

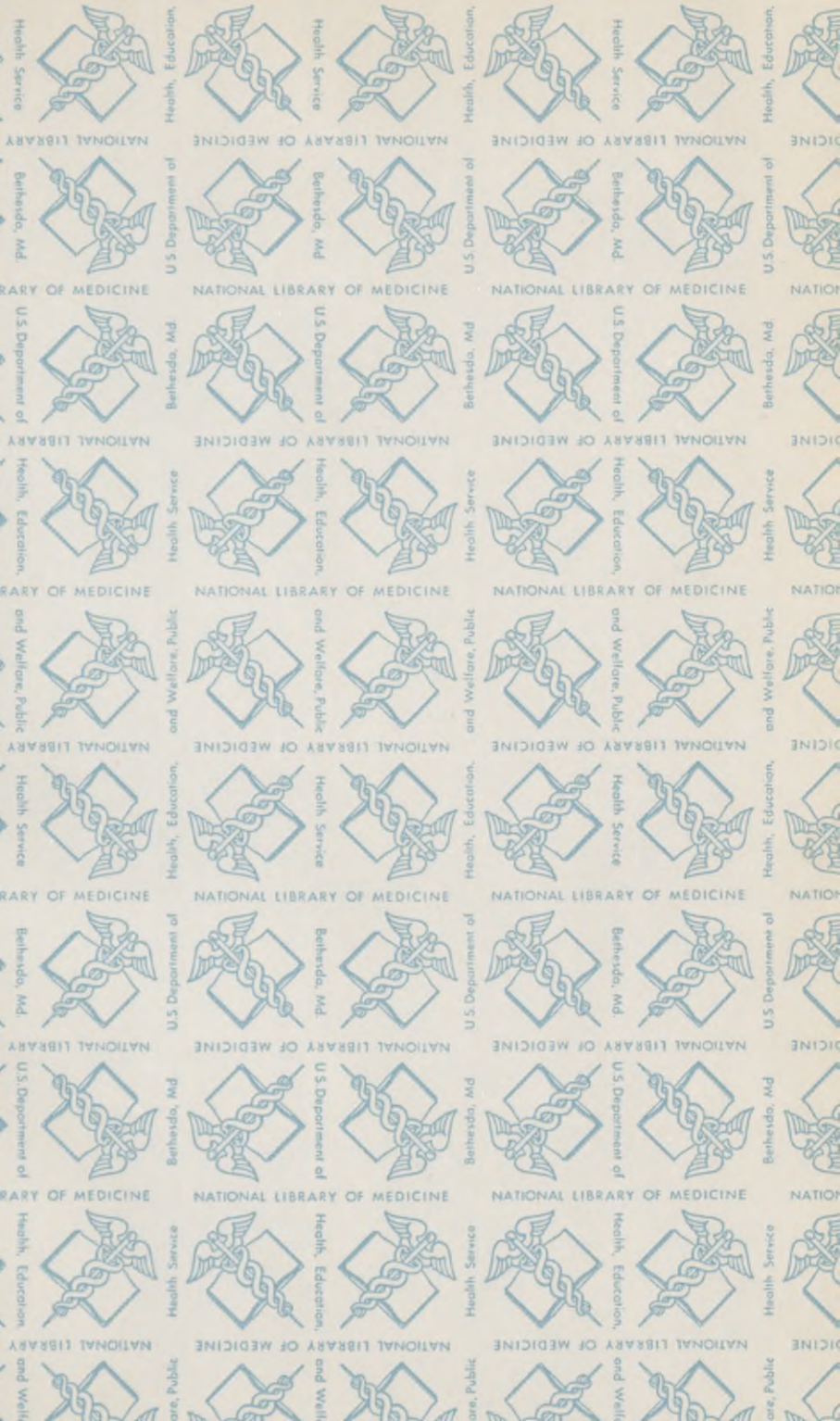
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EXONERATIVE INSANITY.

ADDRESSES

DELIVERED BY

JOHN A. TAYLOR,

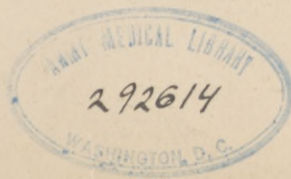
IN

THE CASES OF BURROUGHS AND FUCHS,

WHO WERE INDICTED AND TRIED FOR MURDER AT OYER AND
TERMINER OF THE SUPREME COURT HELD IN
KINGS COUNTY, N. Y.



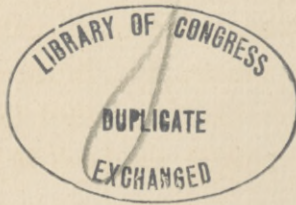
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PUBLISHERS' PREFACE.

EARLY in the spring of 1882, we suggested to Mr. Taylor that, as the first edition of his Burroughs Address was out of print, a second edition should be published which should include the Fuchs Address and should be extended to a treatise on the general subject of "Exonerative Insanity." Arrangements were thereupon perfected under which he began the preparation of the work. When the treatise was about half finished, he was called by Mayor Low to the head of the Law Department of Brooklyn, and has since then been unable to complete the work.

We have thought it best, therefore, to publish the two addresses, under the general title, in the expectation that if another edition should be called for, it will be found practicable to present the book in its complete form.

THE PUBLISHERS.

NEW YORK, *July*, 1882.

THE BURNING CASE

THE BURROUGHS CASE.

THE BURROUGHS CASE.

[On the 13th of November, 1875, John Joseph Burroughs shot his wife, to whom he had been greatly attached, but who had refused to live with him. He was promptly apprehended, and on January 24th his trial began at the Oyer and Terminer for Kings County, New York; Mr. Justice PRATT presided. Hon. Abram H. Dailey was assigned to defend him, and John A. Taylor was associated with him as junior counsel. The prosecution having rested their case, Mr. Taylor addressed the jury in the speech which follows, and which is a copy of the notes taken by Mr. Thomas E. Calvert, the stenographer. After one day's evidence for the defense had been taken, and at the opening of the court on the second day Mr. Winchester Britton, the District Attorney, requested the court to advise the jury to find a verdict of acquittal on the ground of insanity. This request was acceded to by Mr. Justice PRATT, who used the following language: "Of course it is the duty of a prosecuting officer to examine and to satisfy himself that the defense has its foundation in truth. The defendant's counsel were fully satisfied, and it has been the feeling of the court from the commencement of the trial, from a close observation of the prisoner, that this was at least a doubtful case, even before the defense had put in evidence. But that was a matter the court could have left to the jury, unless the prosecuting officer was satisfied that the charge could not be sustained. The case has been carefully prepared on the part of the people, every witness that could possibly be procured has been examined by the District Attorney, and every suggestion offered that was strictly within the line of his office. It is not his duty to

wring a conviction from a jury when he is satisfied that the prisoner cannot be fairly convicted, although it may be his duty to submit the case to the jury. The learned counsel for the defense have observed the greatest care in the preparation of their case. What you have seen in court is only a very small part of their labor, and all their labor they have given gratuitously. In accordance with their oath and a chivalric sense of honor, they threw aside business which would have been profitable to them, and cheerfully accepted the assignment of the court to defend this unfortunate man. That they have defended him well and with great zeal, is apparent to all. The court deems it proper that you, gentlemen of the jury, should render a verdict in this form; that the prisoner is not guilty by reason of insanity; that he was insane at the time of the killing, and that his insanity still continues." Burroughs was accordingly committed to the State Asylum at Utica, where he still remains (October, 1881), in a hopeless condition of dementia.]*

ADDRESS.

May it please the Court: Gentlemen of the Jury:

I doubt very much whether any member of our profession ever rises to address a jury of his countrymen upon a subject involving the issue of life and death, that he does not feel himself overwhelmed with the responsibilities which rest upon him. This is peculiarly the case, gentlemen, when the issue to be considered is one involving such delicate relations as those which it is our duty to examine.

The prisoner at the bar is to receive at your hands nothing of interest to him: no verdict that you can pronounce, nothing which the learned judge can say, nothing which I shall be able to say, or those who

* A letter received from Dr. John P. Gray, in charge of that asylum and one of the experts who examined Burroughs during his trial in behalf of the prosecution, dated October, 1881, says: "Mr. Burroughs is an insane man, and in my judgment a very improper man to be at large."

shall follow me in his behalf, will fall upon his ear with any degree whatever of interest. Nothing but the fiat of Omnipotence itself can re-illuminate the deserted chambers of his brain, or re-light the torch of reason which has fallen from its socket! The District Attorney said in his opening, that the prisoner was nothing but a "drunken vagabond." Gentlemen, I know of no law, written or unwritten, which prescribes that you shall sit here giving the careful attention that you have given to this case, that the judge shall sit here and pass upon the evidence submitted to your consideration, all that a "drunken vagabond" may be hung. The question we are to deal with is a far different question from that. We are, as responsible men, responsible to our office, responsible to civilization, responsible to this prisoner, to say, whether on November 13 last, he was in that full possession of his faculties which made him criminally liable for his conduct on that occasion, whatever it was. I agree with the District Attorney, that this is not an abstract question. I agree with him that it is a question solely to be considered by you as a question of fact: a most difficult problem, a most delicate judgment to pronounce, but nevertheless one which you are called upon, in the exercise of your duties as citizens of the Republic, to determine upon your oaths between the people and this prisoner.

It may possibly never have occurred to you that when a man commits an alleged crime, whether he be innocent, or whether he be guilty, the jury, who are called to pass upon the commission of that crime, are a jury selected from the very people whose rights

he is supposed to have outraged, gathered from the great commonwealth whose laws he is charged with trampling under foot; and thus the prisoner, whether guilty or innocent, starts out with a selection from the very quarter that he has offended, presumably against him, yet sitting in judgment upon him.

Now, we think, in behalf of this unfortunate prisoner, that one of two theories is true. Either this man, who has sat here already a full day and a half, gazing listlessly into vacancy, whose heart was not touched by the pathetic recital of the death of his own wife, made in his presence, which, I feel sure, thrilled your hearts as it did mine,—that either he is playing a part, acting a drama—an unlettered, unintelligent man, a man who cannot read or write—that he is acting a character with greater success than it has ever been simulated upon the stage, or else God has indeed touched the fountain of his brain and left it a desert. Gentlemen, I hope that I need not apologize to you, at the outset of this case, for introducing to your consideration a defense of this character. It is true that not very long ago, men were, by the rules of the law, to be found of a degree of intelligence no greater than that of the brutes, or else they were held sane (*Justice TRACY, in King v. Arnold, 1723*). It is equally true that it is not very long since the standard of sanity was held to be “whether a person could count twenty or not.” But, gentlemen, we live in a different age from that. The jury system, wrung from the unwilling hands of King John, more than six hundred and fifty years ago, has stood the test of advancing civilization, and you who are called upon to determine this question, will consider it in the light of advanced

science, will consider it as it shall be lighted up by the reflection of learned men engaged in that special line of investigation, and will pass upon it with the deliberate, intelligent judgment which your experience and the experience of others, as it shall be brought to your attention, will enable you to give to it.

Now, gentlemen, at the threshold of this case, I want to ask you to disburden your minds, if you may possibly entertain any such prejudice, of the idea that this is a trumped-up defense on the part of attorneys. I know not what conception you yourselves may entertain of the degree of conscience which lawyers may possess in the administration of their duties. I know not how little you may regard the oaths which they have taken when they became members of the bar, to discharge their duties fearlessly, without favor, and with a conscious knowledge of the law, whose officers they are. But, for my own part, I sincerely beg you to believe that what I shall say to you here is said with the full and solemn consciousness of the oaths which I have taken; that I recognize no such absurd doctrine as that promulgated by Lord BROUGHAM, the great English jurist, that a lawyer was obliged to do everything that was possible for his client, even if it overturned empires and sowed the seed of desolation broadcast through the land. I recognize a binding obligation to my client to do whatsoever I may for him, which does not conflict with that more sacred obligation which I owe to my conscience and my God. I shall never do that for him which I shall not do for myself, to wit: knowingly violate any of the laws of morality which I consider myself bound by. It is fair for you, then, to believe that the attitude which I

assume in this case is one thoroughly in consonance with my honest convictions of the facts.

Now, we shall not proceed far in this important investigation before we shall discover that the question which we are called upon to decide is one which has never been passed upon by the courts. I mean by that simply this: that the district-attorney when he shall come to close this case will be wholly unable to cite to you any well-defined principle of law which shall govern it, going any further than to inform you, gentlemen, that after all the artificial rules laid down to determine the degree of reason which a man must possess in order to be criminally responsible, it rests with the jury in the particular case—the jury who have seen the man, the jury who have heard his history, the jury to whom experts, if they are offered, shall testify—to solely determine what their verdict is to be upon the facts.

Why! this doctrine of insanity as a defense is not a new doctrine. “That the madman’s punishment is his own madness,” was a maxim of the old Roman law long before our Anglo-Saxon civilization began. It lies at the root of every definition of murder which can be found in the books. It is comprised in that common law doctrine long ago established, that the intent of the party must lie as a part of the *corpus delicti*, and I shall, with your permission, and the permission of the court, call your attention briefly to a few authorities which I have collected, tending to show what murder has been considered to be, since it has been known as a crime among men.

In the earliest times of English law, murder consisted in the secret killing of a man, and the only way

they had of determining who was the responsible man, was to hold the Hundred in which it was committed to heavy fine for every murder there committed, and that fine was remitted from the Hundred when it was ascertained that the party killed was an Englishman. Well now, as early as that, there crops out this idea: the proof that a man was an Englishman remitted the fine, because it was presumed in those rude days that an Englishman would not murder an Englishman, and the moment it was established that the party killed was an Englishman, it was remitted, because no *intent* was found (4 *Blackstone*, 194). Hawkins defines murder to be "the willful killing of any one with *malice aforethought* (1 *Hawkins' Pleas of the Crown*, 92)." COKE says, "murder is where a man of *sound mind* and discretion unlawfully killeth any reasonable creature" (3 *Coke's Institutes*, 47). MANSFIELD—that "murder is where a man of sound sense unlawfully killeth another of malice aforethought, either express or implied" (*Rex v. Hazel*). Francis Wharton, our authority on homicides, accepts Lord COKE's definition. Bishop abandons the attempt, after undertaking a definition in two editions of his work, in the last, and says it is impossible to define the crime of murder.

Now what is the obvious element of murder as observed so early in the history of our jurisprudence? It is this: That no man shall have been considered to have murdered a fellow-being unless, beside the act of killing, there shall exist in his mind a clearly-formed conception to kill; that murder was something more than the naked act; that there must stand behind it the responsible reason of a human being. Why, gentlemen, if I seize your arm, and by force of my

strength a knife which you hold plunges to the heart of your neighbor, are you to be tried and found guilty of murder? If not, why? Certainly not; because there existed in your mind no willful intent whatever against that man; your reason was not aroused against him; there was nothing in you that was criminal, although your hand was bloody with the deed. That is the doctrine that was recognized so long ago, and Bishop says this was "the doctrine of the law superior to all other doctrines, because first in nature, from which the law itself proceeds, that no man is to be punished as a criminal unless his intent be wrong."

Now, for a long time in our American civilization, there was no statutory definition of murder. The definitions were abandoned, and they rested upon the case of the *People v. Kirby*, in 2 *Parker's Criminal Cases*, page 28, where it was held that "every willful taking of human life without a justifiable cause," was murder. That was the common law expressed upon that occasion in this case, and for a long time we remained without any statutory law upon that subject. In 1787 there were statutes passed in this State which prescribed that poisoning, stabbing, and other specific deeds mentioned, resulting in death, should be punished capitally.

