# Field: Concurrence

I concur with the majority of the court on the several points decided except one -- that which relates to the admission of the testimony of Amelia Jane Schofield given on a former trial upon a different indictment. I do not think that a sufficient foundation was laid for its introduction. The authorities cited by the Chief Justice to sustain its admissibility seem to me to establish conclusively the exact reverse.

NOTE. At a subsequent day of the term, a petition for a rehearing having been filed, MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

Since our judgment in this case was announced, a petition for rehearing has been filed, in which our attention is called to the fact that the sentence of the **[p. 16**9] court below requires the imprisonment to be at hard labor, when the act of Congress under which the indictment was found provides for punishment by imprisonment only. This was not assigned for error on the former hearing, and we might on that account decline to consider it now; but as the irregularity is one which appears on the face of the record, we vacate our former judgment of affirmance, and reverse the judgment of the court below for the purpose of correcting the only error which appears in the record, to-wit, in the form of the sentence. The cause is remanded, with instructions to cause the sentence of the District Court to be set aside and a new one entered on the verdict in all respects like that before imposed, except so far as it requires the imprisonment to be at hard labor.