

#14

THE
DEFENSE OF INSANITY.

OPENING ADDRESS

OF

JOHN A. TAYLOR,

OF COUNSEL FOR

JOHN JOSEPH BURROUGHS,

INDICTED FOR THE MURDER OF HIS WIFE, AND TRIED AT OYER AND
TERMINER, IN KINGS COUNTY, N. Y., JANUARY 24-27, 1876.

Reported by THOMAS E. CALVERT, Stenographer, 69 Madison Avenue, N. Y.

"Furiosus solo furore punitur."

NEW YORK:
DIOSSY AND COMPANY.
1876.

A D D R E S S .

May it please the Court : Gentlemen of the Jury :

I doubt very much whether any member of our profession ever rises to address a jury of his countrymen upon a subject involving the issue of life and death, that he does not feel himself overwhelmed with the responsibilities which rest upon him. This is peculiarly the case, gentlemen, when the issue to be considered, is one involving such delicate relations as those which it is our duty to examine.

The prisoner at the bar is to receive at your hands nothing of interest to him : no verdict that you can pronounce, nothing which the learned judge can say, nothing which I shall be able to say, or those who shall follow me in his behalf, will fall upon his ear with any degree whatever of interest. Nothing but the fiat of Omnipotence itself can re-illuminate the deserted chambers of his brain, or re-light the torch of reason which has fallen from its socket ! The District Attorney said in his opening, that the prisoner was nothing but a "drunken vagabond." Gentlemen, I know of no law, written or unwritten, which prescribes that you shall sit here giving the careful attention that you have given to this case, that the judge shall sit here and pass upon the evidence submitted to your consideration, all that a "drunken vagabond" may be hung. The question we are to deal with is a far different question from that. We are, as responsible men, responsible to our office, responsible to civilization, responsible to this

prisoner, to say, whether on the 13th November last, he was in that full possession of his faculties which made him criminally liable for his conduct on that occasion, whatever it was. I agree with the District-Attorney, that this is not an abstract question. I agree with him that it is a question solely to be considered by you as a question of fact: a most difficult problem, a most delicate judgment to pronounce, but nevertheless one which you are called upon, in the exercise of your duties as citizens of the Republic, to determine upon your oaths between the people and this prisoner.

It may possibly never have occurred to you that when a man commits an alleged crime, whether he be innocent, or whether he be guilty, the jury, who are called to pass upon the commission of that crime, are a jury selected from the very people whose rights he has outraged, gathered from the great commonwealth whose laws he has trampled under foot; and thus the prisoner, whether guilty or innocent, starts out with a selection from the very quarter that he has offended, presumably against him, yet sitting in judgment upon him.

Now, we think in behalf of this unfortunate prisoner, that one of two theories is true. Either this man, who has sat here already a full day and a half, gazing listlessly into vacancy, whose heart was not touched by the pathetic recital of the death of his own wife, made in his presence, which, I feel sure, thrilled your hearts as it did mine,—that either he is playing a part, acting a drama—an unlettered, unintelligent man—a man who can not read or write—that he is acting a character with greater success than it has ever been simulated upon the stage, or else God has indeed touched the fountain of his brain and left it a desert. Gentlemen, I hope that I need not apologize to you, at the outset of this case, for introducing to your consideration a defense of this character. It is true that not very long ago, men were, by the rules

of the law, to be found of a degree of intelligence no greater than that of the brutes, or else they were held sane (*Justice Tracy in King v. Arnold*, 1723). It is equally true that it is not very long since the standard of sanity was held to be "whether a person could count twenty or not." I thank God, gentlemen, that we live in a different age from that. I thank God, that the jury system, wrung from the unwilling hands of King John, more than six hundred and fifty years ago, has stood the test of advancing civilization as it has, and that you, called upon to determine this question, will consider it in the light of advanced science, will consider it as it shall be lighted up by the reflection of learned men engaged in that special line of investigation, and will pass upon it with the deliberate, intelligent judgment, which your experience and the experience of others, as it shall be brought to your attention, will enable you to give to it.

Now, gentlemen, at the threshold of this case, I want to ask you to disburden your minds, if you may possibly entertain any such prejudice, of the idea that this is a trumped-up defense on the part of attorneys. I know not what conception you yourselves may entertain of the degree of conscience which lawyers may possess in the administration of their duties. I know not how little you may regard the oaths which they have taken when they became members of the bar, to discharge their duties fearlessly, without favor, and with a conscious knowledge of the law, whose officers they are. But for my own part, I sincerely beg you to believe that what I shall say to you here is said with the full and solemn consciousness of the oaths which I have taken; that I recognize no such absurd doctrine as that promulgated by Lord Brougham, the great English jurist, that a lawyer was obliged to do everything that was possible for his client, even if it overturned empires and sowed the seed of desolation broadcast through the land. I recognize a binding

obligation to my client to do whatsoever I may for him, which does not conflict with that more sacred obligation which I owe to my conscience and my God. I shall never do that for him which I shall not do for myself, to-wit: knowingly violate any of the laws of morality which I consider myself bound by. It is fair for you, then, to believe that the attitude which I assume in this case is one thoroughly in consonance with my honest convictions of the facts.

Now, we shall not proceed far in this important investigation before we shall discover that the question which we are called upon to decide is one which has never been passed upon by the courts. I mean by that simply this: that the District-Attorney when he shall come to close this case will be wholly unable to cite to you any well-defined principle of law which shall govern it, going any further than to inform you, gentlemen, that after all the artificial rules laid down to determine the degree of reason which a man must possess in order to be criminally responsible, it rests with the jury in the particular case—the jury who have seen the man, the jury who have heard his history, the jury to whom experts, if they are offered, shall testify, —to solely determine what their verdict is to be upon the facts.

Why! this doctrine of insanity as a defense is not a new doctrine. “That the madman’s punishment is his own madness,” was a maxim of the old Roman law long before our Anglo-Saxon civilization began. It lies at the root of every definition of murder which can be found in the books. It is comprised in that common-law doctrine long ago established, that the intent of the party must lie as a part of the *corpus delicti*, and I shall, with your permission, and the permission of the court, call your attention briefly to a few authorities which I have collected, tending to show what murder has been considered to be, since it has been known as a crime among men.

