

of an old and a barbarous code—and that it is a law which shocks Christian sensibilities, and which should not be carried out by Christian men. It is not a part of my duty now, gentlemen, to discuss this question, nor will it form any part of yours to decide it. I admit that the law is an old one; it is to be found in an old and Holy Book, which you and I and all of us have been taught to reverence; and it is there pronounced that "whose sheddeth man's blood, by man shall his blood be shed." I am content to leave the question of its barbarity without further remark; but the real question for us is, not whether this law be barbarous, or old, or new, but whether it is the law which this Court is bound to administer, and by which you are sworn to be guided. To this question there can be but one answer, and you do not appear to me to be men likely to be led by any sophistry from the performance of your plain duty or by finding this man guilty only of manslaughter to save him from the punishment of death, if in your consciences you believe him, according to the evidence placed before you, to be guilty of murder.

The discussion of these preliminary matters, gentlemen, has now brought me to the real questions involved in the momentous issue before you; and these questions are few and simple—

Whether or no Sergeant Quinn was killed by the prisoner at the bar, can scarcely be termed one of these questions, for it cannot be disputed that he did, and his counsel does not deny it. Admitting that fact, then, what crime did that killing constitute? Was it murder or was it manslaughter? Or as appears to be contended by his counsel in portions of his address, was it committed while the prisoner was in a state of insanity, unconscious of what he was doing, incapable of premeditation or of malice, and, therefore, incapable of committing the crime of which he stands charged?

Let us try to obtain a clear idea of what murder is, and what distinction there is between murder and manslaughter, and we shall then be better able to decide in which category the act of the prisoner should properly be placed. Not to fatigue you with learned subtleties I may tell you, as you will probably be better told by his Honor in his charge, that killing a man deliberately and with premeditation is murder. Killing him in a sudden transport of passion caused by grievous provocation, acted upon on the instant of provocation, is manslaughter. But notwithstanding that the killing follows violent provocation, no matter how grievous; if there was an interval of reflection it will be murder. For instance, if a man with an implement of his trade in his hand receives gross provocation, and in an outburst of passion strikes his insulter or assailant dead on the spot with the instrument he holds, a consideration for the frailty of our nature would probably cause the crime to be classed as manslaughter; but if the same man, being without any weapon, should return to his home or workshop to obtain one, and should then seek

his enemy and kill him, it would be murder. For, however short the interval might be, the offended man had had time to reflect and to control the first impulse of his temper. This explanation will enable you to judge, gentlemen, whether the act of the prisoner at the bar can be held to be manslaughter. Let me trespass on your attention for a few moments while I recall to you the details of the whole of the circumstances as proved. They have been fully related to you by the witnesses; you are enabled by the testimony to trace the prisoner step by step from the period of his intoxication and punishment at Chambly down to the morning subsequent to the fatal act, when he gave his own account of it and of his motives in perpetrating it.

About the 21st of June he was found to be intoxicated, on his way with the Company to rifle practice. The deceased, Sergeant Quinn, being on duty at the time, sent him back to barracks under the care of two men, and in this he acted strictly within his duty. The next morning he was brought up, and punished by confinement to Barracks for seven days. You will understand that this punishment did not comprehend confinement in a cell, but merely a prohibition to pass beyond the limits of the barracks. About the 24th of June the Company returned to Montreal, and the prisoner with them. A few days after their return 20 rounds of ball cartridge were served out to the men, and among them the prisoner, for on the morning of the 8th of July his pouch was examined by the Sergeant of the guard, Sergeant Kelly, and the 20 rounds were found in it. On the following evening he was at supper at five o'clock: shortly afterwards he went out with Corporal Barker, who was orderly Corporal that evening, and returned about six. At nine o'clock he was present at roll call, in the room with the rest of the Company, and was subsequently seen to undress himself and go to bed. About half-past twelve o'clock the men were awakened by the discharge of a gun in the room, and a man was seen standing at the bedside of Sergeant Quinn, with a rifle in his hands at the charge, and a bayonet under his left arm. This man fixed the bayonet on the rifle, made steadily for the door of the barrack room with his rifle and bayonet at the charge, and on being interrupted by Connell made a desperate attack on him. The soldiers came to Connell's assistance, the man was overpowered, and recognized, and that man was the prisoner at the bar. He was dressed in his usual fatigue costume; the rifle taken from him was found to have been recently discharged; his pouch was open, and two of the ball cartridges were missing from it; one of them was subsequently under his own directions, taken from his pocket; and a ball of similar kind to those in the cartridges was found near the bed of Sergeant Quinn, with indications upon it of having been discharged; and the unfortunate Sergeant was pierced through his body with a gunshot wound, which from its direction must have been caused by the discharge of a gun or rifle

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