But a general definition was attempted in the Revised Statutes of 1830, which said, "killing a human being without the authority of law—when perpetrated with a *premeditated design*—was murder;" the act of 1860 said that when it was "perpetrated by any kind of *willful, premeditated, and deliberate* killing it was murder;" the act of 1862 said that when it was "per-

petrated from any kind of *premeditated design* to effect the death, it was murder;" and finally, two years ago (1873), our legislature added to this the word "deliberate," and said that "when perpetrated from a *premeditated and deliberate design* to effect the death of the person killed or of any other person, it was murder;" and that is the statute, gentlemen, under which you upon your oaths are to find this shooting to be murder, if it be so. Now, I have called your attention to these express statutory and common-law definitions of murder, in order to establish to your satisfaction—a work of useless repetition, perhaps, but which I felt it my duty to do—to establish to your satisfaction that the plea of insanity as a defense to criminals had its origin in the very essence of murder itself, that it appears as a very important element of the *corpus delicti* itself, of the body of the crime itself, and that it is so far from being a new-fangled notion, a shrewd device of lawyers who stifle their consciences, a most essential ingredient of the important system of jurisprudence under which we live, and by which society itself is protected. When our statute-makers came to frame a law upon the subject of insanity, they did nothing more than to declare the common law itself. The common law had long held that a man who was insane could never be held responsible for his deeds, and the statute did nothing more than to write it in our law books so that all people could read it, and that it might not be gainsaid.

So, gentlemen, this defense which we introduce is one founded upon the elementary principles of the law—a right which every man possesses, a privilege which every being may claim who stands under the

admonition of the law, that he shall first be proved to be a reasonable being.

Now the law requires that in finding this criminal responsibility, this design, you shall find it without a reasonable doubt. But I am frank to say—and I propose to treat you candidly, frankly, fairly—I am free to confess to you, gentlemen, that the decisions in this state are not wholly in favor of the view which I have presented to you concerning the doubt; that is to say, that the court of last appeal have said, not that the element of insanity in the broad sense which we shall claim for it, must be proved beyond a reasonable doubt: they have not presumed to add their authority to that of a great many other judges in the state, but they have said, we leave that question where it is at present; only remarking, concerning the opinion of Judge BROWN in 16 *New York Reports*, p. 58, that it is entitled to whatever of weight the acknowledged erudition of the judge who rendered it can give to it. This was a case where on its trial below evidence had been introduced of the defendant's insanity; the judge below had charged that the party who set up the insanity of the prisoner, must establish it beyond a reasonable doubt to the satisfaction of the jury. Now Judge BROWN, in reviewing this charge in the court of appeals, uses the following language: "It certainly is true that sanity is the normal condition of the human mind, and in dealing with acts, criminal or otherwise, there can be no presumption of insanity; but it is not true, I think, upon the traverse of an indictment for murder, when the defense of insanity is interposed, and the homicide admitted, that the issue is reversed and the burden shifted; the burden is still the same;

it still remains with the prosecution to show the existence of these requisites or elements which constitute the crime, and of this the intention or *malus animus* of the prisoner is the principal." Further, that "notwithstanding the legal presumption, the sanity of the prisoner's mind is, under all the definitions of the crime, to be made out affirmatively upon the trial as a part of the case for the prosecution."

The attention of the court of appeals was again called to this question in 32 *New York*, and there the court held that they would not approve of the opinion of Judge BROWN, that the prisoner was entitled to the benefit of a doubt upon the question of insanity; but in this case, the case under consideration by the court at that time, there was no evidence introduced on the part of the prisoner as to his insanity. But in *Wagner v. People*, 4 *Abbott's Court of Appeals Decisions*, 509, the court of appeals did sustain Judge BROWN to the extent of saying that "where the evidence in a criminal case raises the question of insanity, the jury must be satisfied *beyond a reasonable doubt* that the prisoner was sane when he committed the act;" but again, they limited the application of the doubt to a knowledge of the difference between right and wrong.

Now, gentlemen, we conceive the law to be very plain, and it is this: that the District-Attorney is not obliged to introduce any evidence of the sanity of an ordinary criminal unless the question is raised—that it is presumed, as the law does assume, that every man is sane: but that if the defense introduce any evidence whatever of his insanity, the burden of proof is still with the people, and it then becomes an ele-

ment of the crime at issue ; an element which the prisoner has a right to say shall be found positively, affirmatively against him, or he shall be entitled to acquittal. I think surely I shall have no difficulty in establishing to your satisfaction and to that of the learned judge who presides here in this case, that we are entitled, that the prisoner is entitled here, to any reasonable doubt which you may entertain of his sanity. Certainly, gentlemen, you must see the force of it, if all the line of statutory definitions and common-law definitions have regarded sanity, the competency to entertain a willful design, as a necessary element in the crime, why, then, should not that element be proved as much to your satisfaction as any other? Now, assuming that the court, to whom, of course, belongs the exclusive prerogative of instructing you in the law, and to whose judgment and approval I submit anything I have to say in behalf of the prisoner (deeming it my right to do so since the district-attorney has shown to you what he supposed the law governing the case to be), will charge you that the prisoner is entitled to a reasonable doubt ; and being confident that the district-attorney will be unable to produce any authority from the court of appeals which shall direct him to do otherwise ; it is proper for us now to consider what this reasonable doubt is.

I certainly could not stand up in your presence intending to do my duty, not only as a lawyer but as a citizen, and ask you to entertain any flippant definition of the doctrine of reasonable doubt. The doubt, I say to you with all the earnestness—certainly feeling all the earnestness that the district-attorney can feel

on the subject—the doubt, I say, must not be some flickering, weird suggestion that by some possibility this man may not be sane. It must be a doubt resting upon some well-considered hesitation which you have as to some part of the evidence, some well-defined positive doubt of this character. But I cannot do better, certainly, than to read from the collection I have made here the definition which I suppose is familiar to your Honor, the definition of Chief Justice SHAW as to the reasonable doubt, and which I suppose will be the law administered to the jury in this case. Chief Justice SHAW says, in 5 *Cushing*, 320, that “a reasonable doubt is that state of the case which after an entire comparison and consideration of all the evidence leaves the minds of jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge.” Now, sincerely believing, as I do, that when you retire to determine upon your verdict in this case you will care to consider what so distinguished a man has said upon this subject, I will, with your permission, read this definition again: “A reasonable doubt is that state of the case which after an entire comparison and consideration of all the evidence leaves the minds of jurors in that condition that they cannot say they feel an abiding certainty of the truth of the charge.” Forsyth, in his *Trial by Jury*, page 336, adds something to that—certainly whatever weight may attach to his name—by saying that “the jury do nothing but their strict duty when they declare him to be not guilty whom the evidence falls short of convicting, however dark and unfavorable their suspicions respecting him.” Asking you then carefully to bear in mind

this important element of the crime of murder, design: asking you to remember if what I say shall be fortified by the opinion of the judge who will charge you upon this case, finally, that the prisoner is entitled to the benefit of a reasonable doubt upon this important element, his responsible will at the time, I shall now proceed not at all to in any way satisfactorily answer that great question, "What is insanity?"—but merely to present to your consideration some thoughts, some opinions which I have culled at some pains from the works of master minds in this special domain of science.

Recorder HACKETT in MacFarland's case, said that "the exact line between sanity and insanity in medical jurisprudence, is as intangible and as difficult to precisely measure as a meridian line in geography." Albert Swayne Taylor, in his work on medical jurisprudence, which is before me, which I have not time to turn to now, says, "It would be difficult to find a definition of insanity which includes all who are insane, and excludes all who are sane." "Words" (says Bishop, 1 *Criminal Law*, p. 389), "but imperfectly portray our ideas, but they never go so far short as when employed to convey to other minds our conceptions of the human soul. The thoughts of a man are vague and uncertain, yet never so vague and uncertain as when he is contemplating himself. Let us remember then, that if one can never turn his eyes within, and see his own sane condition truly, nor convey even what he sees in words, so he cannot see perfectly the insane mind of another, and especially he cannot have what is therein disclosed, conveyed in language to him as it is." Now, perhaps there was

never a question submitted to a jury which had about it such great perplexities as are connected with this question which you are to investigate. Why, gentlemen, all the past history and philosophy of the world has failed to demonstrate the grandeur of the universe about us, and yet whenever man has attempted to turn his eyes within him and to compass, if he might, this wonderful faculty of reason called his mind, he has found an infinity as great within his own being as that which he has been able to survey through all the space which is known to him, and so I say, gentlemen, that we are starting out with a difficult question to solve.

Why, the vulgar idea of insanity which prevails among people who have given no attention to the question is, that a man who gesticulates, who roars frantically, who tears his hair, is a madman, and that nobody else is. Now, upon the theory of the prosecution that this man sitting here is simulating insanity, he should be raving about here, and tearing his hair, certainly not preserving that fixed, stolid demeanor which has characterized him from the first moment I visited him at his cell in Raymond street, until this minute, and which will characterize him after his fate shall be determined at your hands. I say, if it be true that this man is playing a part, if it be true that he is simulating this insanity, he has undertaken a task greater than that undertaken by any human being before, and carried out successfully. And it is fortunate, gentlemen, that through all this devious maze of argument and talk, of reasoning, of decision, and doubt, and distrust, he can sit here a silent witness in his own behalf, challenging from your

inspection of his condition, that judgment which the most potent tongue could never wring from your hearts upon his case. "It is not necessary," says ERSKINE, in *The King v. Hatfield*, "that reason should be hurled from her seat; it is enough that distraction sits down beside her, holds her trembling in her place, and frightens her from her propriety." So long ago as 1845, Judge EDMONDS, a man of undoubted erudition and legal acumen, undertook to define this disease of insanity, undertook to approximate dimly to some rule, which should determine when a person was insane to the degree of irresponsibility, and the result which he reached with all his learning was, that "a sane man was one whose senses bore truthful evidence; whose understanding was capable of receiving that evidence; whose reason could draw proper conclusions from the evidence thus received; whose will could guide the thought thus obtained; whose moral sense could tell the right and wrong of any act growing out of that thought; and whose act could at his own pleasure be in conformity with the action of all these qualities. All these things unite to make sanity. The absence of any one of them is insanity." Now, I am not able to say, and I shall frankly confess it, that the highest court of this state has taken up the language of Judge EDMONDS and adopted it, but, gentlemen, the highest court in this state has said and do say, that the fact of insanity is a question which must be left to the jury, and therefore it is that I bring to your assistance upon this question whatever benefit you may obtain from Judge EDMONDS. Because if it be not established as the highest decision of the law, certainly it is not

disestablished by any authority with which I am familiar.

Now, I desire to submit to you some cardinal propositions upon the subject of insanity, and to fortify them so far as I may with the opinions of eminent writers in science who have devoted their lives to the investigation of this subject, and the first principle which I maintain before you is one which few will gainsay, but nevertheless one which I should call to your attention because people are so accustomed to regard it as an important element of insanity. The proposition is that

Insanity may exist without delusions.

"I shall endeavor to show," says Dr. Blandford (*Insanity and its Treatment*, published in Philadelphia in 1871, page 309), "that many patients of undoubtedly insane minds have no delusions; that delusions are not the one test of unsoundness of mind, nor even of insanity, so-called; and further, beyond all question there are persons of unsound mind who cannot properly be called insane." Again he says, "It is quite certain that various persons are undoubtedly insane who present none of the ordinary delusions of insanity; they may not have reached the stage of delusions, and they may go on to recovery without ever reaching it, or they may recover from the stage of delusions, yet never perfectly recover." And again, "We do not call it impulsive insanity when a lunatic all day long tries to smash the windows and tears his clothes to shreds, or incessantly endeavors to set himself and house on fire, and yet perchance he cannot give any reasons for any of these things, but has no delusion in connection therewith, he has very

few delusions." And Dr. W. A. Hammond, who is an eminent authority, is of the same opinion (*McFarland's Trial*, pamphlet edition, page 3). Another proposition which we expect to establish by authority, to your satisfaction, is that

A person may be in possession of his faculties sufficiently to distinguish between right and wrong, and still be irresponsible for his acts.

Now, gentlemen, the district attorney has told you that the only test for insanity was whether the party had a consciousness of right and wrong. I shall attempt to demonstrate to you that in addition to the knowledge of right and wrong, the party must have possession of his faculties enough to control his actions in accordance with his knowledge. Why, in the extreme case I cited a moment ago, that one of you should be forced against his will to murder your fellow, you might have the full possession of the knowledge of the crime—there would be no doubt about that—the resistance which you made to your neighbor in his attempt to enforce your act would demonstrate that ; and yet, gentlemen, under this theory, if it be true, if the law establishes any such criterion, under this theory you would be a culpable criminal, although another controlled you. Now, suppose that you had lost all control over yourselves ; suppose that it was absolutely impossible for you to exercise the will power, which is that wonderful power in man which makes him different from the brute in the field, that power which makes him God-like, which demonstrates his kinship to Divinity itself, this power, this royal power of will—suppose you have it not, are you still a responsible being ? Ought you to be called into a

court of justice, and punished for acts which you never did? Manifestly not, gentlemen. It is high time, high time, gentlemen, that we adopted this common-sense view of the question, which has been tharged over and over again at *nisi prius* by the courts in this state—that the party must not only have a conception of right and wrong, but also a controlling power as to that conception.

Now I desire to read to you (and, gentlemen, I am sure you will pardon me for being very dry and prolix upon a question of this character, when you consider the importance it may be to the prisoner at the bar), I desire to read to you from Henry Maudsley (*The Physiology and Pathology of the Mind*), who is foremost among the authorities upon this subject.

The District Attorney.—We acknowledge Maudsley as an authority.

Mr. Taylor, resuming: I read from the second edition, published in 1868 (p. 348). Maudsley cites this case. “An old lady, aged seventy-two, who had several members of her family insane, was afflicted with recurring paroxysms of convulsive excitement in which she always made desperate attempts to strangle her daughter, who was very kind and attentive to her. During the paroxysms she was so strong and writhed so actively that one person could not hold her, but after a few minutes struggling, she sank down quite exhausted, and panting for breath, would exclaim: ‘There, there! I told you—you would not believe how bad I was.’ No one could detect any delusion in her mind, and had she unhappily succeeded in her frantic attempts it would certainly have been impossible to say honestly that she did not know that it was wrong to

strangle her daughter." "When, therefore," he says again (p. 364), "a person of good social position, possessed of the feelings that belong to a certain social state, and hitherto without reproach in all the relations of life, does, after a cause, known by experience to be capable of producing every kind of insanity, suddenly undergo a great change of character, and lose all good feelings and become shamefully vicious, and brutally wicked, then it certainly will not be an act of charity but an act of justice to suspect the effects of disease; at any rate it behooves us not to be misled in our judgment by the manifest existence in such a patient of the full knowledge of his acts, of a consciousness in fact of right or wrong, to remember that disease may weaken or abolish the power of volition without affecting consciousness." "Most maniacs have a firm conviction that all they feel and think is true, just and reasonable, and nothing can shake their convictions," says Dr. Ray (*Medical Jurisprudence of Insanity*, 5 ed. p. 17).

"If insanity must preclude every attempt at design or premeditation we may as well reject every other principle equally confirmed by every day's observation of the insane, and by the numerous examples cited in the annals of insanity, and medical jurisprudence in our country and abroad" (M. G. Echeverria, in the *American Journal of Insanity* for January, 1873).

"A state of sanity is one in which a man knows the act he is committing to be unlawful and morally wrong, and has reason sufficient to apply such knowledge and be controlled by it" (Recorder HACKETT, in *People v. McFarland*, 8 *Abb. N. S.* 92).

Now I will not read further from the authorities which I have collected here; they certainly add weight to the principle stated by Mr. Maudsley, that the possession of a conscious, controlling power in a man is an essential element of his sanity. And, gentlemen, you will see that this is founded upon a common-sense view of things; because, as I have already suggested, what avails it to have an intellectual conception of the deed which one is about to perform, to know that it violates the moral code which he has been brought up under, and yet to be without power to resist it; to have a brain so shattered that it is no longer the controlling guide of his life; to be dismantled, in fact, of the very power which enables him to put aside the obstacles which hinder him, and to pass upon questions which come to his consideration with an intelligent and responsible judgment?

I suppose that you are aware that insane persons have very generally, or at least on frequent occasions, been possessed of more than ordinary powers both of literary composition and scientific acquirement. Why, gentlemen, the very judge whose authority I have cited to-day, and whose opinion your Honor will, I believe, recognize as entitled to great weight, was known years before he died to be of the firm conviction that every day as he passed down the street there flitted before him forms from the spirit-world: that they followed him about his business; that they accompanied him in his conceptions of the principles of law, and guided him in his labors: and he was firmly of the belief that whatever rank he obtained was due to the direct communication of those spirits to his individual presence. Now, probably, the common mind

would regard a thing of that kind as indicating an aberration of intellect, at least; but we have never ceased to regard his decisions as of the very highest authority. With your permission, let me read the following:

“ There is a winter in my soul,
 The winter of despair ;
 O! when shall Spring its rage control,
 When shall the snow-drop blossom there ?
 Cold gleams of comfort sometimes dart
 A dawn of glory on my heart,
 But quickly pass away.
 Thus Northern lights that gloom adorn,
 And give the promise of a morn
 That never turns to day.”

These verses were written by a lunatic in an English asylum—one quite crazy, but with one portion of his intellect not wholly shut out to the conception of his condition. And it expresses what I regard, gentlemen, as a most beautiful reflection upon the moral and intellectual night that had settled down upon him. In the case of Dadd, who was acquitted on the ground of insanity, and who was proved to be a confirmed lunatic, it transpired that the man, after killing his father, obtained a passport and sailed from France, with all the cunning design of a criminal eluding pursuit, and yet there was no doubt at all of his insanity (*Wood on Plea of Insanity*, page 41).

Now, gentlemen, one other proposition I want to submit to you, and that is, that “*It is not incumbent upon this defense to establish insanity as a continuing accompaniment of this man's existence from any given time to any given time.*”

The question which you will be called upon to answer is: “Was this man, at the time of the commis-

sion of this deed—not, is he now—insane?” I grant that to the people—not is he now, not was he two years ago, not was he five minutes before the deed, not was he five minutes after the deed—but was he at the time of the shooting, in such a possession of the powers of reason, given him at his birth, as to be responsible for this act? And in support of that proposition I cite a case which will be familiar to the court, and if I am wrong in any statement which I make about it, you will be sure to hear of it from the industrious counsel for the people. The case is the *People v. Cole* (7 *Abbott's Pr. N. S.* 321). In that case Judge HOGEBROOM—a man who certainly commanded the respect of the bar and the bench—Judge HOGEBROOM in his charge to the jury had left them in some doubt, I think, as to the full meaning which should be given to what he had said in relation to the *time* of the insanity, which they should find. The jury came in, after having returned twice for instructions. They came in, in a short time, and they said to the court, “We find the prisoner sane at the moment before the shooting, and sane the moment after the shooting, but are in doubt as to his condition at the time of the shooting,” and the court charged that they must give the prisoner the benefit of the doubt, as the time of the shooting was the only criterion. Now, gentlemen, I maintain not the proposition that if we were able to show to you, in this case, some momentary, temporary freak, which could be construed into madness on the part of this prisoner, that thereupon you should as true men, making true deliverance between the people and this prisoner, find him not guilty; but I do maintain that you may find in the condition of this prisoner at any other time than

the shooting, such corroboration of the belief you may entertain of his sanity or insanity, as may be evidenced by the greater or less weight of those circumstances and conditions. That I believe is within the fair construction of all the decisions which have been made upon this subject. Now in the case of Murray, tried in Edinburgh, in 1858, it was proved that the prisoner recovered from his insanity eight hours after he had killed the deceased ; he was acquitted upon the ground of insanity during the time he committed the act. It is cited in Taylor's *Medical Jurisprudence*, vol. ii., 561. Now thus far I have endeavored to lay before you a few propositions which might seem to be helpful to you in discharging your duty. I am not here to interpose any obstacle between the exercise of that very great duty, which is your own individual obligation, and any punishment which lies in wait for this prisoner. If I am correct in the belief which I entertain of his condition he is past the effect of any punishment. The most you can do in that direction will be to shelter his family, to shelter his aged mother, who will come here and tell you what she knows of the story of his life, from the added ignominy of his death upon the gallows. Have you, gentlemen, during the course of this trial hitherto, have you seen any look upon the face of this prisoner that has indicated the slightest interest in this case? If you have, you have certainly discovered more than I have done at any moment or any hour of my intercourse with him, since my duties in relation to him became incumbent upon me. So I say to you, so far as Joseph Burroughs is concerned, your duties do not afford you scope enough to give him a single hour of satisfaction or

comfort. When you shall come to bring in your verdict in this case he will sit here with the same stolid look upon his bloodless face, which has rested there during all his trial. Yet there are considerations which should lead you to give to this prisoner the same impartial trial that you would give to him if he hung breathless with emotion upon every sentence which came from your lips.

I want to call your attention to one principle laid down by the authorities, which you should bear in your mind, and that is, in the words of Dr. Blandford (Blandford's *Insanity and its Treatment*, page 334): "The act may be so motiveless that no one can doubt it must have been the act of a madman. When a man murders one known to be most dear to him, we may suspect insanity, and more than suspect;" because I believe that will be more than an important consideration in your minds, when you shall come to consider in what condition this man's mind was.

Now, gentlemen, I have noted three of the superinducing causes of insanity, which if you will allow me to call your attention briefly to, I shall have done with this theoretical part of the case, and shall proceed to unfold to you the facts which we expect to establish on the part of the defense. The first is that injuries to the head are superinducing causes of insanity. These injuries, I think, frequently appear in the history of these cases, and are recognized as sufficient causes for the production of an unsound mind. Maudsley, in a note to his 2d edition, page 286, quotes from Professor Schlager, of Vienna, who says that "in nineteen cases out of five hundred, mental diseases come on in the course of a year after the injury, but not till

much later in many others; and in four cases not till after ten years; in most of the cases the patients were disposed to congestion of the brain, excitement, and great emotional disturbance and excitement on taking a moderate quantity of intoxicating liquor. There was ringing in the ears, or difficulty of hearing"—both of which are pronounced facts in the case of this prisoner—"very commonly the disposition was changed, and the patient was prone to outbursts of anger or excesses."

Again, we shall maintain before you that intemperate habits of themselves tend to produce a deterioration; are considered inducing causes of this disease of the brain. "There are cases," says Henry Maudsley (page 474), "in which positive insanity is produced by drink; and they are sometimes the occasion of great injustice being done by our legal tribunals. Some persons, who have a strong predisposition to insanity, or who have been once insane, or who have had a severe injury of the head at some time, do actually become truly maniacal for a while after an alcoholic debauch, or are rendered temporarily maniacal, being probably thought drunk, by a very little liquor."

"A thorough diagnosis, involving a history of the patient, a close scrutiny into preceding circumstances, would, more frequently than is done, identify alcohol as the predisposing cause, the great disturber. This poison may be said to act directly on the nervous centers, and it is noticeable that the encephalic portion seems to be the special field for its disturbing chemical action. An affinity seems to exist between alcohol and nervous matter, which may account for

its special power in deranging the nervous system” (*Methomania*, by Albert Day).

“While we must admit hereditary influence to be the most powerful factor in the causation of insanity, there can be no doubt that intemperance stands next to it in the list of efficient causes; it acts not only as a frequent exciting cause where there is hereditary predisposition, but is an original cause of cerebral and mental degeneracy, as a producer of the disease *de novo*” (*Responsibility in Mental Disease*, Maudsley, 1876, p. 283).

Now, gentlemen, I have referred to this as among the superinducing causes of insanity, partly because the case of the prosecution, as shadowed forth in the evidence which has so far been presented to your consideration, seemed to indicate that an attempt was to be made here to show that Joseph Burroughs was under the influence of liquor at the time of this transaction, and was therefore not excused by the law for his participation in it. We shall abundantly satisfy you, gentlemen, I think, that no such state of things could possibly have existed, and if you shall not find that that was an all-efficient cause of it, then, of necessity you will be turned over to the other horn of the dilemma, and you will be obliged to see in it such a state of weakened physical powers, such a low tone of the system, as showed a mind of deteriorated brain-fiber, waiting to be ignited by some exciting cause which should burst forth into the uncontrollable rage of the maniac.

Now, another efficient cause, and the last to which I shall call your attention, is sleeplessness; and I now refer to Dr. Hammond’s synopsis of the general sub-

ject of insanity, found in the edition of the trial of Daniel McFarland, published by W. E. Hilton, of Nassau street, which I have obtained from the library below, where he says that "with the wakefulness of the patient, combined with great mental and physical irritability, the patient is occupied with the thoughts and emotion which have engaged his attention during the day, and he dwells upon them, not only with intensity of thought, but often with an intellect perturbed and perverted from the mode of action natural to him. He may likewise have illusions, delusions, hallucinations, and only towards morning obtain a little sleep, but then is disturbed with dreadful dreams which prevent his being refreshed. His whole nervous system is in such a state that he paces the chamber the greater part of the night, or seeks the open air, or walks the streets until thoroughly exhausted, mentally and physically, when he succeeds in getting a little quiet slumber. Persons thus unfortunately situated must beware how they allow their duties and pleasures to interfere with that recuperative process which is indispensable to their perfect safety. The records of our private asylums show a large proportion of cases in which the disease was attributable chiefly to this cause, which a little more prudence would have prevented."

Now, gentlemen, you are certainly no more conscious than myself of the sketchy, superficial character of these indications which I have thrown out to you; but, when you come to reflect upon the questions which we are considering, it seems to me you will observe that the most we can hope to do in this honest investigation which we are making in this case, is, to feebly

probe after information, which shall be of such a general character as shall enable us, if remembered and thought upon, to rightly consider the facts of this case, which I now proceed to disclose to you, as we believe we shall be able to prove them.

Joseph Burroughs was born about thirty-nine years ago. He was of an humble parentage. Up to the age of fourteen years or thereabouts, he was a bright, active boy, a boy of good behavior, a boy of considerable promise. At that time he accidentally sustained an injury behind his ear, near the brain, which by the way, he could never have simulated. The District Attorney will find himself called upon to demonstrate to your satisfaction when he comes to close this case, as I have so often before remarked, that this man is simulating. Gentlemen, you can have ocular demonstration, if you desire it, of the presence behind his ear of such an injury as the physicians, whom we may call to testify in this case, will declare to you might have been (we shall not claim that insanity was a necessary effect of such an injury), productive of inflammation that could have been sufficient, when taken in connection with the other circumstances of his life, wholly to overpower the reason which God had given him.

After this injury, gentlemen, he became stupid. All the rest of the family, most of whom you will have the opportunity of personally observing, are possessed, if I am any judge, of a degree of intelligence and frank, open-hearted expression not at all common to persons in their rank in life; but this boy after the injury was stupid, intractable, unable to learn to read or write, although he was born here on Long Island,

in Newtown, not far away. He was, therefore, put early at a trade, and about this time his father died. He learned the mason's trade ; it was an humble occupation, it was an honest occupation, it was one not calculated to afford him an opportunity for making a large display in the world, but one, I imagine, quite as essential as many other occupations, certainly, in the community—an honest, healthful, thriving trade. Now, gentlemen, when he arrived at the age of twenty-six years, he married a Miss Maggie Camp. When the District Attorney insisted upon going behind the record of the man's life with the woman that he shot, and saying to you that he expected to show cruelty on the part of this man against his first wife, I did suppose that dwelling on his connection with that first dead woman, he would introduce some shadow of proof upon which he might conscientiously rest the stigma which he had cast upon that relation. Have you heard anything of it? Has there fallen a word from the mouth of any one of these witnesses here which reflects in the slightest degree upon this poor man's relation with that woman? Not a scintilla, not a particle! A wholesale, unsupported defamation of a man whose reason is gone, and whose tongue is speechless. His relations with his first wife, I think, were pleasant ; they were of the most tender nature. We are prepared to show to you, on the part of the defense, conclusively, that those relations were pleasant, and if the District Attorney has forgotten to put in the evidence relating to them, he will have an opportunity to do so upon the rebuttal, perhaps, and we shall be prepared to meet that issue whenever he may present it to our consideration.

Now, before that time—before he married Maggie Camp—the woman whom he shot, knew him. If he was a bad man then, she knew him; if his relations with that first wife were such as have been indicated by the district attorney, she knew it; and yet three months had not elapsed after the death of that first wife, before this woman hustled this man, half fool and the other half crazy, off in a carriage at night, and married him. Now, I desire to speak guardedly and with a peculiar degree of reverence concerning a woman whose lips are cold in death, and who can never answer any assertions made against her character. Far be it from my intention, though I bristled all over with facts, to undertake to defame that woman by any word of mine; unless, gentlemen, you might draw such a conclusion from the facts which it has become necessary for us to present to you, concerning her, in order to demonstrate to you that this man's relations with her were of a widely different nature from those that have been indicated by the witnesses for the prosecution. It is my unpleasant duty to state to you, gentlemen—a duty from which I dare not shrink, a duty which is shared with me by distinguished counsel in this case for the defense—that when this man entered upon the relations with this woman that he did, she had already given birth to a child for whom no man stood up in the whole community and claimed the parentage. And surely if you shall discover in such a disclosure, made to a man after assuming marital relations with a woman, anything which should fire his brain and dethrone his reason, and unsettle his sentiments with regard to right and wrong, why, then, you will but follow, I think, the instincts of human

nature which are alike to every man. The fact exists ; it is a part of this case ; it is one of those circumstances which make up this revolting record as it has been in part presented to you. It is our duty to maintain it and proclaim it.

Now, this woman, Miss Kinsman, the name under which she was married to Joseph Burroughs, was at the time of her marriage an inmate of the house of Mrs. Burroughs, the mother of Joseph. She had for some time been occupying relations of supposed intimacy, with a view to marriage, with a young man in the neighborhood, and it was the common expectation of that household that she would be married to him. But when Mrs. Burroughs, the mother of the prisoner, discovered an unexpected arrival in her household, whose maternity was not in dispute, because impossible to be disputed, the feelings of this honest woman, who had reared a household of children, and stood the only guardian left of their honor and their moral sense of duty—her feelings were outraged, and she said to this Miss Kinsman : “ You must unfold to this young man the circumstances which have happened here ; it is hardly right that you should enter into this sacred relation which you propose to enter into with him, unless he shall be informed of those other intimate relations which you have established with the father of this child, and if you do not tell him, it becomes my duty as a Christian woman, with a regard for the decencies of society, with some regard for his own welfare, to see that he shall be informed of it, and I shall do it.” Miss Kinsman’s ideas of the proprieties of that information differed from Mrs. Burroughs’, and she thought it quite compatible with whatever views

she entertained of the relation she was to assume, that it should be assumed in utter ignorance of any such circumstance. Mrs. Burroughs, however, finally prevailed upon her to make that revelation, and when she made it, the man whose affections had been absorbed in her fainted away at her feet, and of course the relations between them were dissevered.

Now, gentlemen, I think you will acquit me of going outside the professional duty which I have assumed in this case, needlessly. I should deserve to be stricken down here in your presence if I could allow it to be possible, that for any purposes of sensation, for any purpose of enlisting feelings which ought not to be enlisted in this case, I should attempt to throw a stone against the character of this dead woman. I could not find it possible to do so, and in saying what I have, I run the risk of acquittal at your hands of any such design, because I think that you will see that this fact once admitted, it is the pivotal point about which all these relations turn, and unsolves the hidden mystery of what it was that turned the mind of Joseph Burroughs into vacuity, and fixed upon him that steady gaze into the future or to some far-off quarter which has never left his face since he entered this room.

Now, when this infant was found there, it became, of course, the subject of earnest conference in the family, and Mrs. Burroughs' proposition was that the girl should be turned out of doors. I doubt not, gentlemen, that you can rightly understand how outraged must have been the feelings of a woman who had raised in obscurity, and by hard toil, but honestly, a family of children, to find harbored in her household a woman of this character; and perhaps you will find

in that sufficient cause for the stern opinion of this woman that she must be turned out of doors. But a younger sister of the prisoner here interfered in the matter, and at her solicitation she was retained in the house. She represented to her mother the condition of the woman turned out upon the streets under such circumstances, and finally prevailed upon the old lady to allow her to remain in the household; and it was about a year after that disclosure that this woman and Joseph Burroughs left the house by stealth in the night and were married. The false step I have mentioned was unknown to Joseph Burroughs, of course, when he entered upon this relationship. You can hardly assume that the man would openly enter upon any such relationship with a woman concerning whom he knew this fact. But very shortly after Joseph Burroughs was married to this woman, it was disclosed to him, and I think you can readily understand that it precipitated into his domestic affairs a constant element of unrest and disquietude. It certainly was a reflection calculated above all other reflections to disquiet this man, to render him liable to magnify any little departure of that woman from the strict line of virtue or propriety, or even domestic companionship: and yet, gentlemen, in spite of that, so strong was the attachment of this man for that woman, that there has never been a time during the history of his acquaintance with her, when he has not worshiped the very ground upon which she walked. I shall not undertake to demonstrate to you, men of the world, family men, business men, how it is that such a feeling could retain possession of him. I think it is common to all our observations that such feelings are enlisted—the

strength of their retention, and the reality of their existence. However that may be, it did exist in this case and it never deserted him.

Now, Joseph Burroughs contracted at some time in his life the habit of drinking intoxicating liquors. He was a hard-working man; he worked steadily, faithfully; at times he drank liquor, that is a fact in the case; it is a fact which we freely admit, it is a fact we have no disposition to deny, because, gentlemen, although it may seem, from the efforts which have been made by the prosecuting attorney to build up a rampart of rum about this case, that he expected to walk over that unsolid foundation to a verdict of guilty at your hands, yet we expect that you will not try this case upon that issue, and we freely, frankly say to you that, concerning the use of intoxicating liquors, Joseph Burroughs did indulge in them. And we are confident that we shall be able to show to you, if you have not already surmised it from the evidence that has been given, that the threats and the vile language which he indulged in, as testified to by these witnesses, was the result of this undue use of liquor. He was continually endeavoring to master this habit. He had at home a wife concerning whose qualities for keeping his house in order, for doing those various little things by which the wife of a poor man always has it in her power to add to the happiness of her husband, I shall not stop to comment upon. If it shall become necessary for us to ask the witnesses, during the course of the case for the defense, what they were, it will probably be done, and it will be sufficiently disclosed to you; but I think, gentlemen, you will find that without saying anything

particularly against her in that direction, they were certainly not of a character to lure him to the household—they were certainly not such as to keep him well poised in his determination to rescue himself from this habit. He had, however, thrown off this habit, to a great extent, and we shall bring to your notice and offer before you the employers of this man, who will tell you how much of a “drunken vagabond” he has been through a certain portion of his life. On election-day, after he had continued working for two months after his wife had left him, for a short time he began to drink; and he drank, as was his usual custom when he did drink, for one or two days, and since that time we think it will be impossible for the district attorney to show you that he has indulged in the use of intoxicating liquors to any extent. Now, this man’s wife had left him. She was to him, no matter how disordered her relations with him, no matter how very far from that which ordinary men in his condition would regard as preferable and desirable, she was, nevertheless, to him the one necessary element of his happiness and his safety; and she was away from him, and he solicited her to return, and from the day of the election to the day of the shooting, his mind continued in an aggravated state of ferment, excitement, sleeplessness, restlessness, without any mitigation. The Sunday before the Saturday of the shooting, he was in a wild, crazy state about the house; his mother was with him, his niece was with him. He was sitting in the front basement, when suddenly he started up and ran out into the back basement, where the dinner-table was set, seized a knife and attempted to cut his throat, and it bears the

mark to-day, as the doctors will assure you. Now, that was six days before the shooting—will the district attorney tell you that that was simulation? The medical authorities say that simulation is rarely assumed until after the occurrence for which the prisoner is indicted. If he had shot his wife and then undertaken suicide, you would be left the opportunity for believing that he did it to cheat the law of its due; but, gentlemen, he began his tragic manifestations in the history of this case by attempting his own life—that was his condition of sanity. Monday night he sent for a pious woman connected with the church which he had attended, and beseeched of her that she would pray with him for his salvation, and there upon the floor they knelt together for an hour and a half; he beseeching for salvation, and she joining in his plea; he saying that his wife was the only obstacle between him and salvation, and she undertaking to soothe his excited utterances by a petition to the God who watches over us all, that His influence would shine down upon his heart and illuminate it with the light of divine apprehension.

Now, gentlemen, does the murderer, does the man between whom and the people stands the law, begin his work of murder on his bended knees? Does he call in assistants from the neighborhood to add their entreaties to his before he starts out on his errand of death and bloodshed, to ransack your house and pillage society? Certainly not, gentlemen, certainly not; and yet there will be no doubt about these facts.

Has the prisoner slept at all during that week? We shall show you that he did not. We shall show you that on Wednesday night he ranged up and down

through the house, until he finally awoke his aged mother here, who, tired with watching, was getting a little sleep from the "bosom of the night," and bent over her in a position, gentlemen, which I know not how it may impress you, but which certainly suggests to me the horrid thought that he was about to begin his work of 'tragedy by sacrificing the mother who had borne him, to his insane frenzy. Now, gentlemen, where was the motive for this act which this man has committed? Was it revenge upon his wife? Why begin with himself, and second that with the life of his mother?

Thursday night found him in an unabated condition of excitement, sleepless, perturbed, walking through the house with his stockings in his hands and his shoes under his arm, in a perfect condition of restlessness, designated by the gentlemen from whom I have read to you as among the most prominent indicia of insanity; and so it went on until Friday night. The district attorney told you that he expected to show to you that this man Burroughs was lurking about the house of this woman on Friday night, if I remember, and he expected that you would draw from that the conclusion, as you would doubtless have been entitled to, that there was a wicked, persistent, devilish design about the man inconsistent with the theory of his insanity. Has he shown any such thing? Is there any evidence that Burroughs was lurking about the house the night before? There is evidence that he talked with a man who lived somewhere in the neighborhood. Was he lurking about? He made known his presence to the man—went and talked about some ordinary matter; certainly that cannot be construed, by the most

imaginative powers any of you possess, into any lurking on the part of the prisoner.

We shall then, gentlemen, show you in behalf of the prisoner :

First. That he was an industrious and orderly citizen.

Second. That he had no motive for killing the deceased.

Third. That he had been previously uncontrollable, restless and sleepless at night.

Fourth. That he had for weeks been laboring under intense religious excitement.

Fifth. That he had prayed for hours at a time to be relieved from the burden of his sin.

Sixth. That he imagined that his wife stood between him and salvation.

Seventh. That near relatives of the blood were unquestionably insane.

Eighth. That he attempted his own life, and nearly succeeded, six days before the shooting.

Ninth. That he has never denied the commission of the deed.

Tenth. That he made no attempt to escape.

Eleventh. That he expressed no sorrow or regret for the deed ; and,

Twelfth. That to no person connected with this case has he expressed any interest in its result.

These, gentlemen, are brief indications, imperfect suggestions, of the facts which we expect to present to your consideration. They constitute, I think, with the medical testimony which we shall introduce, from those who have examined this prisoner on more than one occasion since the shooting, and from their opinion,

as they shall give it to you upon the facts in this case, and the insane history of his relatives—they constitute a chain of circumstances, of scientific judgment upon the circumstances, which, coupled with what you may observe about this man yourselves, will, as I believe, lead you irresistibly to the conclusion that he has never been responsible for the shooting which it is acknowledged he did.

And now, gentlemen, I have done.

Friendless, illiterate, staring vacantly at this dreadful drama in which is involved no smaller issue than his life or death, Joseph Burroughs asks only at your hands that full measure of justice which is at once the right and privilege of the best and basest of mankind. If you can find in that stormy week of excitement preceding this dreadful catastrophe an intellect sufficiently clear, a brain well enough balanced to weigh with responsible judgment the action to which his mad delusion drove him, then he must suffer the full penalty of the law which he has consciously violated. I have no shield to interpose between any violator of the law and its merited penalty. I am painfully conscious, gentlemen, of the imperfect manner in which I have performed the task which has been allotted to me in this case. Fortunately for the prisoner, at the conclusion of this issue, you will be addressed, in his behalf, by distinguished counsel, who will pass before your consideration all the evidence in this case, subjecting it to the most rigid scrutiny and the most careful analysis. We now present our evidence to your intelligent judgment. We desire by no legal jugglery to divert your minds from the painful issue which you are called upon to decide. The basis of society is not so well

settled that it should lose any element of strength by your adjudication. If the death of this wretched imbecile is necessary to preserve more stable the pillars of the temple of justice, let him meet the fate that awaits him. Let no over-rash zeal of counsel substitute a view of this unhappy circumstance inconsistent with the verdict of your deliberate attention.

Yet, gentlemen, while it may be a matter of small consequence to either you or me, whether the man Joseph Burroughs shall be found guilty or not guilty, it is of vast, illimitable concern to the great civilization in which we live—it is of endless importance to the very life of society itself—whether a being, bereft of reason, floating rudderless on the ocean of temptation and strife, shall be judged in the calm, sober atmosphere of pitying sympathy and love, or in the hot heat of revenge and retaliation; for, wretched and depraved as this poor prisoner may be, standing unfriended in this open court of justice, gazed upon and hawked at by the rabble in the lobby, there are yet chords of human tenderness and hope which knit his heart to that of each of you twelve men by the indissoluble bonds of a common brotherhood.

If the deed for which he is indicted be a crime, it is a crime utterly motiveless. No mad passion fired his arm; no secret jealousy poisoned his judgment or palsied his moral nature. With the discharge of his pistol, all his hopes were blighted. With the fall of his wife, fell every element of happiness to him. He loved her even and literally to distraction. He saw nothing but good around her or about her. To him she was little less than an angel; nay, she was an angel; and since her sad death, she has, as he believes,

opened the door of his wretched cell and shone upon him with angelic benedictions.

Alas, gentlemen, there was a time when Burroughs was not the wretched man you now behold him—a time when his tender breath sweetened and warmed this aged mother's bosom. There was a time when his shouts rung high and joyous in those happy, happy moments of boyhood which we all delight to think upon. But the grave early closed over his father, and, groping blindly through his checkered way of life, he has wandered out into the boundless ocean of utter emptiness, a battered, storm-tossed hulk, without compass or guide, drifting, drifting, drifting to no certain end of the earth—aimless, will-less, emotionless—all the chords of his moral restraint cut loose, every star of heaven shut out from his vision, with the slender wick of reason burning feebly in its socket, if not already put out.

Judge him, then, gentlemen, as he is; and if, on the one hand, you see an offended law and the public weal in jeopardy, listen, also, on the other, to that benign utterance of the divine Nazarene, who, eighteen hundred years ago, from the thunder-rocked hill of Calvary, with an omniscient view of the maniac crowd around him, breathed towards heaven that sublimest expression of charity ever uttered upon earth, "Father, forgive them, for they know not what they do."

THE FUCHS CASE.

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[Andreas Fuchs was indicted for the murder of William Simmons and brought to trial during the first week of April, 1876, at the court of Oyer and Terminer for Kings County, Mr. Justice PRATT presiding. It was conceded that he had caused Simmons' death, but it was claimed that he was not in his right mind and was actuated by an uncontrollable frenzy upon discovering Simmons *in flagrante delicto* with the prisoner's wife. The brutal disposition of the body, Fuchs having cut it up and thrown the head in a ship-yard, at Greenpoint, buried other parts in a field and secreted portions of it about his house, justly excited much feeling against him in the community. He was defended by Mr. H. B. Kinghorn, who opened the case, and John A. Taylor, acting as senior counsel, summed up the case in the following speech, which is a transcript of the stenographer's notes. He was convicted of murder in the first degree, and sentenced to be hung, but upon application to the Governor the sentence was commuted to imprisonment for life, and he was committed to Sing Sing prison. Subsequently he was transferred to Auburn.

Although the theory of his insanity was much ridiculed by the press and rejected by the jury, he is now confined in the State asylum for the insane at Auburn, to which place he was removed on the 30th day of November, 1878.

A letter from Dr. Theodore Dimon, late superintendent of that institution, dated April 6, 1880, says: "From however, the form and description of his insanity and his manifestations of it here, viz.: chronic mania, ordinarily quiet and apparently sane, with occasional periods of disturbance, and the fact that manifestations of delusion and irritability could at any time easily be made to appear by conversation directed to that end; this having been his uniform history now for nearly a year and a half, and the fact that he had delusions which were recognized by prison officers for over a year before he came here, it is quite probable that what was considered very bad temper for the first year at Auburn prison was also insanity."

ADDRESS.

May it please the Court: Gentlemen of the Jury:

I desire to express my grateful acknowledgment to the court and to you, gentlemen, for the indulgence which was granted me on last Friday, in adjourning the discussion of this important case until this morning. I believe that we shall come to it with a calmer consideration, shall give to it a wiser judgment and be better qualified in passing upon it finally, to render such a verdict as will be in consonance with the true history of this poor laborer, and with the preservation of the public rights.

The condition of civilization has been said to be marked by the value which it places upon human life, and I am not here to ask you to do anything in this case which shall render the life of the humblest citizen of our great community less safe, or which shall jeopardize any of the many interests in which we all have a common property.

If you believe that the prisoner at the bar is a bloody butcher—if he has all those elements which have been expressed by the painters and the poets of the past on canvas and in song, as making up that thing which we call “the murderer”—then I cannot ask you that he shall escape, in the slightest degree, any law, which the wisdom of centuries has perfected, and which the present generation has kept sacred upon the statute books for the punishment of such men.

But one of the earliest sections of our State constitution prescribes that “no person shall be deprived of life, liberty or property without due process of

law," and this provision but expresses in new terms that older guaranty which for six centuries has been the protection of the common people, as set forth in Magna Charta itself in the promise of the crowned head, that "Neither justice nor right shall be sold, denied or delayed to any one."

And, gentlemen, it is in obedience to that organic rule of the government, that to this man, as to every citizen of this commonwealth, is secured the inestimable privilege of bringing himself before twelve freemen of the Republic, who shall be without bias and shall be fitted by their occupation and their variety of opinions and personal history to give to the consideration of the charge which shall be preferred against him, their sober, unimpassioned, impartial attention.

And the treatment of this case, as developed by the press and the general public, demonstrates the necessity inbred in the very elements of human nature itself which exists for this institution.

What has been the history of this accusation from the first day when the discovery of this killing was made public to the present. Has there been a single paragraph written in all this great city—has there been a single voice lifted up—that should tend in the slightest degree to mitigate the public opinion which has rashly fastened upon this poor man, or to portray to the public at large the real circumstances governing this case. Not until my associate, Mr. Kinghorn, arose in this court to address you, has it been my fortune to hear or read any such thing.

Now this is an exceedingly unequal contest. The prisoner is both fortunate and unfortunate. Fortunate in having to preside at his trial a large-hearted, clear-

headed jurist,—unfortunate in that he is defended by two gentlemen whom the district attorney very justly stated were younger members of the bar; fortunate in that he brings to your consideration his case, instead of to the general public; unfortunate in that in the preparation of that case he has been as one walking blindly with his hands tied behind him; fortunate in that the circumstances of his case commend him to your most kindly commiseration; unfortunate in that I shall be followed when I shall have finished my feeble effort in his behalf, by a gentleman more perhaps than any other member of our bar distinguished for his sagacity, his plausibility, his powers of eloquence and his learning in the law.

Now I do not desire to dwell improperly upon the labors of counsel in this case, but it is matter of simple justice for me to say to you that if you have discovered any creditable preparation of evidence on the part of the defense, or anything which under all the possibilities of the case has led you to believe that efficient efforts have been put forth in that direction, then I frankly and willingly say to you, gentlemen, that it is due to the untiring industry of my associate. He has had the entire charge of the preparation of this case so far as seeing the witnesses and procuring the evidence has been concerned.

Before I call your attention to the legal aspects of this case,—by which I mean the law under which, in my apprehension, you will be called upon to decide this proceeding, as it shall be afterwards expounded to you by the learned judge who presides,—it is proper that you should be reminded of some of those general incidents of the law which surround every man appre-

hended or supposed to be apprehended in the commission of a crime—provisions which have their seat and root in the very heart of civilization itself—provisions which stand as firmly about each one of you twelve men and stand as ready to shield each one of you in any exigency of your lives, as they do this man.

Edmund Burke it was,—a gentleman certainly a master of human motives and passions,—who said that “mercy was as essential an element of criminal law as equity was of the civil law;” and a judge in Pennsylvania, when a question arose upon the necessity for the presence of a prisoner at his trial, and whether he could be convicted during his absence, used this language: “It would be contrary to the dictates of humanity to let him waive the advantage which a view of his sad plight might give him by inclining the hearts of the jury to listen to his defense with indulgence.” (*Paine v. Commonwealth*, 6 *Harris* [Pa.] 103.)

So; gentlemen, when the district attorney shall come to ask you to consider this case in the steel-cold light of technical law and by the rigid rule which would govern an intelligent and highly-educated and developed man under the same circumstances, I shall hope that you will remember that you are not called upon when you enter this panel to eliminate from your constitutions any element of mercy and charity, but are at full liberty to look upon this unfortunate man with mercy in your hearts and with a tender regard for those circumstances which have made his life different from yours and mine.

Again, he is presumed to be innocent. All along the course of this trial, through all the time which we have spent in it, there has not been an hour or a

moment when you have not been bound to interpret every fact which came to your knowledge by this supreme protection of the law—that a prisoner is presumably innocent. And he is entitled to be shielded in your judgment continually up to the decisive hour of your verdict upon his actions, by this constant ally of his fortunes, grappling with every fact of this case, contesting every inch of the ground and attacking every sinister incident of the case.

And, gentlemen, the law has yet a further general defense for the prisoner, which is—that to him belongs any reasonable doubt upon the whole case. It is fair to the people and to him, that I should say that this reasonable doubt is not any trifling hesitation which you may have upon the subject or upon any aspect of this case. I have no desire that this man shall escape any merited punishment which the law may have in store for him. I must ask you now to believe that the lawyer who comes into court in defense of one accused of crime, does not thereby lay aside a part of his being and leave it at home—does not thereby forget that he is bound by the ties of citizenship and family to the community of which he forms a part, and that there is an allegiance higher than that he owes to his client even, and one which he dares not forfeit. I say to you then that this doubt, as the court will instruct you, must be a reasonable one, must be well founded, must have point and pith about it in your judgment; but if there be such a doubt as to any of the material allegations of this indictment, you are bound then by your consciences,—nay, you would be bound without any oath, to give the benefit of it to this man who is found under these circumstances contending for his

life against the wealth, the learning, and the power of a public prosecution.

Now, gentlemen, I have called your attention to these cardinal rules of law applicable to this case, because I want you to bear them in mind at every stage of these proceedings. There is no potentate in Europe—there sits a crown on no kingly head—that can give it power enough to stand in such a relation to this prisoner as you stand. You have in charge the entire destinies of his life. It is the most dignified and sacred office which you will have fulfilled if you shall live far beyond the time usually allotted to mankind. It is in itself an indication of that matchless power which has given to our civilization its advanced stand-point—the power of the individual citizen himself—the dignity of every man under the commonwealth,—his equality, as to his rights, with all his fellows.

Now there are some things which have crept into this case which are to be entirely excluded from your consideration. So far as I had any part in the selection of this jury, I think you will bear me out in the assertion that I desired to bring this prisoner before men of intelligence, men with hearts, men of principle—men who were bound by ties of interest to this municipality, and who would pass upon these circumstances with that sober judgment which should be given to it at the hands of the proper representatives of the people. And with a faith in the success of our efforts in that regard, I address you, not as men who are not familiar readers of the daily press, nor as men who can read an account of a crime and not be impressed by it. And I shall ask you, therefore, to

put out of your minds some of those features of this prosecution which have been seized upon by the press as the salient points in the case, as if they were the elements which constituted the crime against your household, as if they were the objects against which the policy of our law was framed at the beginning.

I ask you then, gentlemen, to put out of all consideration, in arriving at your verdict in this case, any public clamor about the prisoner, any thoughtless ravings of such as have caught up some slender thread of a narrative—have jumped with lightning speed to some lame conclusion therefrom, and have paraded their theory for the acceptance of an intelligent community in the columns of the newspapers.

I shall ask the court to instruct you that all this horrid detail of the disposition of the body after the killing—all that which is calculated to excite unjust views of the case, when we come to consider the real issue of it, is to be excluded entirely from your mind, unless you shall find in it some element of contradiction to the theory which the defense will insist upon in this case. If you do, gentlemen, scan it thoroughly; unseal every hidden passage in it; ransack every vital element about it, and see that justice be done to this commonwealth as well as to the prisoner.

In his opening, the district attorney said that the prisoner peeled the flesh from the bones of his victim. Well, if that had been done when the man were alive, if it had been a part of the killing, it would have made it a "cruel and inhuman killing" within the language of the statute, and would have raised a presumption of malice in your minds, which the story

of this prisoner, simple as it is, would have utterly failed to refute. But there is no proof of it—there has been no evidence offered upon that point. Not a witness has been placed upon the stand who has told you that Fuchs peeled the flesh off this man—not one. Bear in mind that I have no desire that you should disregard these horrible features of the case if they throw any light upon what transpired before or at the very moment of the killing. For instance, if it were a vital element in this case that the prisoner had concealed the body, which I do not think it is, then, if the evidence of mutilation tended to confirm that theory, it would then be proper, of course, for you to consider whether the disposition of the body, which he did finally make, was in keeping with any theory of concealment. It would then be for you to determine whether the taking of a man's head in a basket on one's arm and throwing it in a place of public resort was such an incident as was calculated to conceal the death of that man. Then it would be for you to say how consistent with that motive was the carrying of a special small part of that body to an open vacant lot, traveled over by the public, or accessible to the travel of the public, and depositing that small portion within the open surface of that field, and thereby publishing that something had been done there to any person who might pass that way upon any day subsequent to this transaction. But, gentlemen, it seems to me that these efforts at concealment, to which I shall refer again, have nothing to do with the determination by you of what the facts were in this case, except as they show an insane disposition of the body.

Gentlemen, a word to you in relation to the time which I shall spend in developing this case to you. I think you will all appreciate the difficulties with which a lawyer must find himself overwhelmed, who, anxious for the best interests of his client in a capital case, wishes to omit nothing which may seem material to his defense, and at the same time to say nothing which shall needlessly prejudice it. The most that I can ask of you is your kind indulgence while I shall do what seems to me to be my duty to this man, and, at the same time, exercise good faith with you in the time during which I shall detain your attention.

Now there are a variety of degrees of crime which may be found to have been committed in this transaction, according as you shall interpret, and find the fact to be with reference to, the conduct of this prisoner. It seems to me, however, at the outset, that you cannot possibly find in it any deliberation, such as the law requires to constitute murder in the first degree. Perhaps you are not aware that we have had some legislation within the last two or three years in reference to this question of "deliberation." The law, as it stood in 1862 (I think I can cite these statutes from memory, as well as to take your time in finding the text, and of course if there is any doubt about it, I shall be corrected by the district attorney)—the law as it stood in 1862 was, that if there was a premeditated design to kill, then the killing was murder in the first degree. By the interpretations which the courts had put upon that statute, it was found that convictions of this capital offense were almost impossible to be obtained, and therefore the legislature thought it wise to change the status of crime in that

regard, and to add to premeditated the word deliberate, so that the capital punishments of persons killing should be confined to those cases in which there was a manifest positive act of deliberation—not at the instant, as the decisions had been before, but some well-defined previous act of design. Now, I had prepared a line of argument upon this point, but I have no hesitation in believing that the court will charge you in that regard substantially as was charged in the Walworth case by Mr. Justice NOAH DAVIS, who said:—

“It might have been open to hold that an intentional murder with actual malice was justly within these words (deliberate and premeditated design to effect death), if there were not divers other expressions in the statute which would preclude a court from adopting that view of the effect of the law. And in creating the second degree the legislature have therefore said, ‘such killing, unless it be murder in the first degree, or manslaughter, or excusable or justifiable homicide, as hereinafter provided, shall be murder in the second degree when perpetrated intentionally, but without deliberation or intention.’ The effect of this provision, in my judgment, is that it becomes the duty of the court to instruct you that the deliberation and premeditation required to constitute murder in the first degree is something quite different from the actual presence of the intention formed at the instant of the striking of the blow or the firing of the shot. It is essential that it should appear in a case where the offense charged is murder in the first degree under this statute, that there was some actual pre-deliberation and premeditation in and upon the mind of the accused in respect to the subject-matter

of the offense before the actual occurrence of the act which is alleged to be the crime."

Now, the defense in this case claim that upon three considerations you must acquit the prisoner, providing that you find similarly with them as to the occurrences taking place at the time of the killing.

In the first place, if this killing were done upon finding the deceased in criminal assault upon the prisoner's wife, then he was justified in pursuing every remedy which was open to him, even to killing the man, in order to prevent that object being accomplished at any stage of its progress. I think you will not be called upon to split hairs here upon the consideration of whether any act of criminal assault upon this wife had been accomplished in this case or not, because the guardianship and protection which is thrown about a man under such circumstances regards with as great a horror the putting upon a man of spurious issue as it does the defense even of the chastity of his wife. And in this connection, let me say that no matter what the character of this woman had been—no matter how much below those wifely attributes, which commend the honorable, intelligent, refined and cultivated man's wife to his kindly consideration and affection, the relation of wife to husband is protected in its lowest as well as in its highest sphere; nay, there is not a strumpet that plies her brazen career on the public streets at night whose person is not, by the law of the land, protected against violence; so that if you find such to have been the circumstances of this case—that the prisoner was repelling an attack of that character upon the person of his wife, then I think the court will instruct you that

the killing was justifiable. Further than that, if you find that the prisoner's wife was insensible from liquor, or that she was in a condition incapable of giving assent to such a crime, then I think that the court will instruct you that the man who was having connection with her under such circumstances was committing a crime under section twenty-three of the statute, which provides for those cases which under English statutes amount to rape, by saying, that they shall be "connections had with persons incapable of giving their assent," and that the term of imprisonment shall be no less than ten years, thus constituting it a felony.

And, gentlemen, the law is explicit that any efforts necessary to be made by any man for the prevention of a felony, even to taking life, constitute such killing justifiable homicide.

Nor is the law wanting in another principle which, applied to this case, would constitute it, if not justifiable, excusable homicide. The books are full of decisions and the statute is explicit upon this question of excusable homicide. The words of the statute, which I need not cite here, are, in substance, that where a man kills another by accident or misfortune, upon sufficient provocation, it will be excusable—wholly excusable. And that is founded upon a principle of law, or of public policy, which I think will commend itself to your favor. There is no statute law in our land against the crime which (if you believe the theory of this defense) you will find to have been in the act of commission by the deceased on this occasion. Now, that is an exceptional fact in the history of all civilization—it is an exceptional fact. And by

your kind permission I will call your attention to a summary of the laws of different nations, in that regard, made by Professor Dimitry in the Sickles Case, and which was submitted to the court on that trial.

“Among the Jews, by the law of God, the adulterer and adulteress were both stoned to death. In Greece Lycurgus decreed that adultery should be punished the same as murder. The Saxons, by their law, burned the adulteress to death and over her ashes reared the gibbet on which the adulterer was hung. In England, in the reign of Alfred, the adulteress was seized and stripped to the waist, driven away from her husband’s house, and in the presence of all her relations scourged from tithe to tithe until death ensued, while the adulterer was strung up to the next tree. In France, under the laws of Louis the Debonnaire, both parties suffered capital punishment. Constantine inflicted capital punishment upon adulterers of both sexes. Spanish laws deprived the adulterer of that through which he had violated the laws of society and the sanctity of the marriage-bed. In Portugal the adulterer was burned to death with the adulteress, but if the husband chose to save his wife from this fearful chastisement, she was set free with a fine.”

From this, gentlemen, you will observe how the history of civilization discloses the rigid views which men have at all times entertained of the commission of this hateful crime, and now, can you ask me how it is that upon the statute books of our commonwealth no law punishing it is found?

Why, gentlemen, it is the highest commentary upon the intelligence and moral insight of our people,

and the due administration of justice in our land, which could possibly be made. The objections to be urged against any express provisions upon the subject are, I think, obvious to you. They opened the door for the defeat of justice by the apprehension and trial of persons engaged in relations to each other which were especially unsusceptible of proof; and the makers of our law, when they came to consider the propriety of introducing them upon our statute-books, with an eye to these manifest objections said, "Why, we will leave that question to the decision of an intelligent jury of the vicinage, whenever and wherever it shall come to their attention, and we will leave them to make up the record (which they have never evaded in any capital case hitherto), that the punishment awaiting a man in these circumstances is not less sure of being meted out to him than if it were written in letters of gold all over the statutes of our land."

Because, gentlemen, there never has yet been a case where a jury of twelve men, taken at random from any great municipality, have been satisfied that the sanctity of the marriage tie was being violated by the man slain at the time of killing when they have not nobly risen to the emergency which beset the slayer and given him a free acquittal at their hands. And I say to you, gentlemen, that, from the moment you shall determine what the facts are in this case, there will not be an instant of time thereafter when this poor laborer shall not walk free in this land as the righteous instrument of a deserving punishment. I have no desire to take up your time in the consideration of authorities which I have at hand. In this regard the policy of the law has always been to recog-

nize such a provocation as, in cases of a discovery *flagrante delictu* or in the very act of crime, sufficient to justify even a fatal assault upon the aggressor. It has always been considered that in the presence of these peculiar circumstances the frailty of human nature is so great that one cannot be expected to control his acts or to resist the natural manly impulses of every human being so situated.

Now, gentlemen, I have very briefly, and very imperfectly, as you have observed, brought to your attention what seemed to me to be the leading principles of law which pertain to this case. There are some minor elements which we have covered in our "requests to charge" which have been presented to the court, and there is only this further consideration of that nature which I desire to present to you before I undertake to examine what the facts were in this case. And that consideration is: that no murder can possibly be committed without the person committing it shall be at the time in the possession of a sound mind.

And this opens up for our discussion a vast and uncertain field of exploration, into which I do not propose to carry you at any great length. Need I suggest to you, however, in view of the delicate arrangement of the nervous system, of which the brain is the head and motor, how very marvelous it is that any one of us should be able to control it—to hold it in hand, apply it to the varied relations of life, and make it our servant in the administration of our duties as citizens, as husbands, as fathers, and as business men. Why, gentlemen, when we consider that the human brain, which in the case of Cuvier weighed four pounds, gives

out branches from the brain cavity which, traversing the spinal column, ramifies our entire physical structure, until it reaches its farthest parts in such attenuated structure that twenty-five thousand of its finest fibers lying in juxtaposition make up but the narrow span of one inch, each narrowest fiber of which is still in instantaneous readiness to transmit to its parent, the brain, the slightest possible sensation received by it from the outer world, need I suggest to you what a delicate machine we are considering, or how wonderful, how surpassingly wonderful it is that it should keep its regularity for sixty years and report with punctilious exactness, and at intervals of time of less than the thousandth part of a second, the conditions of temperature, and danger which continually environ us. Need I suggest to you the intimate relation of the heart—so long supposed to be the seat of all human passion—to this machine; the heart, which is the second of the great primary developments of our physical structure. Let me presume that these suggestions are unnecessary, and that it will be sufficient to call your attention to the impossibility of the circumstances of this case being suddenly confronted by any one without its weakening, and in some cases destroying entirely, that governing principle of human reason, which is all that causes you or I to differ from the beasts of the field. So I shall ask you to consider whether, if you believe this pivotal fact of this case, it was possible that this man Fuchs, who is not of the highest order of intelligence certainly, was in the possession of a sound mind when he did whatever may have been done in this case. And if you shall find that he was not, you will have discovered lacking

an important element of murder, as much so as the *corpus delicti* itself—just as much so as the dead and mutilated body of Simmons himself; a cardinal element of the crime, to be found by you beyond a reasonable doubt, before you can consign this prisoner to the scaffold. And upon that subject I call your attention to a decision in our court of appeals, “The People *v.* Wagner,” in which is stated the advanced ground which our highest court has taken in relation to this element of murder. As I read it from the syllabus the doctrine is that “when the evidence in a criminal case raises the question of insanity, the jury must be satisfied *beyond a reasonable doubt* that the prisoner was *sane* when he committed the act.”

Now, perhaps, I ought to suggest to you that insanity is very commonly regarded as a wild, furious, raving condition of the mind, and that it is not thought by common people, who frequently and cursorily discuss the subject, that insanity means simply without mind, or without soundness. It is not necessary that a man should commit any untoward act, or should remain in an unsound condition more than a brief time, in order that he should be without a sound mind, which is a material element of all crime,—an element, it is true, always presumably present; but if from any evidence, however slight, the question is raised in your mind, then it becomes proper and necessary for your consideration, and it must be passed upon by you with the gravest scrutiny—a scrutiny to be qualified and modified by the privilege I have already suggested to which the prisoner is entitled, of the advantage of any reasonable doubt you may entertain upon any and every essential element of guilt.

Now I ought, in frankness to you, as well as to the court, to say that this position, as taken by our court of appeals, as to a reasonable doubt in the case I have cited, was a doubt as to whether the prisoner at the time had a conscious power, had a consciousness of right and wrong, and that that was the test of his insanity. But there are many decisions below which establish irrefutably the doctrine that this old right-and-wrong test of insanity is a patent absurdity, and the moment you will consider it yourself as intelligent men, you will observe that it must be so. For many lunatics have a distinct conception of right and wrong, and understand perfectly well themselves all the moral considerations involved in an act of turpitude, and yet find themselves overwhelmed with such a disturbed mental balance that they cannot control and shape their acts in conformity with a right standard.

And so the court held in the case of the *People v. Cole*. Judge HOGBOOM held that a man must have, in addition to this intellectual grasping of the question of right and wrong—in addition to this dim intimation of what the proper thing was to do, and of the consciousness that something wrong was being done—the power to control his own acts; not by any means (and I do not want to mislead you at any point of this case), not by any means that he should have the calm possession of his faculties—not at all,—but that he should have intellect sufficient to control his motives in that regard—to carry into effect his intellectual conception; in other words, that he should have, besides the machinery of intellectual conception, the power to control the machinery—that he must

have; and concerning that quality of sanity Judge HOGEBROOM said in his charge to the jury, "If you have any doubt about that power he is entitled to it."

And further, in that case was also decided the question of how much time must elapse of this disconnected state of mind before the exemption by reason of unsoundness can intervene.

The jury in this case had gone out (Cole had killed the adulterer long after the event of the adultery), and returned for instructions, and retired again, and on returning a second time for instructions reported to the presiding justice the impediment to a verdict, the foreman saying: "We find the prisoner sane at the moment before he committed this act, we find him sane the moment after he committed the act, but we are in doubt of his sanity at the time of the act;" and the court instructed them that they must give the prisoner the benefit of that doubt, and they did so, and acquitted him.

I now approach the consideration of what seem to me to be the facts in this case, and I think, to start with, that you will find in these circumstances ample evidence that nothing took place on that eventful night which was actuated by any other motive than that suggested by the prisoner himself. Why, when the district-attorney closed his case, when all these detectives had exhibited themselves upon the stand with such success as you saw, if I had asked any one of you twelve men what it was that actuated Fuchs in the killing of this man Simmons, what could you have said to me?

The evidence then was at about this stage. It had been proven that the body of Simmons—the disinte-

grated parts of it—had been found at the ship-yard ; another part in the meadow ; more of it in the stove ; some of it in the cellar ; and part of it in boxes in the house—had been identified. The occupants of that house were Fuchs, the prisoner, his wife and a little girl. It had also been proven that the party deceased was on friendly terms with the prisoner, was his benefactor, was his employer, and in that sense a benefactor to him ; was the man upon whom Fuchs depended for a living ; had that very day, so late as five and one-half o'clock in the afternoon, drank in a friendly way with him at his own—Simmons'—invitation ; and then it was proven that the articles (which I think were identified without any doubt as belonging to Simmons) had been found in the house locked up in a drawer, the only drawer in the house locked, and the key in possession, not of Fuchs, on that occasion, for he had then been arrested, but of Mrs. Fuchs, and in the same drawer the liquor which poor Fuchs was in the habit of keeping away from his wife by reason of her habits ; and the liquor accounts for the drawer and the lock on it. I think you must have been struck very forcibly by the importance which was attempted to be given to that bit of evidence by the sharp detective Corwin. I have never seen a person on the witness stand who labored heavier, who exerted himself to a greater degree to get that cloth in there, probably all the cloth in the house, top of the keys ; he labored heavily at it, and the only thing he was sure about in this whole transaction, you will remember, was that the newspaper which was covered over the key was a printed newspaper. I believe that was the only question which I asked Corwin that he was positive

of. He was positive, he said, that that newspaper was a printed newspaper. Now he tried to get it there but I don't think he did. It is suggested by my associate that it was Short who made that endeavor. I don't care which detective it was. It is an example worthy of your attention of the manner of looking at things which detectives bring to the stand.

Now you will judge human nature as you see it in the street, and deal with it in your business, and as you find it in social circles. I wanted no other men myself on this jury, and you did not fail to observe that he was making every point he could against this poor man, and was even willing to throw his surmises into the scale against him. And yet this evidence was of no importance if my view of the case is right; because I may as well say to you here that if the disposition of this body and the secretion of these things were necessary to make up a circumstantial case of killing they would be important, but in the absence of that necessity they have no particular significance, for in this case the killing is acknowledged.

Now, who was this man Fuchs? for when we are considering whether a man committed such a horrid crime as murder, we are justified, I think, in inquiring as to what manner of man he is. Indeed, we shall, as fair men, look to the evidence in the first instance mainly to discover whether his habits of life, and, so far as we may be able to ascertain, his manly or moral constitution were such as would naturally lead us to expect this fearful crime of murder from him. Who, then, was he?

He was an Alsatian peasant by birth; had acquired an honest trade and had pursued it, as one of the wit-

nesses who were sprung upon us with such remarkable stage-effect at a certain period of this case, informs us, "of very good habits, regular in his work in the old country." He came to this country, sought employment at once, obtained it. He worked four years here. We have thrown open the door of character, a door which was shut to the prosecution before we opened it, as the court will instruct you, and we have challenged them to ransack the history of this poor, humble and ignorant mechanic, from the moment of his arrival here at the dock in New York to this day, and to bring forth what they could find most odious against him from the slums and sewers of crimes in these two great cities. And here, perhaps, as well as elsewhere, lest I forget it, I may call your attention to the method of examination pursued by the district-attorney when this poor man went on the stand. At a certain stage of the examination, you remember, he asked him in a loud voice whether he knew two such men as Leopold Ambruster and another one named Kuster; that was his first question at this stage. Then he asked him for the names of two men whom Fuchs knew. Then followed the question, "Now did you kill a man there abroad somewhere?" Well, what was the rationale of this question, and what would suggest itself to a sagacious man's mind? He knew that the moment he presented the names of two men whom Fuchs had known abroad he could hold them in terror over him at the next question, so that he should not dare to deny any act which he had done in that country. It was a marvelously ingenious examination. But you saw the effect of it upon poor Fuchs. Gentlemen, I would be willing to risk this case upon the question of whether you be-

lieved that was genuine indignation which Fuchs expressed when he rose, and, with such poor vehemence as his scant knowledge of the English language permitted him, repelled the vile imputation upon his former life. Was that honest surprise? was that just indignation, or was it simulation at the hands of this ignorant man here? If it was not simulation it establishes to your complete satisfaction, that there was nothing in this prisoner's career before he came to this country, that he does not unblushingly tell you; and it is further ratified by the frank manner in which this poor fellow confesses that he loved a girl there, had entered into marital relations with her, a child was born, he came here, sent her money to follow him, when he heard from one of these very witnesses that the poor girl and child were dead, and then contracted this unfortunate alliance with this miserable woman which has brought him into court to answer for his life.

Now, he was employed at Jones & Henry's, a shop where a large number of hands are employed. My associate called on a great number of them and subpoenaed such of them as he thought were most familiar with Fuchs. There were at least ten detectives in this case, at least the whole force was on. As Mr. Corwin said: "They were all on after the head was found"—and you will observe that the detectives themselves never dreamed of this case until after the head was found—a clue quite calculated to incite the ingenious inquiries of even a dull set of men. And I suppose that if the head had not been so far from the body—about a mile away—they would have suggested the same ingenious theory of this murder which they have

of all the real murders which have taken place in this city for the last two years—that the man committed suicide.

Now, I say to you, that if you find about this man's character or person the elements of a murderer—the man that you and I as good citizens fear on the public highway as attacking us at night in our retirement, don't, by any manner of means, allow him to escape the just penalty of the law. But if, on the contrary, you find about him the characteristics up to the very time of this transaction of an honest, peaceable, hard-working citizen of an humble calling, supporting a dissolute wife and her child, by his hard blows on the anvil or by the exercise of his strength in the humble duty of helper to Simmons; then, unless you find that his nature was changed in a moment, that all the characteristics of the fiend and the murderer ran riot through his brain in an instant of time, that the laws of human nature were reversed, that for the first time in the history of mankind the benignant God had stooped to earth to create a murderer; then, gentlemen, give him that just consideration to which he is entitled by reason of the hitherto clean record of his life. Why, what higher certificate to your good opinion could we furnish this prisoner? We teach our children at home, all of us, that a good character will be to them an unfailling tower of strength in any time of trial; that no matter how much riches they may have acquired, no matter how happily glory waits upon them, no matter how high they may rise in political place or honor, if they have not the solid foundation of a good character, it will avail them nothing. Why, if you were to decide what legacy you were to leave to any child of yours upon your dying bed, would you

choose long between leaving him a character rich with the fruitage of generous deeds and kindly charities, or piles of gold? When the tempest comes upon a man; when dire exigencies of life gather gloomily about him, when he finds himself confronted with sinister circumstances which he is called upon to explain, when he must establish some hypothesis of his life to present to his fellows who are to judge upon him, why what else can he do than to unfold the pages of his life to them, ask them to look kindly upon its errors, to acknowledge its merits, and to let it stand him in stead in their good opinion if it be found worthy.

Gentlemen, I doubt very much whether any of these fellow-workmen of Fuchs could have been found in the whole shop who could have presented a fairer or cleaner record as a good citizen than he did. He was not gifted by nature with a remarkable intellect. Many a man owes a punctilious performance of his duties to his acute perception and recognition of what people will think of him; but this poor man had no such index to start with through life. He is a very limited man in his knowledge, and knew nothing better than to go regularly to his work and back to his home and to harbor, in his uncultured yet good-hearted way, this miserable wife and her child; "Oh!" but says the district-attorney to his fellow-workmen who testified to his uniform good conduct and orderly behavior, "you only knew him about in the shop." Well, gentlemen, there is where he spent ten hours in the day—and the rest at home. Very true; that is all we could show about him. He had no boon companions in the lager-beer saloon. He did not traverse the ways of this city by night in doubtful places. He was at home. Why

do you expect us to bring before you in sustaining the character of this man a record of brilliant, heroic deeds—of signal moral courage? No, you do not. You will judge him fairly, in that regard, I am sure, and looking at his simple record as we have disclosed it to you, you will set it down in your memories not to be twisted therefrom by any sophistries or ingenuity of the district-attorney, that the prisoner is a man of good moral character, of good repute among his fellows; occupying an humble station, but true to his calling at every moment of his life, true up to the very hour when he did this deed.

I confess, gentlemen, to some degree of curiosity to hear what theory will be advanced by the prosecution as to any sufficiently heinous motive which could have changed this man's character so suddenly. Some evidence has been introduced here in relation to Simmons's watch; but I cannot understand how any flimsy structure of cupidity can be dignified by any skill of argument into a sufficient incitement to outweigh the whole tenor of this man's life, and cause him to kill the man on whom he depended for employment. Why, every act of this eventful evening was proposed and carried out by Simmons. It was he who asked Fuchs to drink. He came to the house of Fuchs without an invitation, and one remark that Fuchs made on his cross-examination, throws a great deal of light upon this feature of the case. The watch was exhibited here, and Fuchs was asked when he got that watch. Now did he hesitate to tell you about that? Not in the least. He said he snatched it from the vest as he was putting it in the fire. Now I want you to consider that a moment. What was the man doing? was he not throwing away the

very object of the murder? Even the imagination of the district attorney and his ability to appropriate points of testimony to his purpose will not enable him to destroy the naturalness of this act. He snatched it from the vest as he was putting it in the fire. He was actually throwing the vest in the fire with the watch in it and happening to see it, and for the first time thinking of it, he snatched it and preserved it, and there is no evidence that any of the material which Simmons had about him, even to that rusty old knife and rule, which could easily have been burned up if Fuchs desired to avoid detection, was not carefully preserved. Nay! lest I forget it, let me in this connection call your attention to another instance in this case which I think reflects with most powerful effect upon what manner of man this *murderer* was. You remember that it is in evidence that he went to Jones Saturday night and got two dollars, and it is also in evidence that there was some three or four dollars at that very time in Simmons's pocket-book—some of it silver coin, the most marketable of all commodities. Now, when this man went to Jones, having just paid his rent and being exhausted of money (which reminds me that he was always prompt in the payment of his rent); when he went down there and in an abject position of humility almost begged for the bread to keep him through the next week—the money of William Simmons lay in his drawer untouched. All the money, and more than the money, he cringingly asked for on that eventful night was there for the having. I say to you, gentlemen, that this action alone on the part of poor Fuchs, ignorant, unfortunate, standing before you to-day in the felon's dock pleading for his unhappy life, reflects a luster upon this whole

transaction which crowns this humble mechanic with almost an heroic glory. The money of Simmons, who was the spoiler of his marriage-bed, who had violated the hospitality of his hearth-stone and befouled the privacy of his home, and broken asunder his marriages, no matter how valuable they were, was not to be touched in the direst extremity, nor was a single thing that Simmons had. Is there then any room left for the theory that this prisoner murdered Simmons for the few articles which it is proved he had about him? It seems to me that there cannot be.

But let us pursue these relations as fast as we may. On Thursday night, Fuchs, having seen Simmons in the afternoon and at his request having taken a drink with him, was sitting in this little room twelve by thirteen feet, by the table. A knock came at the door, which was opened immediately, and in walked Simmons, whom he had left two or three hours before on the street. The usual conversation took place, probably, incident to an arrival in a humble home of that character. And I want to ask you right here to continue to bear in mind, and especially during the argument of the district attorney, that this poor man is to be judged with his mean surroundings and with this drinking of beer, and his rough, uncouth manners, not as you would judge a man of refinement, of a sensitive nature and of culture. He is evidently in his manner and habit of living about as humble a man and lives in about as rough a way as falls to the lot of most men. Indeed, you must see yourselves that this is a necessary incident of the wages he receives, and it is proper that you should bear that in mind in considering these relations.

Well, Simmons comes in. Some little familiarities passed between Simmons and the prisoner's wife ; what they were we don't know, probably the ordinary salutations. A little conversation followed which Fuchs says he did not understand. Then Simmons exhibits a doll he had brought for the little girl. Now Simmons was a man of family, with a wife and children, yet none of them had been living with him during the recollection of any of these witnesses. Of course there is nothing criminal in your or my taking to the residence of a man occupying an inferior station in life to ourselves, a doll for his child or the child of his wife, but it must throw what light it will upon this transaction ; and if you shall find in that little incident any indication of an object, remote or otherwise, to be gained by Simmons, the prisoner is entitled to the full benefit of whatever inference you may draw from that fact. Simmons produces the doll, the little girl is brought and Fuchs is sent for beer to celebrate the event. Now if this were a death-trap which Simmons was being led into we maintain that liquor would have been brought instead of beer. The beverage furnished was a drink of which Fuchs and Simmons probably consumed five quarts a day. It is astonishing the amount of beer that foreigners will consume at their labor. They drink it as water. Then they go to the drawer and Fuchs brings out a bottle which was carefully locked from his wife and they have one drink all around. Further along in the evening, the little girl having gone to bed, Simmons proposes that they have some more beer at his expense. He produces the money, Fuchs takes it and goes for the beer. It is his employer who speaks, and he is entitled to some defer-

ence. Fuchs is detained more or less, we know not how long. He says twenty or twenty-five minutes, and I believe there is no evidence to contradict that. He says he was at the lager-beer saloon ten minutes and when he came back he heard no voices, and peering through the blinds he saw no one above the level of the window-sill. Now there was a lounge in the room and if any one had been on that lounge it could have been observed from the window ; so that a survey of the apartment satisfied him that there was no one standing in the room, no one sitting in the chair, and no one upon the lounge ; and the only other place where they could have been to be out of sight from the window, was upon the floor, and upon opening the door he found the deceased upon the floor with his wife.

Now I cannot undertake to analyze the motives or the passions which arise in a man's soul upon contemplating such a sight, but I can unhesitatingly declare to you that the theory which I have understood to be suggested or prompted by the district attorney, that some unpleasant relations between Fuchs and his wife might have mitigated his feelings in such a situation is contrary to every dictate of divine law and every experience of humanity the world over. It is contrary to any possible conception which any husband can entertain of the degree of indignity to his honor which he has sustained, where a man has alienated from him that about his wife which is the inestimable pearl of her virtue.

And if you find in this story of Fuchs some things which seem to be irregularities ; some things which an unlearned, ignorant man was obliged to say that he could not explain, or did not remember, or did not

know about, I do not think you will allow those considerations to affect your consideration of his story any more than if you desired to enter a room containing some valuable treasure, and a person came to you with a key which he said he had tried and found to fit the lock; and a third party should start up and say, "Why, that key never can fit the lock; that cannot secure your entrance to the treasure: the lips are too long; there is a knuckle on one lip, an abrasion on the other"—any more than you would hesitate to say to that man, "Stand aside—here is a man who has tried the key and found it to fit the lock." And if upon trial you found that it fitted the lock; that its secret springs moved at the contact of the key, and you secured the treasure, you would treat with contempt the discussion of these minor irregularities, which had been profoundly argued by the third party who had intervened.

So I say to you here, that if you find this story of Fuchs' true—if you find that it fits into the position of these parties—that it accords with their antecedents; that it is, in fine, the touch-stone which gathers to itself the whole history of this man during this transaction; that it accounts for his bewilderment as to what he did with these remains; that it reveals the instigation of the blow which he says he knows nothing about; that it caused him during the next week to vacillate to and fro—at one time desiring to expose the body so that all might see it, and at another overwhelmed with the consequences of what he had done, and desiring in a moment of human weakness to conceal it—why, you will not bother yourselves long in considering those minor features of the case which

can have no possible bearing upon the main issue which you are here to decide. I have heard of nothing more pathetic in a court of justice, nothing which delineated more exactly the true state of affairs in this case than that touching remark of Fuchs in answer to one question of the district attorney, when he said that the reason he did not know what he had done with some of the fragments of this body was that he was for some days "like a shadow on the wall." Gentlemen, have you faith enough in your mental condition under such circumstances to feel sure that you would be of any more avail in regulating your affairs after such a transaction than "a shadow on the wall."

I know not what considerations the district attorney may present to you, entitled as he may suppose himself to be to urge upon you any views of retribution which he may entertain. I know not whether he will cite to you the widow and children of William Simmons, whose death I as deeply deplore as he can, as demanding from their far-away home any vengeance which the law may be supposed to entertain towards criminals; but I have to say to you that the wife and children of William Simmons were widowed and orphaned long before the commission of the act for which this prisoner answers at the bar to-day. For that wife is already a widow and those children are already orphaned whose husband and whose father is in the hot pursuit of an alien love. From that household thenceforward is banished every ray of sunshine which this world can bring to it; from that peaceful fireside have departed all those elements which enter into and constitute the sacredness of home. Nothing more can be done, no other desolation can be added to it. It

lies a ruined thing. It rests in the darkest shadow of despair—a mockery of its former self. It is blighted from the face of the earth. It has left about it no element of happiness.

Now I think you will apprehend the difficulties the defense were under in this case when called upon to substantiate this fact and show to you what was transpiring in that room when Fuchs re-entered it. That is a circumstance which rarely happens in our history that a man shall find his wife *flagrante delicto*, and it could happen, I think, only under just such circumstances as are proven in this case, outside of the prisoner's evidence. But we were conscious all the while, during the preparation of this case, that there was a little girl present at the time. She was detained at the hands of the prosecution. Some question has arisen as to whether she was accessible to us. However that may be, I believe there is no dispute that, as matter of fact, the only interview we had with her was, as she herself testified, and that that interview was held under the lynx-eyed surveillance of a detective sent there by the district attorney to catch the defendant's attorney in any attempt which they should make to manufacture this little girl into a valuable witness for the defense. You will, therefore, be obliged, in the consideration of her testimony, to banish from your minds any possible theory that it was concocted by the attorneys for the defense. Now, the district attorney said, as an excuse for not producing her (for it was obvious that she, being the only other witness and an intelligent child, ought to be produced as much in the interest of the public as for the prisoner) that he had understood that she was wholly unreliable in her testimony, and for that reason he thought she had

better not be introduced. That statement had no sooner fallen from his lips in his opening than I felt sure that if we could get that little girl on the stand, she would come into this case like a sunbeam from heaven and illuminate it with the exact truth. That was the occasion of my visit there, and I hope you will give me credit for not desiring to contaminate the little creature with this case, unless it were necessary to defend some right of the prisoner. For I do not suppose that any one of you twelve men looked with greater reluctance upon the exhibition of that poor little girl called upon to testify to such degrading circumstances than we did. But, gentlemen, when there lay so near at hand water from the very freshest fountain of truth, was it not our duty to present it to you? For whoever else in this case may be charged with duplicity or be covered over with excuses, surely this little girl coming here in her child-like, artless way, and telling her simple story of degradation, must be free from suspicion; and of one thing you must be confident: that she meant to tell the truth.

Now what did she say? One of the many disabilities which the defense have labored under has been our inability to procure any of the evidence upon this trial. Not a total inability, yet such as amounts practically to our not procuring it. I shall be compelled, therefore, to rely here, as I have relied at all stages of my address, upon your recollection of the accuracy of what I shall state to you as the testimony in this case. I have no desire to pervert, magnify, or reduce it, and what I shall say to you concerning the examination of this little girl must be either verified or gainsayed by your own individual recollection.

I called the little girl to the stand, asked her if she had seen me before, and she replied that she had. I asked her if she remembered my asking her some questions, and she said she did, and also testified that Mr. Short, the detective, was present. Now I might diverge here to comment upon that unfortunate state of the law, if there be such a state, which prevents the freest consultation by counsel for a prisoner with any person whom he regards as a necessary witness, unrestrained by the presence of any public official. From the moment the district attorney announced his abandonment of this little girl as a witness, why should she not have been open to the freest consultation, even if we should find in her simple story a confirmation of the prisoner's evidence?

I then asked her if she remembered this night; she said she did, and I then asked her "Where was your mother on that night?" and do you remember her answer? I think that from the moment it came to your ears you were settled in your convictions as to the true history of this case. "She was on the floor with Mr. Simmons." Now how did that come in the mind of this little girl. Here is a witness who has never lied to you. Here is a witness who is the nearest approach to the fountain of all truth that it is practicable for human agencies to employ. An innocent, pure-minded little girl. The circumstances of the interviews of counsel with her preclude all possibility that that remark emanated from them; and the circumstances of her confinement apart from the prisoner precludes that possibility in that quarter. And then the district attorney, deceived in his opinion as to her power of telling the truth, took the little girl in hand and asked her

whether she did not say to somebody something about seeing Mr. Simmons on a chair when beer was brought, and she said that she did. She did what? Why, she had said that to somebody. She replied Yes, and said so over, and over to any other question he asked, and the result of this examination certainly evinced that she had some confused idea of seeing Simmons in a chair at some part of the evening; and she further said that Fuchs hit him on the head when he was in the chair, and cut his head off when he was in the chair, or something of that nature, and that he fell on the floor; and after that, your recollection will certainly support me in saying that she said she got that story from the newspapers. Now, the only story that the newspapers had of this case was the story of the chair, so that it was possible for her to get that story from the newspapers. Further along the district attorney said to her, "Now, little girl, I want you to begin and tell this story exactly as it occurred, yourself;" and what was her reply? Why, when called upon to state the story for herself, she answered exactly as she did under my examination that "She came to the door of her room, that she found her mamma and Simmons on the floor; that her papa came in and struck him with an ax and killed him." Now it is possible that this other testimony as to cutting the head off of Simmons in a chair, related to a subsequent stage of this transaction, when Fuchs found it necessary to dispose of this body, and let me suggest to you here that there is not a particle of proof that this mutilation occurred at all until after killing—not the least particle. There was nothing found until two days after. And you are at liberty, therefore, to conclude that all that which forms the dramatic part of

this unhappy tragedy, which has permeated this community with a very just sense of horror and has thrilled them with its brutality, happened when the party to this transaction was overwhelmed with the necessity of dismembering this body in order to be rid of it ; an infirmity common to human passion, and no more opprobrious or unusual as to the disposition of the body than the course which was followed by Prof. Webster when he cut in pieces the body of Parkman, and consumed it in his chemical laboratory.

So you are not to bring to the consideration of this transaction any of those repulsive features of the case, but are to consider them with an intelligent discrimination as actuated by the policy of concealment which was adopted by Fuchs. Nor are you at liberty to consider them apart from the other facts of what I regard as an insane disposition of special parts of the body, and calculated to fasten in your minds indelibly the conviction that this man, so recklessly disposing of this body, was a man with no reasonable apprehension of the crime he had committed, and pursuing no intelligent design to effect the secretion of these remains.

In the case of Prof. Webster, my associate suggests that the court held, that if there was any proof that the blow he gave Parkman was struck in the heat of passion, and without design, that it must have been simple manslaughter, and this notwithstanding the efforts at concealment of the body which were made by Webster.

I am now about to surrender this case to your deliberation, and I do so with great confidence as to what your verdict will be, but with very grave distrust of the manner in which I have presented these facts to

your consideration. I am conscious that I have omitted to say many things which abler men than I would have thought of, and I am also conscious that I have said many things which more astute counsel would have left unsaid, and I say this with no affectation of humility before you, but overwhelmed with a sense of the importance of what even I may say, or not say, as affecting the destinies of this unfortunate man.

Three thousand miles across the sea, an old man waits to hear your verdict. He has heard of the charge which has been presented against his son, and he has heard that he is to be tried in a free land before an unbiassed jury of free men. Let him not hear again that your verdict has belied his faith. Let him, I pray you, hear nothing less in the result than that it carries freedom to his boy.

He has come before you and told his story of this unhappy event. He has unfolded to you the past history of his life, and invited you to scrutinize it carefully and to say what manner of testimony it bears concerning his real character. And, gentlemen, if you shall find in these outer circumstances of the case a foundation sufficiently strong to support the testimony which has been given you in relation to that last final act on Thursday night, why then, under the ruling of the court, and with the sanction and the approving voice of every manly man in all this community, you must say by your verdict to this man that the blow he struck was struck in defense of that which is recognized throughout the length and breadth of Christendom as the one priceless pearl which must be preserved intact, in order that the domestic institutions which surround and protect us shall be main

tained inviolate. For, gentlemen of the jury, there is no institution known to our modern civilization which will survive longer the years which are to succeed us, and which are to lighten and bless the future generations of this Republic than the sacred hearthstone of "Home." It constitutes the very pith and core of our national government, and long after our temples of learning shall have crumbled into dust ; long after these church-spires which point towards heaven from every lofty hill and smiling valley all over this great continent, shall have been supplanted by the less pretentious symbols of a purer faith ; long after even these halls of jurisprudence which are the sustaining glory of our age shall have given place to higher conceptions of truth and justice, shall this humble institution of Home remain intact as a part of our existence. See to it, gentlemen, that it lose no element of strength by your decision in this case to-day. See to it that you plant about it the adamantine barrier of your verdict, across which if any libertine walk, he shall walk to his death. See to it, that, restrained by no fear of public opinion, strong in the rectitude of your own honest convictions, rewarded by your own self-respect, which is of greater value than the unthinking applause of multitudes, you shall give to this poor man that justice to which the law of the land and his great injury entitle him. See to it that you let it go forth as the verdict of an untrammelled jury sitting in an enlightened age, and under the benign influences of our free institutions, that the law and the jury recognize no distinction in the absolute sanctity of a home, whether its threshold opens to the humble cabin of the poor or the lofty palace of the rich.

While this work is going through the press the papers announce the death of Fuchs, and that, upon an autopsy held at the Auburn Insane Asylum, his brain was found to be seriously diseased.

The following reply to a letter of inquiry addressed to the superintendent of the asylum is of interest.

STATE ASYLUM FOR INSANE CRIMINALS,
Auburn, N. Y., July 29, 1882.

JOHN A. TAYLOR, Esq.,

Dear Sir:

In reply to yours of 28th July, I would say that Andreas Fuchs was committed to this asylum, from Auburn prison, November 30, 1878. The certificate of the prison physician stated that Fuchs had been confined in a cell since his admission to prison, in April, 1876, "on account of his violent temper," also, "that he refused to be reasoned with," and "had no sense of moral responsibility." Further, that he had "various delusions"—the chief one being that he was to be pardoned on Christmas of that year. On admission I found him to be suffering from well-marked chronic mania, with delusions and also fixed hallucinations of sight and hearing. He frequently complained that the assistant physician and the attendants passed the night at his room door, calling him names and making faces at him; also that he heard the voices of the assistant physician's brother and sister over his head at night. Occasionally he would draw crude caricatures of the imaginary persons who annoyed him. He was homicidal toward those about whom he entertained delusions, and would frequently threaten to kill them. He resented the idea that he was insane, and often demanded to be sent back to prison. I doubt if he ever realized that he was sentenced for life. Up to the time of his death, which occurred on the 5th inst., he insisted that he was not ill, and, although too feeble to raise himself in bed, he would say, "Me no sick, me feela goot." He never referred to his crime nor to his wife or child.