In the earliest times of English law, murder con-

sisted in the secret killing of a man, and the only way they had of determining who was the responsible man, was to hold the Hundred in which it was committed to heavy fine for every murder there committed, and that fine was remitted from the Hundred when it was ascertained that the party killed was an Englishman. Well now, as early as that, there crops out this idea: the proof that a man was an Englishman remitted the fine, because it was presumed in those rude days that an Englishman would not murder an Englishman, and the moment it was established that the party killed was an Englishman, it was remitted, because no *intent* was found (4 *Blackstone*, 194). Hawkins defines murder to be "the willful killing of any one with *malice aforethought* (1 *Hawkins' Pleas of the Crown*, 92)." Coke says "murder is where a man *of sound mind* and discretion unlawfully killeth any reasonable creature" (3 *Coke's Institutes*, 47). Mansfield—that "murder is where a man of sound sense unlawfully killeth another of malice aforethought, either express or implied" (*Rex v. Hazel*). Francis Wharton, our authority on homicides, accepts Lord Coke's definition. Bishop abandons the attempt, after undertaking a definition in two editions of his work, in the last, and says it is impossible to define the crime of murder.

Now what is the obvious element of murder as observed so early in the history of our jurisprudence? It is this: That no man shall have been considered to have murdered a fellow-being unless, beside the act of killing, there shall exist in his mind a clearly-formed conception to kill; that murder was something more than the naked act; that there must stand behind it the responsible reason of a human being. Why, gentlemen, if I seize your arm, and by force of my strength, a knife which you hold, plunges to the heart of your neighbor, are you to be tried and found guilty of murder? If not, why? Certainly not; because there existed in your

mind no willful intent whatever against that man; your reason was not aroused against him; there was nothing in you that was criminal, although your hand was bloody with the deed. That is the doctrine that was recognized so long ago, and Bishop says this was "the doctrine of the law superior to all other doctrines, because first in nature, from which the law itself proceeds, that no man is to be punished as a criminal unless his intent be wrong."

Now, for a long time in our American civilization, there was no statutory definition of murder. The definitions were abandoned, and they rested upon the case of the People *v.* Kirby, in the second of *Parker's Criminal Cases*, page 28, where it was held that "every wilful taking of human life without a justifiable cause," was murder. That was the common law expressed upon that occasion in this case, and for a long time we remained without any statutory law upon that subject. In 1787 there were statutes passed in this state which prescribed that poisoning, stabbing, and other specific deeds mentioned, resulting in death, should be punished capitally.

But a general definition was attempted in the Revised Statutes of 1830, which said "killing a human being without the authority of law—when perpetrated with a *premeditated design*, was murder"; the act of 1860 said that when it was "perpetrated by any kind of *willful, premeditated, and deliberate* killing it was murder"; the act of 1862 said that when it was "perpetrated from any kind of *premeditated design* to effect the death, it was murder"; and finally, two years ago (1873), our legislature added to this the word "deliberate," and said that "when perpetrated from a *premeditated and deliberate design* to effect the death of the person killed or of any other person, it was murder"; and that is the statute, gentlemen, under which you upon your oaths are to find this shooting to be murder, if it be so. Now, I have called your attention to these express statutory

and common-law definitions of murder, in order to establish to your satisfaction—a work of vain repetition, perhaps, but which I felt it my duty to do—to establish to your satisfaction that the plea of insanity as a defense to criminals had its origin in the very essence of murder itself, that it appears as a very important element of the *corpus delicti* itself, of the body of the crime itself, and that it is so far from being a new-fangled notion, a shrewd device of lawyers who stifle their consciences; that it is a part of this great jurisprudence under which we live, and by which society itself is protected. When our statute-makers came to frame a law upon the subject of insanity, they did nothing more than to declare the common law itself. The common law had long held that a man who was insane could never be held responsible for his deeds, and the statute did nothing more than to write it in our law books so that all people could read it, and that it might not be gainsaid.

So, gentlemen, this defense which we introduce is one founded upon the elementary principles of the law—a right which every man possesses, a privilege which every being possesses who stands under the admonition of the law, that he shall first be proved to be a reasonable being.

Now the law requires that in finding this criminal responsibility, this design, you shall find it without a reasonable doubt. Now I am frank to say—and I propose to treat you candidly, frankly, fairly—I am free to confess to you gentlemen, that the decisions in this state are not wholly in favor of the view which I have presented to you concerning the doubt, that is to say, that the court of last appeals have said, not that the element of insanity in the broad sense which we shall claim for it, must be proved beyond a reasonable doubt: they have not presumed to add their authority to that of a great many other judges in the state, but they have said we leave that question where it is at present, only remarking concerning the opinion of

Judge Brown in 16 New York Reports, p. 58, that it is entitled to whatever of weight the acknowledged erudition of the judge who rendered it can give to it. This was a case where on its trial below evidence had been introduced of the defendant's insanity; the judge below had charged that the party who set up the insanity of the prisoner, must establish it beyond a reasonable doubt to the satisfaction of the jury. Now Judge Brown, in reviewing this charge in the Court of Appeals uses the following language: "It certainly is true that sanity is the normal condition of the human mind, and in dealing with acts, criminal or otherwise, there can be no presumption of insanity, but it is not true, I think, upon the traverse of an indictment for murder, when the defense of insanity is interposed, and the homicide admitted, that the issue is reversed and the burden shifted; the burden is still the same; it still remains with the prosecution to show the existence of those requisites or elements which constitute the crime, and of this the intention or *malus animus* of the prisoner is the principal." Further, that "notwithstanding the legal presumption, the sanity of the prisoner's mind is, under all the definitions of the crime, to be made out affirmatively upon the trial as a part of the case for the prosecution."

The attention of the Court of Appeals was again called to this question in the 32nd New York, and there the court held that they would not approve of the opinion of Judge Brown, that the prisoner was entitled to the benefit of a doubt upon the question of insanity; but in this case, the case under consideration by the court at that time, there was no evidence introduced on the part of the prisoner as to his insanity. But in *Wagner v. The People* (4 *Abbott's Court of Appeals Decisions*, 509), the Court of Appeals did sustain Judge Brown to the extent of saying that "where the evidence in a criminal case raises the question of insanity, the jury must be satisfied *beyond*

a reasonable doubt that the prisoner was sane when he committed the act ;” but again they limited the application of the doubt to a knowledge of the difference between right and wrong.

Now, gentlemen, we conceive the law to be very plain, and it is this :—That the District-Attorney is not obliged to introduce any evidence of the sanity of an ordinary criminal unless the question is raised—that it is presumed, as the law does assume that every man is sane ; but that if the defense introduce any evidence whatever of his insanity, the burden of proof is still with the people, and it then becomes an element of the crime at issue, an element which the prisoner has a right to say shall be found positively, affirmatively against him, or he shall be entitled to acquittal. I think surely I shall have no difficulty in establishing to your satisfaction and to that of the learned judge who presides here in this case, that we are entitled, that the prisoner is entitled here, to any reasonable doubt which you may entertain of his sanity. Certainly, gentlemen, you must see the force of it, if all the line of statutory definitions and common law definitions have regarded sanity, the competency to entertain a wilful design, as a necessary element in the crime, why, then, should not that element be proved as much to your satisfaction as any other ? Now, assuming that the court, to whom, of course, belongs the exclusive prerogative of instructing you in the law, and to whose judgment and approval I submit anything I have to say in behalf of the prisoner, (deeming it my right to do so since the District-Attorney has shown to you what he supposed the law governing the case to be) will charge you that the prisoner is entitled to a reasonable doubt ; and being confident that the District-Attorney will be unable to produce any authority from the Court of Appeals which shall direct him to do otherwise ; it is proper for us now to consider what this reasonable doubt is.

I certainly could not stand up in your presence intending to do my duty, not only as a lawyer but as a citizen, and ask you to entertain any flippant definition of the doctrine of reasonable doubt. The doubt, I say to you with all the earnestness, certainly feeling all the earnestness that the District-Attorney can feel on the subject, the doubt, I say, must not be some flickering, weird suggestion that by some possibility this man may not be sane. It must be a doubt resting upon some well-considered hesitation which you have as to some part of the evidence, some well-defined positive doubt of this character. But I cannot do better, certainly, than to read from the collection I have made here the definition which I suppose is familiar to your Honor, the definition of Chief Justice Shaw as to the reasonable doubt, and which I suppose will be the law administered to the jury in this case. Chief Justice Shaw says, in the 5th Cushing, 320, that "a reasonable doubt is that state of the case which after an entire comparison and consideration of all the evidence leaves the minds of jurors in that condition that they can not say they feel an abiding conviction to a moral certainty of the truth of the charge." Now, sincerely believing as I do that when you retire to determine upon your verdict in this case you will care to consider what so distinguished a man has said upon this subject, I will, with your permission, read this definition again: "a reasonable doubt is that state of the case which after an entire comparison and consideration of all the evidence leaves the minds of jurors in that condition that they can not say they feel an abiding certainty of the truth of the charge." Forsyth, in his Trial by Jury, page 336, adds something to that, certainly whatever weight may attach to his name, by saying that "the jury do nothing but their strict duty when they declare him to be not guilty whom the evidence falls short of convicting, however dark and unfavorable their suspicions respecting him." Asking you then carefully to

bear in mind this important element of the crime of murder, design ; asking you to remember if what I say shall be fortified by the opinion of the judge who will charge you upon this case, finally, that the prisoner is entitled to the benefit of a reasonable doubt upon this important element, his responsible will at the time, I shall now proceed not at all to in any way satisfactorily answer that great question, "What is insanity?"—but merely to present to your consideration some thoughts, some opinions which I have culled at some pains from the works of master minds in this special domain of science.

Recorder Hackett in MacFarland's case, said that "the exact line between sanity and insanity in medical jurisprudence, is as intangible and as difficult to precisely measure as a meridian line in geography." Albert Swayne Taylor, in his work on medical jurisprudence, which is before me, which I have not time to turn to now, says, "It would be difficult to find a definition of insanity which includes all who are insane, and excludes all who are sane." "Words" (says Bishop, *Criminal Law*, vol. I., p. 389), "but imperfectly portray our ideas, but they never go so far short as when employed to convey to other minds our conceptions of the human soul. The thoughts of a man are vague and uncertain, yet never so vague and uncertain as when he is contemplating himself. Let us remember then, that if one can never turn his eyes within, and see his own sane condition truly, nor convey even what he sees in words, so he can not see perfectly the insane mind of another, and especially he can not have what is therein disclosed, conveyed in language to him as it is." Now, perhaps, there was never a question submitted to a jury which had about it such great perplexities as are connected with this question which you are to investigate. Why, gentlemen, all the past history and philosophy of the world, has failed to demonstrate the grandeur of the universe about us, and yet when-

ever man has attempted to turn his eyes within him and to compass if he might, this wonderful faculty of reason called his mind, he has found an infinity as great within his own being as that which he has been able to survey through all the space which is known to him, and so I say, gentlemen, that we are starting out with a difficult question to solve.

Why, the vulgar idea of insanity which prevails among people who have given no attention to the question is, that a man who gesticulates, who roars frantically, who tears his hair is a madman, and that nobody else is. Now, upon the theory of the prosecution that this man sitting here is simulating insanity, he should be raving about here, and tearing his hair, certainly not preserving that fixed stolid demeanor which has characterized him from the first moment I visited him at his cell in Raymond street, until this minute, and which will characterize him after his fate shall be determined at your hands. I say, if it be true that this man is playing a part, if it be true that he is simulating this insanity, he has undertaken a task greater than that undertaken by any human being before, and carried out successfully. And it is fortunate, gentlemen, that through all this devious maze of argument and talk, of reasoning, of decision and doubt, and distrust, he can sit here a silent witness in his own behalf, challenging from your inspection of his condition, that judgment which the most potent tongue could never wring from your hearts upon his case. "It is not necessary," says Erskine, in the *King v. Hatfield*, "that reason should be hurled from her seat, it is enough that distraction sits down beside her, holds her trembling in her place and frightens her from her propriety." So long ago as 1845, Judge Edmonds, a man of undoubted erudition and legal acumen, undertook to define this disease of insanity, undertook to approximate dimly to some rule, which should determine when a person was insane to the degree of irresponsibility, and the result

which he reached with all his learning was, that "a sane man was one whose senses bore truthful evidence; whose understanding was capable of receiving that evidence; whose reason could draw proper conclusions from the evidence thus received; whose will could guide the thought thus obtained; whose moral sense could tell the right and wrong of any act growing out of that thought; and whose act could at his own pleasure be in conformity with the action of all these qualities. All these things unite to make sanity. The absence of any one of them is insanity." Now, I am not able to say, and I shall frankly confess it, that the highest court of this state has taken up the language of Judge Edmonds and adopted it, but gentlemen the highest court in this state, has said and do say, that the fact of insanity is a question which must be left to the jury, and therefore it is, that I bring to your assistance upon this question whatever benefit you may obtain from Judge Edmonds. Because if it be not established as the highest decision of the law, certainly it is not dis-established by any authority with which I am familiar.

Now, I desire to submit to you some cardinal propositions upon the subject of insanity, and to fortify them so far as I may with the opinions of eminent writers in science who have devoted their lives to the investigation of this subject; and the first principle which I maintain before you is one which few will gainsay, but nevertheless one which I should call to your attention because people are so accustomed to regard it as an important element of insanity, the proposition is that

Insanity may exist without delusions.

"I shall endeavor to show," says Dr. Blandford (*Insanity and its Treatment*, published in Philadelphia in 1871, page 309), "that many patients of undoubtedly insane minds have no delusions; that delusions are not the one test of unsoundness of mind, nor even of insanity, so called; and further, beyond all ques-

tion there are persons of unsound mind who can not properly be called insane." Again, he says, "It is quite certain that various persons are undoubtedly insane who present none of the ordinary delusions of insanity; they may not have reached the stage of delusions, and they may go on to recovery without ever reaching it, or they may recover from the stage of delusions, yet never perfectly recover." And again, "We do not call it impulsive insanity when a lunatic all day long tries to smash the windows and tears his clothes to shreds, or incessantly endeavors to set himself and house on fire, and yet perchance he can not give any reasons for any of these things, but has no delusion in connection therewith, he has very few delusions." And Dr. W. A. Hammond, who is an eminent authority, is of the same opinion (*McFarland's Trial*, pamphlet edition, page 3). Another proposition which we expect to establish by authority, to your satisfaction, is that

A person may be in possession of his faculties sufficiently to distinguish between right and wrong and still be irresponsible for his acts.

Now, gentlemen, the District-Attorney has told you that the only test for insanity was whether the party had a consciousness of right and wrong. I shall attempt to demonstrate to you that in addition to the knowledge of right and wrong, the party must have possession of his faculties enough to control his actions in accordance with his knowledge. Why, in the extreme case I cited a moment ago, that one of you should be forced against his will to murder your fellow, you might have the full possession of the knowledge of the crime—there would be no doubt about that—the resistance which you made to your neighbor in his attempt to enforce your act would demonstrate that; and yet, gentlemen, under this theory, if it be true, if the law establishes any such criterion, under this theory you would be a culpable criminal, although another controlled you. Now,

suppose that you had lost all control over yourselves ; suppose that it was absolutely impossible for you to exercise the will power, which is that wonderful power in man which makes him different from the brute in the field, that power which makes him God-like, which demonstrates his kinship to Divinity itself, this power, this royal power of will—suppose you have it not, are you still a responsible being? Ought you to be called into a court of justice, and punished for acts which you never did? Manifestly not, gentlemen. It is high time, high time, gentlemen, that we adopted this common sense view of the question, which has been charged over and over again at Nisi Prius by the courts in this state—that the party must not only have a conception of right and wrong, but also a controlling power as to that conception.

Now I desire to read to you (and, gentlemen, I am sure you will pardon me, for being very dry and prolix upon a question of this character, when you consider the importance it may be to the prisoner at the bar), I desire to read to you from Henry Maudsley (*The Physiology and Pathology of the Mind*), who is foremost among the authorities upon this subject.

The District-Attorney.—We acknowledge Maudsley as an authority.

Mr. Taylor, resuming: I read from the second edition, published in 1868 (p. 348). Maudsley cites this case. “An old lady aged seventy-two, who had several members of her family insane, was afflicted with recurring paroxysms of convulsive excitement in which she always made desperate attempts to strangle her daughter, who was very kind and attentive to her. During the paroxysms she was so strong and writhed so actively that one person could not hold her, but after a few minutes struggling, she sank down quite exhausted, and panting for breath, would exclaim: ‘There, there! I told you—you would not believe how bad I was.’ No one could detect any delusion in her mind, and had she, unhappily succeeded in

her frantic attempts it would certainly have been impossible to say honestly that she did not know that it was wrong to strangle her daughter." "When, therefore," he says again (p. 364), "a person of good social position, possessed of the feelings that belong to a certain social state, and hitherto without reproach in all the relations of life, does after a cause, known by experience to be capable of producing every kind of insanity, suddenly undergo a great change of character, and lose all good feelings and become shamefully vicious, and brutally wicked, then it certainly will not be an act of charity, but an act of justice to suspect the effects of disease; at any rate it behooves us not to be misled in our judgment by the manifest existence in such a patient of the full knowledge of his acts, of a consciousness in fact of right or wrong, to remember that disease may weaken or abolish the power of volition without affecting consciousness." "Most maniacs have a firm conviction that all they feel and think is true, just and reasonable, and nothing can shake their convictions," says Dr. Ray (*Medical Jurisprudence of Insanity*, 5th ed., p. 17).

"If insanity must preclude every attempt at design or premeditation we may as well reject every other principle equally confirmed by every day's observation of the insane, and by the numerous examples cited in the annals of insanity, and medical jurisprudence in our country and abroad" (*M. G. Echeverria, in the American Journal of Insanity for January, 1873*).

"A state of sanity is one in which a man knows the act he is committing to be unlawful and morally wrong, and has reason sufficient to apply such knowledge and be controlled by it" (*Recorder Hackett, in People v. McFarland*, 8 Abbott N. S. p. 92).

Now I will not read further from the authorities which I have collected here; they certainly add weight to the principle stated by Mr. Maudsley, that the possession of a conscious controlling power in a man is

an essential element of his sanity. And, gentlemen, you will see that this is founded upon a common-sense view of things; because, as I have already suggested, what avails it to have an intellectual conception of the deed which one is about to perform, to know that it violates the moral code which he has been brought up under, and yet to be without power to resist it; to have a brain so shattered that it is no longer the controlling guide of his life; to be dismantled, in fact, of the very power which enables him to put aside the obstacles which hinder him, and to pass upon questions which come to his consideration with an intelligent and responsible judgment?

I suppose that you are aware that insane persons have very generally, or at least on frequent occasions, been possessed of more than ordinary powers both of literary composition and scientific acquirement. Why, gentlemen, the very judge whose authority I have cited to-day, and whose opinion your Honor will, I believe, recognize as entitled to great weight, was known years before he died to be of the firm conviction that every day as he passed down the street there flitted before him forms from the spirit-world; that they followed him about his business; that they accompanied him in his conceptions of the principles of law, and guided him in his labors; and he was firmly of the belief that whatever rank he obtained was due to the direct communication of those spirits to his individual presence. Now, probably, the common mind would regard a thing of that kind as indicating an aberration of intellect, at least; but we have never ceased to regard his decisions as of the very highest authority. With your permission, let me read the following:

“There is a winter in my soul,
 The winter of despair;
 Oh! when shall Spring its rage control,
 When shall the snow-drop blossom there?
 Cold gleams of comfort sometimes dart
 A dawn of glory on my heart,

But quickly pass away.

Thus Northern lights that gloom adorn,
And give the promise of a morn
That never turns to day."

These verses were written by a lunatic in an English asylum. One quite crazy, but with one portion of his intellect not wholly shut out to the conception of his condition. And it expresses what I regard, gentlemen, as a most beautiful reflection upon the moral and intellectual night that had settled down upon him. In the case of Dadd, who was acquitted on the ground of insanity, and who was proved to be a confirmed lunatic, it transpired that the man, after killing his father, obtained a passport and sailed from France with all the cunning design of a criminal eluding pursuit, and yet there was no doubt at all of his insanity. (*Wood on Plea of Insanity*, page 41).

Now, gentlemen, one other proposition I want to submit to you, and that is, that "*It is not incumbent upon this defense to establish insanity as a continuing accompaniment of this man's existence from any given time to any given time.*"

The question which you will be called upon to answer is: "Was this man at the time of the commission of this deed, not is he now, insane,"—I grant that to the people—not is he now, not was he two years ago, not was he five minutes before the deed, not was he five minutes after the deed,—but was he at the time of the shooting, in such a possession of the powers of reason, given him at his birth, as to be responsible for this act. And in support of that proposition I cite a case which will be familiar to the court, and if I am wrong in any statement which I make about it, you will be sure to hear of it from the industrious counsel for the people. The case is the *People v. Cole* (7 *Abbott's P. R. N. S.* 321). In that case Judge Hogeboom, a man who certainly commanded the respect of the bar and the bench, Judge Hogeboom in his charge to the jury had left them in some doubt, I

think, as to the full meaning which should be given to what he had said in relation to the *time* of the insanity, which they should find. The jury came in, after having returned twice for instructions. They came in, in a short time, and they said to the court, "We find the prisoner sane at the moment before the shooting, and sane the moment after the shooting, but are in doubt as to his condition at the time of the shooting," and the court charged that they must give the prisoner the benefit of the doubt, as the time of the shooting was the only criterion. Now, gentlemen, I maintain not the proposition that if we were able to show to you, in this case, some momentary, temporary freak, which could be construed into madness on the part of this prisoner, that thereupon you should as true men, making true deliverance between the people and this prisoner find him not guilty; but I do maintain that you may find in the condition of this prisoner at any other time than the shooting, such corroboration of the belief you may entertain of his sanity or insanity, as may be evidenced by the greater or less weight of those circumstances and conditions. That I believe is within the fair construction of all the decisions which have been made upon this subject. Now in the case of Murray, tried in Edinburgh, in 1858, it was proved that the prisoner recovered from his insanity eight hours after he had killed the deceased; he was acquitted upon the ground of insanity during the time he committed the act. It is cited in Taylor's *Medical Jurisprudence*, vol. ii., 561. Now thus far I have endeavored to lay before you a few propositions which might seem to be helpful to you in discharging your duty. I am not here to interpose any obstacle between the exercise of that very great duty, which is your own individual obligation, and any punishment which lies in wait for this prisoner. If I am correct in the belief which I entertain of his condition he is past the effect of any punishment. The most you

can do in that direction will be to shelter his family, to shelter his aged mother who will come here and tell you what she knows of the story of his life from the added ignominy of his death upon the gallows. Have you, gentlemen, during the course of this trial hitherto, have you seen any look upon the face of this prisoner that has indicated the slightest interest in this case? If you have, you have certainly discovered more than I have done at any moment or any hour of my intercourse with him, since my duties in relation to him became encumbent upon me. So I say to you, so far as Joseph Burroughs is concerned, your duties do not afford you scope enough to give him a single hour of satisfaction or comfort. When you shall come to bring in your verdict in this case he will sit here with the same stolid look upon his bloodless face, which has rested there during all this trial. Yet there are considerations which should lead you to give to this prisoner the same impartial trial that you would give to him if he hung breathless with emotion upon every sentence which came from your lips.

I want to call your attention to one principle laid down by the authorities, which you should bear in your mind, and that is, in the words of Dr. Blandford (Blandford's *Insanity and its Treatment*, page 334): "The act may be so motiveless that no one can doubt it must have been the act of a madman. When a man murders one known to be most dear to him, we may suspect insanity, and more than suspect;" because I believe that will be more than an important consideration in your minds, when you shall come to consider in what condition this man's mind was.

Now, gentlemen, I have noted three of the superinducing causes of insanity, which if you will allow me to call your attention briefly to, I shall have done with this theoretical part of the case, and shall proceed to unfold to you the facts which we expect to establish on the part of the defense. The first is that injuries to the head are superinducing causes of insanity.

These injuries, I think, frequently appear in the history of these cases, and are recognized as sufficient causes for the production of an unsound mind. Maudsley in a note to his 2d edition, page 286, quotes from Professor Schlager, of Vienna, who says that "in nineteen cases out of five hundred, mental diseases come on in the course of a year after the injury, but not till much later in many others ; and in four cases not till after ten years ; in most of the cases the patients were disposed to congestion of the brain, excitement, and great emotional disturbance and excitement on taking a moderate quantity of intoxicating liquor. There was ringing in the ears, or difficulty of hearing"—both of which are pronounced facts in the case of this prisoner—"very commonly the disposition was changed, and the patient was prone to outbursts of anger or excesses."

Again, we shall maintain before you that intemperate habits of themselves tend to produce a deterioration ; are considered inducing causes of this disease of the brain. "There are cases," says Henry Maudsley (page 474), "in which positive insanity is produced by drink ; and they are sometimes the occasion of great injustice being done by our legal tribunals. Some persons, who have a strong predisposition to insanity, or who have been once insane, or who have had a severe injury of the head at some time, do actually become truly maniacal for a while after an alcoholic debauch, or are rendered temporarily maniacal, being probably thought drunk, by a very little liquor."

"A thorough diagnosis, involving a history of the patient, a close scrutiny into preceding circumstances, would, more frequently than is done, identify alcohol as the predisposing cause, the great disturber. This poison may be said to act directly on the nervous centers, and it is noticeable that the encephalic portion seems to be the special field for its disturbing chemical action. An affinity seems to exist between alcohol and nervous matter, which may account for

its special power in deranging the nervous system.” (*Methomania*, by Albert Day.)

“ While we must admit hereditary influence to be the most powerful factor in the causation of insanity, there can be no doubt that intemperance stands next to it in the list of efficient causes ; it acts not only as a frequent exciting cause where there is hereditary predisposition, but is an original cause of cerebral and mental degeneracy, as a producer of the disease *de novo*” (*Responsibility in Mental Disease*, Maudsley, 1876, p. 283).

