

The dangers of popular government have often been exposed. The ballot act and the abnormal laws against bribery and corruption attest the reality of certain perils. The danger of inconsiderate legislation introduced by incompetent people has been less considered. It is not, however, to be underrated. Naturally a very small proportion of the members of a representative body can conceive the scheme of organic laws, and fewer still can give a possible form to the conception.

R.

MURDER AND MANSLAUGHTER

In the case of *Charles Albert Smith*, tried for murder in the March Term of the Court of Queen's Bench at Montreal, the Court had occasion to instruct the jury as to the distinction between murder and manslaughter. The prisoner was charged with murder, but it was apparent that he had no intention of killing the deceased, and the only difficulty was whether he had discharged his revolver with intent to kill one Barnes. Mr. Justice Ramsay, who presided, said :—

“Homicide is the killing of a man. That it may be innocent or culpable is the most obvious distinction. In this case we have not to consider the former. The culpable or criminal killing is in law divided into two offences, murder and manslaughter. This is to some extent an arbitrary distinction; but it is one of great antiquity, and it is founded in reason. The only difference between them is, that in murder there is killing with premeditated malice, and in manslaughter the element of premeditation is wanting. By premeditated malice the law does not mean a long preparation for the crime, such as is indicated by lying in wait, or threats. The existence of malice is judged of in many cases by the act, but sometimes there are other facts bearing so closely on the act of killing that they assist in forming a judgment on the existence or absence of malice, and then it is proper they should be proved. The introduction of this sort of evidence is a matter requiring some little skill and a great deal of caution. On the one hand everything that looks like concealment must be avoided, and on the other care must be taken not to embarrass the attention of the jury by an array of irrelevant facts. This case affords a wider field than usual for this sort of evidence, but I have

endeavoured to keep it within proper limits. Evidence of the proceedings of the prisoner the night before the occurrence was admitted, also his demeanour towards Barnes immediately after the arrest; but I prevented the defence from proving an anterior cause of quarrel which could not justify the act.

The facts have been proved before you with remarkable precision, nor can it be fairly said that there has been any display of ill-feeling towards the accused. There are really no contradictions of any moment in the evidence. Your attention was specially directed to what is called a challenge to the prisoner by Barnes to use his pistol. Barnes says he does not recollect this, but Jones says it happened and we may fairly believe it took place. But really it has no bearing on the case, for no words justify an assault, much less a killing, and it does not affect Barnes' credibility. It has also been said that the woman, who was examined, contradicted the testimony of Jones; but when we examine what she says she saw, it confirms in a very remarkable manner the testimony of Jones, who in his turn supports the evidence of Barnes. Now Barnes tells us that after some angry words, heard by McDonald and his companion, who went out fearing a row, prisoner drew his pistol and stepped back, cocking it as if he intended to fire. Thereupon Barnes seized hold of him, but not before. This scuffle caused Jones to turn round, and just then the pistol went off in the prisoner's hand and Hayes was shot dead. It is perfectly evident that it was not the intention of the prisoner to shoot Hayes, but I must tell you that if the prisoner fired the pistol intending to shoot Barnes, and that, accidentally, he shot Hayes it is just as much murder as if he had shot Barnes. The measure of his guilt is the guilty intent towards Barnes. And here comes the whole difficulty of the case. If you believe Barnes, he never touched the prisoner until he drew the revolver and cocked it as if he were going to fire. Barnes then seized the prisoner and the pistol went off. Now if you think prisoner did not relent in the apparent intention to fire, and that he drew the trigger, he was guilty of murder. If again you think that, in spite of appearances, he relented at the last moment, and that the pistol went off accidentally, then he is only guilty of manslaughter. In arriving at a con-