

from the hip and not from the shoulder. During the three hours that elapsed from between the time of the prisoner's retirement and that of the firing of the shot, no human eye saw his occupation, but the circumstances enable us to describe it with absolute certainty. We may conclude as confidently as if we saw the whole, that the prisoner arose, dressed himself, took his rifle from the rack beside his bed, took down his pouch and opened it, opened one of the packages of cartridges and abstracted from it two cartridges, put one of them in his pocket for subsequent use, loaded his rifle with the other, took down from the wall his bayonet and placed it under his arm; thus prepared passed stealthily among the beds of his comrades till he reached that of his victim; then holding his rifle across his person, he shoots the object of his hatred through the body, and in another instant the eyes of sixty men are upon him. Gentlemen, we are certain of the accuracy of this detail of his actions, both while he was seen by no eye but that of his God, and while he was before the eyes of the Company to which he belonged! But let us follow him one step further, and hear, from his own lips, an account of the dreadful deed, and of his motives for perpetrating it.

He said to Sergeant Carroll that "Sergeant Quinn had confined him at Chambly which he need not have done, and that he had told him he would be revenged on him dead or alive."

He said to Private Conway in the guard-room: "I promised him that in Chambly and if it ran to the end of twelve months I would shoot him," and afterwards, "now I have shot him and I hope he is dead and damned."

He made similar statements before Captain Rooke and Major Garrett the next morning adding his regret that he "had not taken another."

Is any argument required, gentlemen, to convince you that the killing of Sergeant Quinn cannot be held to be, and is not manslaughter? Was his death caused by a blow struck "in a sudden transport of passion—upon a grievous provocation acted upon on the instant of the provocation and without an interval of reflection."? Or was the deed "a deliberate act, with premeditation," and accompanied not only by a presumption of malice—but by acts and declarations proving malice by declarations of the clearest possible kind? I should ignore the patience and intelligence you have displayed during the long trial: I should insult your understanding were I to argue this point further. You cannot but be of opinion that the killing of Sergeant Quinn was premeditated; that it resulted from a feeling of revenge which the prisoner had cherished towards him for the previous three weeks; in other words that it was a deliberate and awful murder.

But, gentlemen, there is yet another question before you, to which you are bound to give the most careful attention; for if it can be resolved in favor of the prisoner, it would be contrary to the most obvious dictates of humanity to punish him for the act with which he stands charged.

His counsel has argued that he must be relieved from responsibility to any human tribunal for the killing of Sergeant Quinn upon one of two grounds, though he has not made it clearly appear upon which of them he relies. These are that the prisoner at the time of committing the offence was insane, as the result of long continued constant and habitual drunkenness; or, that he was then in a state of temporary delirium produced by drinking spirituous liquors the evening before his crime.

If the prisoner were really insane, gentlemen, there is no doubt that it would be your duty to find a verdict accordingly; notwithstanding that the remote or original cause of such insanity was habitual drunkenness. But no evidence of such insanity has been produced before you. Insanity is not by any means a necessary result of intemperate habits; on the contrary—among the numerous unhappy victims of the too prevalent vice of drunkenness, but a moderate percentage suffer from aberration of intellect. If the learned counsel had succeeded in proving that the prisoner was a man addicted to habitual intoxication he would have been also obliged to shew that such habitual intemperance had resulted in insanity. But he did neither.—He failed in proving more than the fact that the prisoner during several years of service had become occasionally intoxicated, but that his habits were not much, if at all below the average sobriety of men of his class. And it was never even attempted to be proved that the prisoner's mind was in the slightest degree affected.

Upon the other ground taken by the counsel for the defence it would be necessary to say but little, were it not that the doctrine that drunkenness excused or palliated crime, had been urged for the defence, as a legal ground of acquittal—and it might be feared that you, gentlemen, could entertain such an idea. I think it my duty therefore, to state to you what I believe to be the true doctrine on this point; and what I have no doubt his Honor will also tell you, if he thinks it necessary to lay down the law upon it at all. And I wish you to understand that I do so, not because the drunkenness of the prisoner has been proved, but because I think it becomes me publicly and authoritatively to contradict the pernicious and dangerous pretensions which have been placed before the Court and before you as rules of law. For this purpose I will read to the Court in your hearing, certain extracts from books of authority, containing my pretensions on this point: and as being not only sound law, but good common sense; and although you cannot take the law which is to govern this case either from me or from the books to which I am about to refer, you will doubtless appreciate the sound conclusions to which these authors have arrived.

The learned Solicitor General then read to the Court the following extracts from Wharton and on Medical jurisprudence, at pages 50, 51, 52, 53, 56, 57, 58; and from the cases then cited: