

and as regards the one or two questions put in the form of a summary or partial summary of what had been previously stated, I do not find that there was in fact any inaccuracy or misstatement of what had not been actually in the same or substantially the same words previously said by the witness.

As to the charge of the learned Judge, it appears to me that, where it dealt with the evidence, it did so in a way quite free from objection, and not in any way calculated to confuse or mislead the jury, either by inaccurate recapitulation or otherwise. Where the learned Judge indicated his view, he was careful to reiterate and impress upon the jury that it was, nevertheless, for them to form their own opinion and conclusion upon the facts. He withdrew nothing from them, and what he said as to the question of the prisoner having had a meal at the restaurant which he had not paid for, and the inference to be drawn from the fact that the prisoner was leaving the restaurant with some property of the owner in his pocket, was, upon the evidence, no more than he had a perfect right to say, leaving it as he did to the jury to form their own conclusions, there being evidence on both points, as bearing upon the conduct of the prisoner, from which conclusions unfavourable to him might be drawn.

In point of law on the subject of provocation and on that of the prisoner's intoxication as tending to reduce the offence to manslaughter, there is no fault to be found with the charge; the jury were instructed fully as to both, and quite as favourably to the prisoner as the evidence warranted.

Upon the whole of the evidence, which details the brief, simple, and uncomplicated facts of the tragedy, it is difficult to see how the jury could have arrived at any other verdict than that which they rendered.

It was urged that the trial should have been postponed, but of the propriety of doing so it was for the learned Judge to determine. It has at all events not been made to appear that the prisoner suffered any injustice by the refusal of a postponement, or that the other persons present when the deceased was slain could have given an account of the transaction more favourable to the prisoner than did the witness who was called for the defence.

On the whole, after having given the case the fullest consideration in my power, I have arrived at the clear conclusion that all the objections relied upon are groundless, and that the motion must be refused.

MEREDITH, J.A., also gave reasons for refusing the motion.

The other members of the Court concurred.