Hammond (Wm A.)

MEDICO-LEGAL POINTS

IN THE CASE OF

DAVID MONTGOMERY

BY

WILLIAM A. HAMMOND, M. D.,

PROFESSOR OF DISEASES OF THE MIND AND NERVOUS SYSTEM, AND OF CLINICAL MEDICINE, IN THE BELLEVUE HOSPITAL MEDICAL COLLEGE, ETC.

In the spring of the present year I was requested by the District Attorney of Monroe County, in this State, to read a transcript of certain evidence which had been adduced at a preliminary examination in the case of David Montgomery, indicted for the murder of his wife.

Upon a careful consideration of this evidence I gave it as my opinion that epilepsy of itself was not sufficient to destroy responsibility, and that, though the prisoner had probably suffered from occasional epileptic seizures, there was nothing to show that the crime of which he was accused was in any way the result of such a paroxysm. On the contrary, the circumstances appeared to indicate that the prisoner acted with deliberation and full reason. I, however, stated that I could not give a definite opinion on these latter points without examining the accused.

A preliminary examination had been made before a jury to determine the mental condition of the prisoner, the law

of the State of New York not allowing of the trial of a person not of sound mind. A commission, composed of physicians, examined him, and, though they reported that he was insane, other testimony to the contrary was given, and the jury disagreed on the question submitted to them. As this result was equivalent in law to a declaration of sanity, the trial was ordered to take place. The result was a conviction of murder in the first degree. The medical experts who supported the theory of the prisoner's insanity were Dr. Cook, of the asylum at Canandaigua, and Dr. Gray, of the Utica Asylum; those who thought differently were Drs. Moore and Montgomery, of Rochester, and myself. Two careful examinations of the prisoner left no doubt on my mind of his entire responsibility for the murder. At the same time, there was no question that his intellect was undeveloped, and that he had had occasional paroxysms of epilepsy. There was, however, no mental aberration, and the circumstances of the deed and his subsequent conduct were such as to shut off all idea of unconsciousness.

It by no means follows that an individual suffering from epilepsy is not as fully responsible for his actions as healthy persons.

Reynolds, who has written the best work on the subject in the English language, states that the disease in question, even when fully pronounced, does not necessarily involve mental change. In thirty-eight per cent. of his cases the mind was unaffected in any way.

He further declares that, while considerable intellectual impairment exists in some cases, it is the exception and not the rule.

And also that ulterior mental changes are rare.

Falret, in his valuable essay on the "Mental State of Epileptics" ("L'État mental des Épileptiques") says: "The first question which naturally presents itself to the mind, relative to the medico-legal relations of epilepsy, is this: Should all the epileptics who commit criminal acts be regarded as insane, and therefore irresponsible? Some physicians, laying too much stress on the eccentricities of character and of conduct observed with the majority of epileptics, even with those

who have preserved all the appearances of reason, declare for the affirmative. They contend that the simple proof that an individual is suffering from epilepsy is sufficient to acquit him of criminality; as not having enjoyed mental freedom at the moment of accomplishing the act imputed to him. A doctrine so absolute cannot be accepted without reserve. It extends, to boundless limits, the sphere of irresponsibility, and, if generally adopted by physicians, would greatly lessen their authority in the eyes of magistrates, who will never admit that the sole fact of epilepsy is sufficient to absolve an accused person. Physicians who only observe the epileptics of insane asylums may be inclined to adopt this absolute opinion. In fact, notwithstanding the essentially intermittent character of the intellectual troubles with epileptics, the frequent repetitions of the accessions of delirium leave generally, in the minds of those who experience them, evident and durable traces even in the intervals of the paroxysms. But when we do not restrict our observation to the epileptics who are contained in lunatic asylums, when we extend it to all those who live in society without any one suspecting the existence of this disease, it is impossible not to accord to a certain number of epileptics the privilege of moral responsibility, if not during their whole lives, at least during a long period of their existence.

"The question, therefore, of the responsibility or irresponsibility of epileptics cannot be defined in an absolute manner, since we must consider certain epileptics as guilty of the acts imputed to them; at certain periods of the disease, the appreciation of this responsibility becomes extremely delicate in each particular case.

"Thus the only practical manner of putting medico-legal questions relative to epilepsy and mental alienation is that which has been hallowed by custom. Was the individual of sane or insane mind when he committed the act for which he was arraigned before the bar of justice? If he was insane, he ought to be considered irresponsible; if not, he ought to be condemned as guilty."