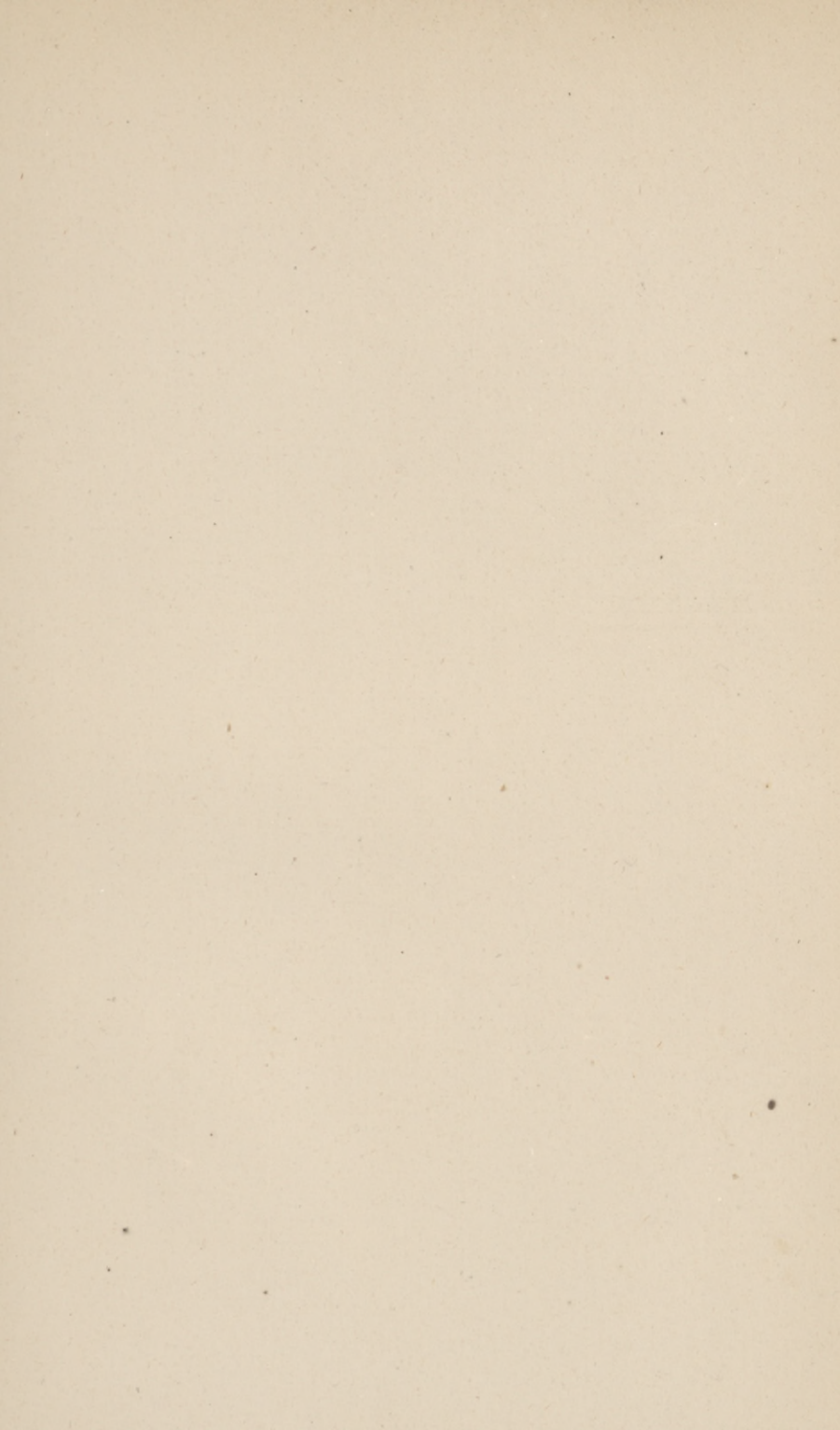
The immediate cause of his death was consumption of the lungs. In addition to this, the autopsy revealed well-marked indications of chronic organic disease of the membranes surrounding the brain, as well as of the structure of the organ itself.

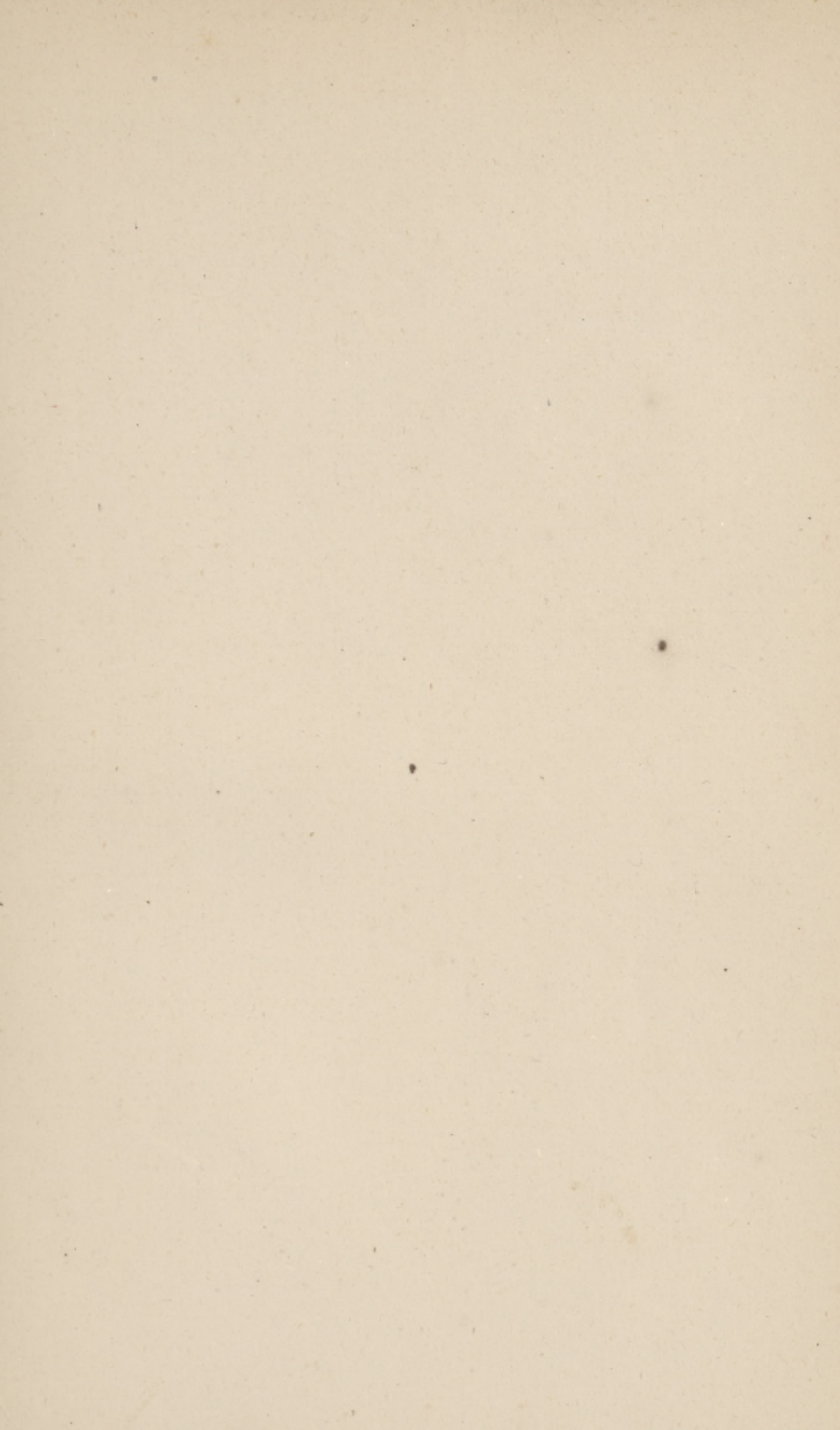
The history of the case, including the condition of the brain as disclosed by the *post-mortem* examination, in my judgment, warrants the presumption that Fuchs was insane at the time he committed the homicide.

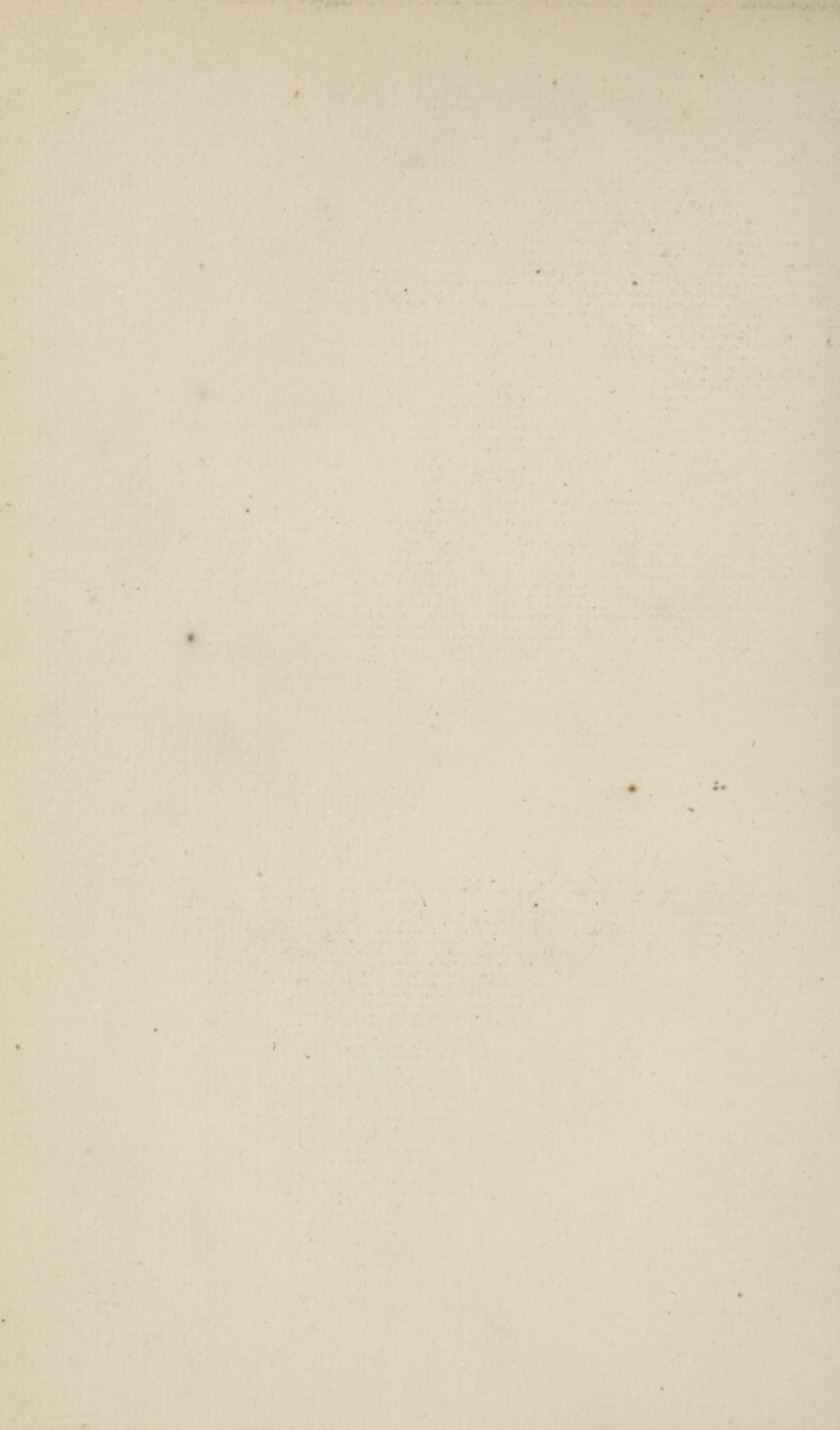
Trusting I have covered the ground of your inquiry, I am,

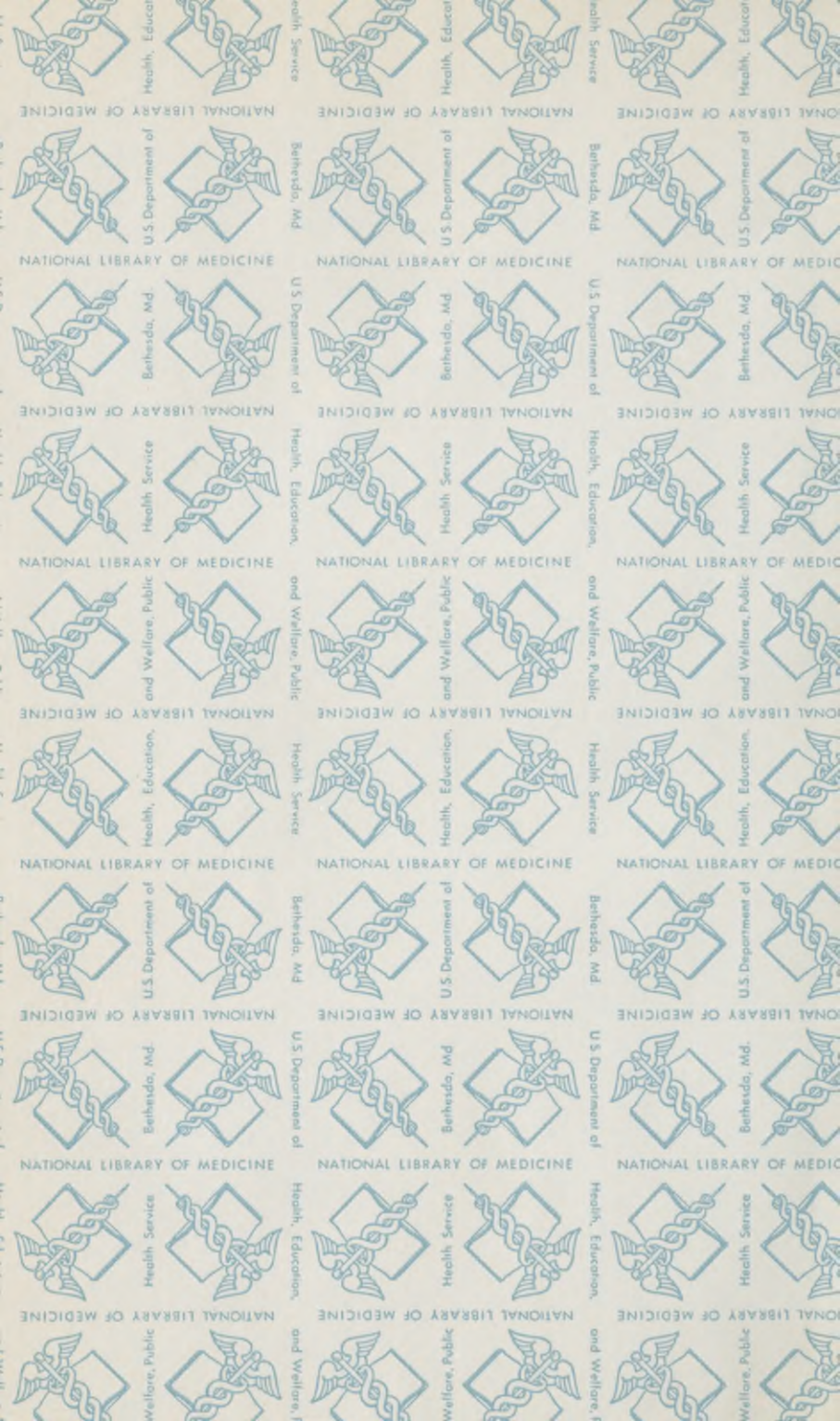
Respectfully yours,

CARLOS F. MAC DONALD,
MED. SUP'T.











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