

to correspond with the broken stem of the pipe found on the prisoner.

The last point I have to draw your attention to in the evidence of the Crown is the question put by prisoner to deceased after the latter made his statement before Mr. Dugas. As you will remember, the production of Nesbitt's deposition as direct evidence of the assault was objected to on the part of prisoner, and his objection was maintained. It is not a dying declaration, because there is no evidence that Nesbit knew he was dying when he made it, but it is produced as evidence of what took place in the presence of the prisoner, and of his demeanour and action on hearing this grave accusation. The prisoner being asked by the magistrate what he had to say, having heard what Nesbit said about the shooting and the assault with the shovel, he asked: "Is it not true that you ran after me and knocked me down?" The answer was unfavorable and he once more took refuge in silence.

This question is not what is called circumstantial evidence. It is an admission, though only an implied admission, of having fired the fatal shot, but it is a direct admission of an assault.

There are reasons which may be urged and fairly so, to explain why an accused person does not speak when his conduct is open to suspicion. He may fear by some indiscretion to heighten the presumptions against him of guilt, or he may dread misinterpretation. The prisoner is probably an old soldier, his counsel say he is, and he was therefore fully aware of his right to say nothing. But the dangers which suggest this reserve are at an end. He has had two months to arrange his defence, and he has now the aid of learned counsel able and willing to put his defence, if any he has, in the best shape before you. Yet to what does it amount? He says the bullet wound was not the cause of death. We have already dealt with that sophism. He now says, there is no proof of his having shot deceased. I think you will have no difficulty in dealing with that pretention. And finally he says that even if you believe he fired the shot, there is no evidence that he did so with premeditated malice, and that it was, in effect, an accident. In support of this defence it is agreed, that there was no

motive for a crime, that an evil intention cannot be presumed, and that no guilty man would have acted as the prisoner did.

Motive, like character, is only important in cases of doubt; it is of no importance when the testimony is conclusive. Again absence of proof of motive, in any case, is of little moment, as a bad man will find sufficient excuse for crime in what appears trivial in the extreme. In fact no motive for crime is sufficient. Again, you are told that you cannot presume the malicious intention. The law says you may gather it from the act. If a man unintentionally inflicts a deadly wound, and the wounded man dies of the wound, it is for the assailant to show that he did not premeditate what is the natural or even possible consequence of his act. Knowing this, the defence says it was an accident, and there was no intentional killing at all. If that were true, how do they explain that the prisoner did not assist the deceased to the house, and that he broke open the door when he did go there? Did he re-load the pistol to give an opportunity for another accident? Why the concealment of the pistol and the ammunition? And how did it happen that when he saw the deceased lying at death's door, owing to a wound accidentally inflicted by him, he uttered not a word of regret or sympathy? He would hardly acknowledge that he knew this man who had been his employer up to the day before, and whom he had met not two hours before in high health, and who, but for his act, would be so still. But it is a mere waste of words to dwell further on this defence. It is urged in utter despair, for providentially the Crown has been able to lay before you a chain of circumstances which seems to connect the prisoner indissolubly with the guilty act.

One other point was put forward in favour of prisoner, it is the certificate of good service, found in his possession. In face of the change of name this certificate proves nothing. If he be Timothy Milloy and not Timothy Dooley, then why did he abandon the name under which he obtained a good character? This is unexplained. He, therefore, has no right to any more credit for good character than arises from the ordinary presumption of innocence.

In matters of this kind one does not desire to augment one's responsibility. It is not for me to pronounce the fatal word, but I should be