It is very certain, therefore, that the mere fact of the existence of epilepsy in a person accused of crime is not suffi-

cient to abrogate responsibility. My own experience abundantly supports this view; and it is well known that some of the greatest men who have ever lived and who were remarkable for their intellectual vigor—Julius Cæsar and Napoleon Bonaparte, for example—were epileptics. Cases have been under my observation in which the disease had lasted for many years without apparent mental derangement or failure.

It frequently happens that the insane in lunatic asylums are at the same time epileptics. But insanity with epilepsy is a very different thing from the insanity which results from epilepsy. It is for this reason that Falret, in the foregoing quotation, attaches little importance to the views of asylum physicians on this subject. And his opinion is the more valuable, as he is himself the superintendent of a large asylum in France.

The essential feature of an epileptic paroxysm, whether it is of the *grand mal* or *petit mal* variety, is unconsciousness. And though occasionally in aborted seizures there may be a kind of semi-consciousness present, the other phenomena of the attack are so characteristic as to be perceived by the patient.

In all fully-developed paroxysms unconsciousness is the essential feature, and without it there is no epilepsy. The individual attacked has, therefore, no recollection of any thing which has taken place during the seizure, and the mere fact of such recollection existing is very certain evidence that there was no paroxysm.

There is no case on record of a crime being committed by an epileptic during a paroxysm, and the recollection of it being present.

Crimes may be committed by epileptics without responsibility under three different conditions, and no others: 1. Either as a consequence of mental imbecility resulting from repeated attacks of epilepsy. In such a case the condition of the individual would be one of dementia, and he would be incapable of judging of the consequences of his act, and the act itself would be without motive. 2. During the state of high maniacal excitement which sometimes follows an attack, and in the otherwise insane precedes it, in which case the act

would be indeterminate. 3. During the state of unconsciousness resulting or attending upon the paroxysm. In this case there would be no subsequent recollection.

In a paper on "Epilepsy and Homicide," written by Dr. Isaac Ray in special reference to the Winnemore case, and published in the *Journal of Insanity* for October, 1867, the author says: "If the deed was committed under the influence of his disease, supposing the charge to have been true, we are necessarily led to inquire what particular phase of it was present. No one supposes that his mind was generally so impaired as to be incapable of discerning right from wrong, of knowing that murder is forbidden both by human and divine law, or of controlling the fullest impulses of passion. The act could not have sprung from such a condition as that. Neither is there any ground for the supposition that he was under the domination of that blind fury so frequently exhibited by epileptics before or after a fit, or that his mind was overpowered by apprehensions of dangers, or a sense of persecution and outrage from persons, real or imaginary, about him. Neither of these phases of the disease had he ever exhibited; and, though it is not impossible, perhaps, that the latter occurred on this occasion for the first time, there is not the slightest reason to believe that such was the fact. We then come to the only other epileptic condition in which the act could have happened, that of utter unconsciousness, and, though we have no direct evidence respecting it, neither are we met by any circumstances of the case that would render it impossible. He had been in this state more than once before, and it was one of its incidents that he had no idea whatever of what he thought or did while in them."

The case of Fyler, the first time in this country in which epilepsy was used as a defence, who was tried in Onondaga County, N. Y., in 1855, for killing his wife, was also one in which there was entire want of recollection of the murderous act. In both Winnemore's and Fyler's cases the prisoners were found guilty. In the first, the penalty was inflicted; in the latter, a medical commission pronounced the prisoner insane, and he was committed to the lunatic asylum in Utica.

In the case of John Reynolds, tried over a year ago in New York for murder, the attempt was made, after convic-

tion, to prove the existence of epilepsy. I examined the prisoner several times before and after the trial, and was satisfied that the crime was not committed through the influence of that disease. He was executed.

In the case of Chambers, who shortly afterward committed a murder in Brooklyn, the plea of insanity was set up. I was requested by the district attorney to examine the prisoner. I did so, and found no evidence of epilepsy beyond the statements of Chambers himself. On his trial another physician testified to the presence of epilepsy. Through a misadventure, I did not get to the court to testify, and the prisoner was acquitted and sent to the lunatic asylum at Utica. He presents no signs, as I have been informed by Dr. Gray, of having any form of mental alienation or epilepsy.

The prisoner Montgomery is twenty years of age, has followed the occupation of a carter, and has never been suspected of mental derangement, dementia, or epilepsy, by those who knew him, outside of his own family. Several members of the family, however, testified, in the previous proceedings relative to his sanity, that he had been subject to epilepsy since infancy, but the commissioners could only satisfy themselves that he had had three attacks up to the time of the homicide; therefore it may easily be assumed that, notwithstanding the possible existence of epilepsy, his mind has not in consequence of such disease undergone marked deterioration.

At the age of about eighteen he married; but had lived upon bad terms with his wife, who had been a prostitute, and who insisted upon returning to her former occupation. A week before the homicide she left him, taking with her their child, eight months old. On the evening of the day (Saturday) before the homicide, Montgomery went to her mother's, where she was stopping, and persuaded her to return home with him. They arrived at their own home about twelve o'clock at night, and she was killed the next morning between the hours of six and eight. Many of these particulars, as well as the subsequent ones, are derived from the statements of the prisoner.

From these statements it appears that they awoke early in the morning and began to talk of their difficulties. He told

her that, if she would remain at home and stop going with other men, he would forgive her. She replied that she would not, that she was a prostitute when he married her, and he knew it, and that she had always been one and always would be one. He replied that he had made up his mind that, if she would not live with him, she should not live with any one else. He then got out of bed, partially dressed himself, and went to his father's house, a few rods distant, and took from the back-yard an axe, with which he returned to his own residence. On entering the room where his wife was he found her asleep. He stood by the stove a few minutes, deliberating whether he should kill her or not. Finally he determined to do so, and then struck her on the head, just above the left temple, inflicting a mortal wound, of which she died.

He then left the house, and, meeting a younger brother in the street, told him what he had done, and then taking a razor from his pocket attempted to cut his throat. In this effort he was prevented by his father and brother, and was by them persuaded to give himself up to the police. On his way to the jail he stated to the officer that he had at first thought of going to Canada after killing his wife, but, concluding that he would be caught, he had determined to give himself up.

In these particulars there is no one fact indicating insanity, dementia, or epilepsy, besides the fact of voluntary confession and surrender. This, unaccompanied by other evidences of mental aberration, is of little importance, and is materially lessened in its force by the opinion of the prisoner, as expressed to the policeman, that he thought he would be caught if he attempted to escape.

As regards temporary insanity from morbid impulse, there is no evidence to show that Montgomery had exhibited any indications of mental derangement during the few days preceding the homicide. The facts of the dispute, the repugnance he entertained to his wife's conduct, the deliberation with which he went to his father's house for the axe, and reflected, as he stood by the stove, in regard to his purpose, are at direct variance with any such idea.

They are equally against the idea of such a condition of

dementia or imbecility as to indicate a want of knowledge of his acts and their consequences.

As to epilepsy, the circumstances of the affair are absolutely irreconcilable with the theory that the homicide was perpetrated during a paroxysm or an accession of epileptic mania. Instead of a blind fury, there was deliberation; instead of a purposeless act, there were motive and provocation; instead of unconsciousness and subsequent want of recollection, there was complete knowledge of all the circumstances, even to their minutest details; instead of subsequent confusion of ideas, there was distinct recollection.

Admitting that Montgomery has been subject to repeated attacks of both the *grand* and *petit mal*, it is very evident that these were not sufficient to injure his mind to any appreciable extent.

The hereditary tendency to insanity would be of importance if the prisoner had himself, in the perpetration of the homicidal act, or before or after, shown signs of mental derangement. In the absence of such signs, it is of little importance.

The prisoner, as stated, was convicted of murder in the first degree.

A motion for a new trial was made by the prisoner's counsel, and, among other reasons which he adduced, was the fact that I had been paid a large sum to come to Rochester and testify in the case. The views of Judge E. Darwin Smith, before whom the case was originally tried, are so exactly in accordance with those now held by all enlightened jurists, relative to compensation to medical experts, and are so fair to myself and the district attorney, Mr. Davis, that I subjoin them without comment:

"The next allegation of irregularity is 'that a medical witness, Dr. Hammond, was produced and gave testimony in the case on the part of the people, by the procurement of the district attorney, under a contract that such witness, not being a poor witness, nor a non-resident of the State, should be paid a consideration of five hundred dollars for attending the court and giving his testimony, and was paid that sum of money, and this without the knowledge of the prisoner or

his counsel until after his testimony in the case was closed.' Upon this statement of facts I cannot perceive upon what ground or principle an allegation of irregularity can be based or sustained; but it is doubtless due to the importance of the case, the character of the question involved, and to the consideration of what is due to the proper administration of justice in respect to public prosecutions, that the facts contained in the affidavits produced should be more fully stated and considered. From the stenographer's notes and our own minutes of the trial, we know that the fact and body of the crime for which the prisoner was tried was very clearly proved, and was really undoubted and unquestioned, and that the only defence set up and sought to be established at the trial was that of *insanity*. It appears from the affidavits read on this motion that the case was put over the last February term of this court, upon the allegation that the defendant was insane, and a commission of distinguished physicians was fixed and agreed upon by the attorney-general and the counsel for the prisoner, and assented to and appointed by the court, so far as it had power to do so, to ascertain by inspection and otherwise, and report whether the prisoner was or was not insane; and it also appears and was well known that the case also went over the April term to allow an inquiry to be instituted, and that such inquiry had been instituted by the county judge, with a jury, under the statute of 1842, to ascertain whether the prisoner was or was not insane—upon which inquisition the jury were unable to agree.

"The case, therefore, was necessarily prepared for and came on for trial at the present adjourned term of the Oyer and Terminer.

"The prisoner, to prove and establish his defence of insanity, called a number of distinguished physicians, and the people also called several physicians upon that issue, and among others Dr. Hammond. In respect to the attendance of Dr. Hammond, particularly as a witness, the facts stated in the affidavits are in substance as follows: The affidavit of the counsel for the prisoner states that preparatory to such court he 'was induced to write to Dr. Hammond, of the city of New York, and sent a gentleman to see him a few days before

the court to inquire (not as to his opinion, but) whether he would come and examine and testify in the case;[1] that he received information in reply that he was coming at the request of the district attorney, and would be present; that the trial began on Wednesday, May 17th, and on the following morning Dr. Hammond arrived in the court-house, as the counsel was opening the case for the defence; that he saw Dr. Hammond at noon of that day, and was informed by him that he wished to examine the prisoner, and would make an impartial examination, and he also saw Dr. Hammond the same evening, and had considerable conversation with him about the case and the condition of the prisoner; that before the prisoner closed his case, he called Dr. Hammond as a witness for the prisoner and examined him at some length, and that the people recalled him in reply when he was further examined; that on Tuesday, the 23d of May, while the counsel for the prosecution was summing up the case for the people, he received information that the district attorney had contracted to pay Dr. Hammond five hundred dollars for coming to Rochester and testifying in behalf of the people; that during the recess at noon he inquired into the facts and found that a warrant of the treasurer had been drawn in Dr. Hammond's favor, and paid, for five hundred dollars; that Dr. Hammond was then a resident of the city of New York, and that his reasonable expenses could not exceed fifty dollars, and that on the coming in of the court after the recess he called the

[1] The purport of the counsel's inquiry will be best judged of by a perusal of his letter to me at the time, and which I subjoin. The sincerity of his opinion relative to compensation of expert witnesses may probably admit of some question, in view of the contents of this letter.

ROCHESTER, N. Y., *May* 12, 1871.

DEAR DOCTOR: I am to defend David Montgomery, charged with the crime of murder, the trial to commence on Tuesday next, in this city. I wish to examine you as an expert witness. If you will be here on *Wednesday morning*, I will release you *Wednesday night*.

I send you, through my brother, the testimony and opinions of physicians, including Drs. Gray, of Utica, and Cook, of Canandaigua, taken on an examination to determine whether Montgomery had intelligence enough to be tried. The jury disagreed, *I have pressed a trial*. I wish the case to be ended. I have not the slightest doubt that the alleged murder was an insane act. The prisoner struck his wife a single fatal blow with an axe while she was asleep, kissed her, and proceeded to cut

attention of the court to the fact in the presence of the jury, and that such payment had been made as above stated with the sanction of the court, which was admitted by the district attorney and not denied.'

"The affidavit of the district attorney on the same subject states in substance that, preparatory to said trial, he took all the testimony which had been taken before the county judge as above stated, and went to the city of New York and laid the same and the whole case before Dr. Hammond, and asked him for his opinion upon it, and, learning from Dr. Hammond that he could not give him a satisfactory opinion without seeing and examining the prisoner, he inquired of him upon what terms he could be induced to come to Rochester and make such examination and attend the trial as a witness; and, learning that he could not be induced to come for any thing less than five hundred dollars, he left him, and consulted the district attorney of the city of New York, and the United States district attorney of the southern district of this State, the late Judge Davis, on the subject of the propriety of engaging Dr. Hammond to come to Rochester and attend the trial at the price aforesaid, and was advised by both of said officers that it was customary for district attorneys to employ and pay experts in professional life like Dr. Hammond, and that his charge was reasonable in view of his high reputation and extensive practice in his profession; that deponent then returned home, and consulted the judges of the court of sessions, and several members of the board of supervisors of Monroe County, and also two of the justices of the Supreme

his own throat with a razor, and was arrested in the act. This was on Sunday, the 13th November last. He made no attempt at escape or concealment. Soon after, he stated that it was his temper, he supposed, which led him to kill her; that he loved her, and she was resolved to be a prostitute. (I think this was true.) Within an hour he stated that he felt compelled to kill her. Shortly after noon, he was quite unconscious of the act, and it is my conviction has *now* no remembrance of it whatever. The evidence sent to you shows that he has been subject to occasional fits of epilepsy. Still, he has been a strong young man (now twenty years old), and has labored faithfully and well, the neighbors not knowing generally that he was ailing. His friends are poor, but I shall see that you are fairly compensated. The newsmongers and police want an exciting trial and execution, and, to my surprise, have created some prejudice against the young man. Hence the necessity of fortifying the case by the opinions of able and humane men. Please telegraph to me to-morrow.

Truly yours, J. H. MARTINDALE.

Court of this district, on the subject, all of whom advised him that they thought that, as the public prosecutor for the county, he would be justified in making the proposed arrangement to secure the attendance of Dr. Hammond at this court, and advised him to make such arrangement.

"The district attorney further states in his affidavit that on Monday before the trial he informed the counsel for the prisoner that Dr. Hammond would be present at the trial as a witness for the people, and that after his arrival General Martindale had frequent interviews and consultations with Dr. Hammond during the progress of the trial, and took the doctor to his house to spend an evening; and that after such interviews, intercourse, and consultations, the said counsel called Dr. Hammond as a witness for the prisoner, and improved him as such, and that he is informed, and believes, that it is customary throughout the State for the courts to pay professional witnesses for their time, expenses, and services, as in this case, upon the application of the district attorney of the county, and that deponent had no other object in calling Dr. Hammond except to elicit the truth before the jury.

"Upon these facts we do not see that the calling of Dr. Hammond as a witness, and the payment to him of a sufficient sum to secure his attendance at the court during the trial, was in any respect an irregularity, or did any wrong to the prisoner. It seems to us that the district attorney was acting in the line of his duty as public prosecutor in securing the attendance of a proper medical witness of high repute to meet the distinguished medical experts which he knew the prisoner expected to call on his side. The question at issue in the trial was chiefly a medical one, in respect to which the opinions of medical men would be likely to exert a great if not controlling influence. The witnesses who had testified before the county judge, and those also who had acted on the commission, were among the most distinguished members of their profession upon the particular questions involved on the trial. Those witnesses the prisoner was expected to call in the trial, and the district attorney would, it seems to us, under the circumstances of the case, have been derelict in his duty to the people of this county if he had not taken the requisite steps to secure the attendance of witnesses of equal

distinction and consideration in their profession, on the part of the people. The district attorney, it is true, might have required the attendance of Dr. Hammond on subpœna, but that would not suffice to qualify him to testify as an expert, with clearness and certainty, upon the questions involved. He would have met the requirement of a subpœna if he had appeared in court when he was required to testify, and given proper *impromptu* answers to such questions as might then have been put to him in behalf of the people. He could not have been required under process of subpœna to examine the case, and to have used his skill and knowledge to enable him to give an opinion upon any points of the case, nor to have attended during the whole trial, and attentively considered and carefully heard all the testimony given on both sides, in order to qualify him to give a deliberate opinion upon such testimony as an expert in respect to the question of the sanity of the prisoner. Professional witnesses, I suppose, are more or less paid for their time, and services, and expenses, when called as experts in important cases in all parts of the country. The question what amount is paid, or agreed to be paid, in such cases, cannot affect the regularity of a trial. It may perhaps properly affect the question of their credit with the jury. In this case it appears that the facts in respect to the employment and payment of Dr. Hammond were fully and publicly stated in the presence of the jury before the case was given to them, and were well known to them, and may have, and must have had, such influence with them as they thought proper to give to them under the circumstances of this case. We do not, therefore, think they present any ground for a new trial, as a question of irregularity or otherwise.

"The prisoner's counsel also ask for a new trial on the ground of surprise in respect to the testimony of Dr. Hammond, and of newly-discovered evidence.

"So far as relates to the question of newly-discovered evidence, the application is based upon several affidavits showing that the prisoner has had a fit in the jail since his trial, and it is claimed that this fact tends to show that he did not simulate, on the trial and before, the appearance of an insane person.

"On this question the allegation is in substance that the testimony of Dr. Hammond tended to show that the prisoner's appearance of indifference and apparent unconsciousness on the trial was assumed or feigned, and that the proof of the fit had at the jail, since the trial, tends to refute such evidence. This is not new evidence in kind or degree, and is really nothing but cumulative testimony on the main issue. Much testimony was given on the trial, proving that the prisoner was accustomed to have fits, had numerous fits in his infancy, and in his earlier years, and a few later in life, and one in the week previous to the homicide; and this evidence was not questioned or doubted. Proof of another fit occurring after the trial could not affect the question, particularly on another trial. It is not newly-discovered evidence within the rule applicable to such cases, that the newly-discovered evidence to warrant a new trial must be material, and to go to the merits and not be cumulative, collateral, or corroborative, and such as ought to produce on another trial an opposite result on the merits. (*Vide* 'American Criminal Law,' section 3,161.) Such we think quite clearly would not be the effect of making proof of this fit at the jail, just as it is presented in the several affidavits read and produced on this motion.

"On the point of *surprise*, the facts above stated, and contained in the affidavits of the counsel for the prisoner, and of the district attorney, we think do not show that the prisoner's counsel had any just ground of complaint or of surprise, in a legal sense, in respect to the testimony of Dr. Hammond. The counsel for the prisoner states that he advised his client to submit to examination by Dr. Hammond, and that he did submit to such examination, and that Dr. Hammond did not fully disclose to him the whole of such examination. The defence of insanity set up for the prisoner necessarily subjected him to the test of medical examination. I do not see how Dr. Hammond, seeking to make an examination of his person to ascertain the state of his system, his health, and the symptoms of mental disease, as a witness and expert, called in behalf of the people, could properly be denied such an opportunity. To have refused to allow it would have been a virtual admission that such defence was unfounded, and that the appearance of the prisoner in his person and conduct, giving color to such

defence and relied upon in part to sustain it, was simulated for the purpose of such defence. The counsel for the prisoner had constant intercourse with Dr. Hammond during the trial, and, finally, virtually took him away from the prosecution, and appropriated him as a witness for the prisoner, by calling him as such witness, and examining him as far as he pleased. Dr. Hammond, so far as we could see, answered all the questions put to him by the counsel, on such examination, with frankness and explicitness; and we cannot see that it furnishes any ground for the complaint of surprise, that he gave further and fuller testimony afterward when called by the prosecution. The fact stated in the affidavit of the counsel, that, when he so called him as a witness, he was ignorant that he had made a contract with the district attorney to appear and testify as a witness, on the part of the prosecution, for the sum of five hundred dollars, cannot, that we see, affect the question of surprise. Certainly the learned counsel knew that Dr. Hammond came to Rochester to examine the prisoner, and attend the trial as a witness in behalf of the people, and upon the employment of the district attorney. It could hardly have been supposed that he came voluntarily, and spent so much of his time, without some compensation, and such compensation to be paid necessarily from the funds of the county, at the instance and upon the application of the district attorney.

"Within the rule applicable to cases of surprise, in respect to the proceedings of a trial, we do not see any basis of fact, upon which the court would be justified in granting a new trial on this specific ground. We cannot see that the prisoner's case was affected injuriously by any essential surprise in law or fact, or by any accidental or unforeseen occurrence, during the trial, to his prejudice. And, upon the whole case, we think the motion for a new trial should therefore be denied. Motion denied."

I submit these views and opinions of Judge Smith without further comment, though there are several statements made by the prisoner's counsel which are based more on fancy than reality.