Now, gentlemen, I have referred to this as among the superinducing causes of insanity, partly because the case of the prosecution, as shadowed forth in the evidence which has so far been presented to your consideration, seemed to indicate that an attempt was to be made here to show that Joseph Burroughs was under the influence of liquor at the time of this transaction, and was therefore not excused by the law for his participation in it. We shall abundantly satisfy you, gentlemen, I think, that no such state of things could possibly have existed, and if you shall not find that that was an all-efficient cause of it, then, of necessity you will be turned over to the other horn of the dilemma, and you will be obliged to see in it such a state of weakened physical powers, such a low tone of the system, as showed a mind of deteriorated brain-fibre, waiting to be ignited by some exciting cause which should burst forth into the uncontrollable rage of the maniac.

Now, another efficient cause, and the last to which I shall call your attention, is sleeplessness ; and I now refer to Dr. Hammond’s synopsis of the general subject of insanity, found in the edition of the trial of Daniel McFarland, published by W. E. Hilton, of Nassau street, which I have obtained from the library below, where he says that “ with the wakefulness of the patient, combined with great mental and physical irritability, the patient is occupied with the thoughts

and emotion which have engaged his attention during the day, and he dwells upon them, not only with intensity of thought, but often with an intellect perturbed and perverted from the mode of action natural to him. He may likewise have illusions, delusions, hallucinations, and only towards morning obtain a little sleep, but then is disturbed with dreadful dreams which prevent his being refreshed. His whole nervous system is in such a state that he paces the chamber the greater part of the night, or seeks the open air, or walks the streets until thoroughly exhausted, mentally and physically, when he succeeds in getting a little quiet slumber. Persons thus unfortunately situated must beware how they allow their duties and pleasures to interfere with that recuperative process which is indispensable to their perfect safety. The records of our private asylums show a large proportion of cases in which the disease was attributable chiefly to this cause, which a little more prudence would have prevented."

Now, gentlemen, you are certainly no more conscious than myself of the sketchy, superficial character of these indications which I have thrown out to you; but, when you come to reflect upon the questions which we are considering, it seems to me you will observe that the most we can hope to do in this honest investigation which we are making in this case, is, to feebly probe after information, which shall be of such a general character as shall enable us, if remembered and thought upon, to rightly consider the facts of this case, which I now proceed to disclose to you, as we believe we shall be able to prove them.

Joseph Burroughs was born about thirty-nine years ago. He was of an humble parentage. Up to the age of fourteen years or thereabouts, he was a bright, active boy, a boy of good behaviour, a boy of considerable promise. At that time he accidentally sustained an injury behind his ear, near the brain, which, by the way, he could never have simulated. The District-

Attorney will find himself called upon to demonstrate to your satisfaction when he comes to close this case, as I have so often before remarked, that this man is simulating. Gentlemen, you can have ocular demonstration, if you desire it, of the presence behind his ear of such an injury as the physicians, whom we may call to testify in this case, will declare to you might have been (we shall not claim that insanity was a necessary effect of such an injury), productive of inflammation that could have been sufficient, when taken in connection with the other circumstances of his life, wholly to overpower the reason which God had given him.

After this injury, gentlemen, he became stupid. All the rest of the family, most of whom you will have the opportunity of personally observing, are possessed, if I am any judge, of a degree of intelligence and frank, open-hearted expression not at all common to persons in their rank in life ; but this boy after the injury was stupid, intractable, unable to learn to read or write, although he was born here on Long Island, in Newtown, not far away. He was, therefore, put early at a trade, and about this time his father died. He learned the mason's trade ; it was an humble occupation, it was an honest occupation, it was one not calculated to afford him an opportunity for making a large display in the world, but one, I imagine, quite as essential as many other occupations, certainly, in the community, an honest, healthful, thriving trade. Now, gentlemen, when he arrived at the age of twenty-six years, he married a Miss Maggie Camp. When the District Attorney insisted upon going behind the record of this man's life with the woman that he shot, and saying to you that he expected to show cruelty on the part of this man against his first wife, I did suppose that, dwelling on his connection with that first dead woman, he would introduce some shadow of proof upon which he might conscientiously rest the stigma which he had cast upon that relation. Have you heard anything of it? Has there fallen a word

from the mouth of any one of these witnesses here which reflects in the slightest degree upon this poor man's relation with that woman? Not a scintilla, not a particle! A wholesale, unsupported defamation of a man whose reason is gone, and whose tongue is speechless. His relations with his first wife, I think, were pleasant; they were of the most tender nature. We are prepared to show to you, on the part of the defense conclusively, that those relations were pleasant, and if the District-Attorney has forgotten to put in the evidence relating to them, he will have an opportunity to do so upon the rebuttal perhaps, and we shall be prepared to meet that issue whenever he may present it to our consideration.

Now, before that time—before he married Maggie Camp—the woman whom he shot, knew him. If he was a bad man then, she knew him; if his relations with that first wife were such as have been indicated by the District-Attorney, she knew it; and yet three months had not elapsed after the death of that first wife, before this woman hustled this man, half fool and the other half crazy, off in a carriage at night, and married him. Now, I desire to speak guardedly and with a peculiar degree of reverence concerning a woman whose lips are cold in death, and who can never answer any assertions made against her character. Far be it from my intention, though I bristled all over with facts, to undertake to defame that woman by any word of mine; unless, gentlemen, you might draw such a conclusion from the facts which it has become necessary for us to present to you, concerning her, in order to demonstrate to you that this man's relations with her were of a widely different nature from those that have been indicated by the witnesses for the prosecution. It is my unpleasant duty to state to you, gentlemen, a duty from which I dare not shrink, a duty which is shared with me by distinguished counsel in this case for the defense, that when this man entered upon the relations with this

woman that he did, she had already given birth to a child for whom no man stood up in the whole community and claimed the parentage. And surely if you shall discover in such a disclosure made to a man after assuming marital relations with a woman, anything which should fire his brain and dethrone his reason, and unsettle his sentiments with regard to right and wrong, why, then, you will but follow, I think, the instincts of human nature which are alike to every man. The fact exists; it is a part of this case; it is one of those circumstances which make up this revolting record as it has been in part presented to you. It is our duty to maintain it and proclaim it.

Now, this woman, Miss Kinsman, the name under which she was married to Joseph Burroughs, was at the time of her marriage an inmate of the house of Mrs. Burroughs, the mother of Joseph. She had for some time been occupying relations of supposed intimacy, with a view to marriage, with a young man in the neighborhood, and it was the common expectation of that household that she would be married to him. But when Mrs. Burroughs, the mother of the prisoner, discovered an unexpected arrival in her household, whose maternity was not in dispute, because impossible to be disputed, the feelings of this honest woman, who had reared a household of children, and stood the only guardian left of their honor and their moral sense of duty—her feelings were outraged, and she said to this Miss Kinsman: "You must unfold to this young man the circumstances which have happened here; it is hardly right that you should enter into this sacred relation which you propose to enter into with him, unless he shall be informed of those other intimate relations which you have established with the father of this child, and if you do not tell him, it becomes my duty as a Christian woman, with a regard for the decencies of society, with some regard for his own welfare, to see that he shall be informed of it, and I shall do it." Miss Kinsman's ideas of the proprieties

of that information differed from Mrs. Burroughs', and she thought it quite compatible with whatever views she entertained of the relation she was to assume, that it should be assumed in utter ignorance of any such circumstance. Mrs. Burroughs, however, finally prevailed upon her to make that revelation, and when she made it, the man whose affections had been absorbed in her, fainted away at her feet, and of course the relations between them were dissevered.

Now, gentlemen, I think you will acquit me of going outside the professional duty which I have assumed in this case needlessly. I should deserve to be stricken down here in your presence if I could allow it to be possible, that for any purposes of sensation, for any purpose of enlisting feelings which ought not to be enlisted in this case, I should attempt to throw a stone against the character of this dead woman; I could not find it possible to do so, and in doing what I have, I run the risk of acquittal at your hands of any such design, because I think that you will see that this fact once admitted, it is the pivotal point about which all these relations turn, and unsolves the hidden mystery of what it was that turned the mind of Joseph Burroughs into vacuity, and fixed upon him that steady gaze into the future or to some far off quarter which has never left his face since he entered this room.

Now, when this infant was found there, it became, of course, the subject of earnest conference in the family, and Mrs. Burroughs' proposition was that the girl should be turned out of doors. I doubt not, gentlemen, that you can rightly understand how outraged must have been the feelings of a woman who had raised in obscurity, and by hard toil, but honestly, a family of children, to find harbored in her household a woman of this character; and perhaps you will find in that sufficient cause for the stern opinion of this woman that she must be turned out of doors. But a younger sister of the prisoner here interfered in the matter, and at her solicitation she was retained in

the house. She represented to her mother the condition of the woman turned out upon the streets under such circumstances, and finally prevailed upon the old lady to allow her to remain in the household; and it was about a year after that disclosure that this woman and Joseph Burroughs left the house by stealth in the night, and were married. The false step I have mentioned, was unknown to Joseph Burroughs, of course, when he entered upon this relationship. You can hardly assume that the man would openly enter upon any such relationship with a woman concerning whom he knew this fact. But very shortly after Joseph Burroughs was married to this woman, it was disclosed to him, and I think you can readily understand that it precipitated into his domestic affairs a constant element of unrest and disquietude. It certainly was a reflection calculated above all other reflections to disquiet this man, to render him liable to magnify any little departure of that woman from the strict line of virtue or propriety, or even domestic companionship; and yet, gentlemen, in spite of that, so strong was the attachment of this man for that woman, that there has never been a time during the history of his acquaintance with her, when he has not worshipped the very ground upon which she walked. I shall not undertake to demonstrate to you, men of the world, family men, business men, how it is that such a feeling could retain possession of him. I think it is common to all our observations that such feelings are enlisted—the strength of their power, and the reality of their existence. However that may be, it did exist in this case, and it never deserted him.

Now, Joseph Burroughs contracted at some time in his life the habit of drinking intoxicating liquors. He was a hard-working man; he worked steadily, faithfully; at times he drank liquor, that is a fact in the case; it is a fact which we freely admit, it is a fact we have no disposition to deny, because, gentlemen, although it may seem, from the efforts which

have been made by the prosecuting attorney to build up a rampart of rum about this case, that he expected to walk over that unsolid foundation to a verdict of guilty at your hands, yet we expect that you will not try this case upon that issue, and we freely, frankly say to you that concerning the use of intoxicating liquors, Joseph Burroughs did indulge in them. And we are confident that we shall be able to show to you, if you have not already surmised it from the evidence that has been given, that the threats and the vile language which he indulged in, as testified to by these witnesses, was the result of this undue use of liquor. He was continually endeavoring to master this habit. He had at home a wife concerning whose qualities for keeping his house in order, for doing those various little things by which the wife of a poor man always has it in her power to add to the happiness of her husband, I shall not stop to comment upon. If it shall become necessary for us to ask the witnesses, during the course of the case for the defense, what they were, it will probably be done, and it will be sufficiently disclosed to you; but I think, gentlemen, you will find that without saying anything particularly against her in that direction, they were certainly not of a character to lure him to the household—they were certainly not such as to keep him well poised in his determination to rescue himself from this habit. He had, however, thrown off this habit, to a great extent, and we shall bring to your notice and offer before you, the employers of this man, who will tell you how much of a “drunken vagabond” he has been through a certain portion of his life. On election-day, after he had continued working for two months after his wife had left him, for a short time he began to drink; and he drank, as was his usual custom when he did drink, for one or two days, and since that time we think it will be impossible for the District-Attorney to show you that he has indulged in the use of intoxicating liquors to

any extent. Now, this man's wife had left him. She was to him, no matter how disordered her relations with him, no matter how very far from that which ordinary men in his condition would regard as preferable and desirable, she was, nevertheless, to him the one necessary element of his happiness and his safety; and she was away from him, and he solicited her to return, and from the day of the election to the day of the shooting, his mind continued in an aggravated state of ferment, excitement, sleeplessness, restlessness, without any mitigation. The Sunday before the Saturday of the shooting, he was in a wild, crazy state about the house; his mother was with him, his niece was with him. He was sitting in the front basement, when suddenly he started up and ran out into the back basement where the dinner-table was set, seized a knife and attempted to cut his throat, and it bears the mark to-day, as the doctors will assure you. Now, that was six days before the shooting—will the District Attorney tell you that that was simulation? The medical authorities say that simulation is rarely assumed until after the occurrence for which the prisoner is indicted. If he had shot his wife and then undertaken suicide, you would be left the opportunity for believing that he did it to cheat the law of its due; but, gentlemen, he began his tragic manifestations in the history of this case, by attempting his own life—that was his condition of sanity. Monday night he sent for a pious woman connected with the church which he had attended, and beseeched of her that she would pray with him for his salvation, and there upon the floor they knelt together for an hour and a half; he beseeching for salvation, and she joining in his plea; he saying that his wife was the only obstacle between him and salvation, and she undertaking to soothe his excited utterances by a petition to the God who watches over us all, that His influence would shine down upon his heart and illuminate it with the light of divine apprehension.

Now, gentlemen, does the murderer, does the man between whom and the people stands the law, begin his work of murder on his bended knees? Does he call in assistants from the neighborhood to add their entreaties to his before he starts out on his errand of death and bloodshed, to ransack your house and pillage society? Certainly not gentlemen, certainly not, and yet there will be no doubt about these facts.

Has the prisoner slept at all during that week? We shall show you that he did not. We shall show you that on Wednesday night he ranged up and down through the house, until he finally awoke his aged mother here, who, tired with watching, was getting a little sleep from the "bosom of the night," and bent over her in a position, gentlemen, which I know not how it may impress you, but certainly suggests to me the horrid thought that he was about to begin his work of tragedy by sacrificing the mother who had borne him, to his insane frenzy. Now, gentlemen, where was the motive for this act which this man has committed? Was it revenge upon his wife? Why begin with himself, and second that with the life of his mother?

Thursday night found him in an unabated condition of excitement, sleepless, perturbed, walking through the house with his stockings in his hands and his shoes under his arm, in a perfect condition of restlessness, designated by the gentlemen from whom I have read to you as among the most prominent indicia of insanity; and so it went on until Friday night. The District Attorney told you that he expected to show to you that this man Burroughs was lurking about the house of this woman on Friday night, if I remember, and he expected that you would draw from that the conclusion, as you would doubtless have been entitled to, that there was a wicked, persistent, devilish design about the man inconsistent with the theory of his insanity. Has he shown any such thing? Is there any evidence that Burroughs was

lurking about the house the night before? There is evidence that he talked with a man who lived somewhere in the neighborhood. Was he lurking about? He made known his presence to the man—went and talked about some ordinary matter; certainly that can not be construed, by the most imaginative powers any of you possess, into any lurking on the part of the prisoner.

These, gentlemen, are brief indications, imperfect suggestions, of the facts which we expect to present to your consideration. They constitute, I think, with the medical testimony which we shall introduce, from those who have examined this prisoner on more than one occasion since the shooting, and from their opinion, as they shall give it to you upon the facts in this case, and the insane history of his relatives—they constitute a chain of circumstances, of scientific judgment upon the circumstances, which, coupled with what you may observe about this man yourselves, will, as I believe, lead you to the conclusion that he has never been responsible for the shooting which it is acknowledged he did. Added to that, we shall show you that an uncle of this man, his father's brother, was insane, and that the son of that uncle was also insane. The father of the son committed suicide.

Now, gentlemen, I have done.

Friendless, illiterate, staring vacantly at this dreadful drama in which is involved no smaller issue than his life or death, Joseph Burroughs asks only at your hands that full measure of justice which is at once the right and privilege of the best and basest of mankind. If you can find in that stormy week of excitement preceding this dreadful catastrophe an intellect sufficiently clear, a brain well enough balanced to weigh with responsible judgment the action to which his mad delusion drove him, then he must suffer the full penalty of the law which he has consciously violated. I have no shield to interpose between any violator of the law and its merited penalty. I am

painfully conscious, gentlemen, of the imperfect manner in which I have performed the task which has been allotted to me in this case. Fortunately for the prisoner, at the conclusion of this issue, you will be addressed, in his behalf, by distinguished counsel, who will pass before your consideration all the evidence in this case, subjecting it to the most rigid scrutiny and the most careful analysis. We now present our evidence to your intelligent judgment. We desire by no legal jugglery to divert your minds from the painful issue which you are called upon to decide. The basis of society is not so well settled that it should lose any element of strength by your adjudication. If the death of this wretched imbecile is necessary to preserve more stable the pillars of the temple of justice, let him meet the fate that awaits him. Let no over-rash zeal of counsel substitute a view of this unhappy circumstance inconsistent with the verdict of your deliberate attention.

Yet, gentlemen, while it may be a matter of small consequence to either you or me, whether the man Joseph Burroughs shall be found guilty or not guilty, it is of vast, illimitable concern to the great civilization in which we live—it is of endless importance to the very life of society itself—whether a being, bereft of reason, floating rudderless on the ocean of temptation and strife, shall be judged in the calm, sober atmosphere of pitying sympathy and love, or in the hot heat of revenge and retaliation; for, wretched and depraved as this poor prisoner may be, standing unfriended in this open court of justice, gazed upon and hawked at by the rabble in the lobby, there are yet chords of human tenderness and hope which knit his heart to that of each of you twelve men by the indissoluble bonds of a common brotherhood.

If the deed for which he is indicted be a crime, it is a crime utterly motiveless. No mad passion fired his arm; no secret jealousy poisoned his judgment or palsied his moral nature. With the discharge of his

pistol, all his hopes were blighted. With the fall of his wife, fell every element of happiness to him. He loved her even and literally to distraction. He saw nothing but good around her or about her. To him she was little less than an angel; nay, she was an angel; and since her sad death, she has, as he believes, opened the door of his wretched cell and shone upon him with angelic benedictions.

Alas, gentlemen, there was a time when Burroughs was not the wretched man you now behold him—a time when his tender breath sweetened and warmed this aged mother's bosom. There was a time when his shouts rung high and joyous in those happy, happy moments of boyhood which we all delight to think upon. But the grave early closed over his father, and, groping blindly through his checkered way of life, he has wandered out into the boundless ocean of utter emptiness, a battered, storm-tossed hulk, without compass or guide, drifting, drifting, drifting to no certain end of the earth—aimless, will-less, emotionless—all the chords of his moral restraint cut loose, every star of heaven shut out from his vision, with the slender wick of reason burning feebly in its socket, if not already put out.

Judge him, then, gentlemen, as he is; and if, on the one hand, you see an offended law and the public weal in jeopardy, listen, also, on the other, to that benign utterance of the divine Nazarene, who, eighteen hundred years ago, from the thunder-rocked hill of Calvary, with an omniscient view of the maniac crowd around him, breathed towards heaven that sublimest expression of charity ever uttered upon earth, "Father, forgive them, for they know not what they do."

NOTE.—On the opening of the court on the second day of the case for the defense, the District-Attorney announced the abandonment of the case by the prosecution, and the court directed a verdict of acquittal, on the ground of insanity, which was accordingly rendered.