This one contains Mr Sickles acquittal

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The Press.

WEDNESDAY, APRIL 27, 1859.

TRIAL OF DANIEL E. SICKLES.

TUESDAY'S PROCEEDINGS.

CLOSING SPEECH OF MR. OULD.

MR. SICKLES ACQUITTED!

REPORTED VERBATIM BY TELEGRAPH.

WASHINGTON, April 26.

[After the conclusion of our report yesterday, Mr. Brady continued in a strain of eloquence for some time. He was replied to by Mr. Ould, who had not finished when the court adjourned.]

There is a general feeling of relief manifested by the court, jury, counsel, spectators, and all concerned, at the prospect of arriving, to-day, at a termination of this protracted case. It is expected that, if the rulings of Judge Crawford on the instructions prayed for be not adverse to the prisoner's cause, the case will be submitted to the jury without further summing up, in which event a verdict would probably be returned on this, the twentieth day of the trial.

The District Attorney resumed his argument on the instructions prayed for. He had been endeavoring to show that the rule adopted in Manning's case was not a tightening of the principles of the common law, but was rather in the nature of an alleviation than otherwise. Prior to that time the doctrine had never gone further than that no act of insult or contumely, and no trespass on the property, would justify the slayer in taking the life of the trespasser, and would not reduce the crime from murder to manslaughter. The determination of the bench in Manning's case was in consonance with the principles of common law long established. As adultery was not an assault on the person of the husband, but was only combined of the two provocations of insult and trespass, then a regard to the construction of the law, as understood at that time, would have convicted the party of murder. The law then, for the first time, declared that adultery was such a provocation as would reduce the homicide from murder to manslaughter. From that time to this the law had never gone further. It would be very unwise for courts of justice to relax that rule. It would overturn the principles of common law in regard to murder, and would establish the principle that a man could kill another from motives of revenge. Besides, it could not be restricted to the single crime of adultery, but would also have to extend to the case of the defamation of a man's wife. The principle that would allow one would necessarily embrace the other.

He referred to Blackstone, where it is laid down that no insult constitutes a justification for homicide. No species of contumely, no species of mere trespass, and no combination of the two, had been recognised, in either ancient or modern times, as an alleviation of the crime of murder to manslaughter. He referred to the case of Smith, tried in 1804, where a man shot another who was representing a ghost. The jury brought in a verdict of manslaughter, but the court refused to receive the verdict, and the jury retired again and brought in a verdict of guilty. These principles had been uniformly recognised and adopted in this country. He referred to the case of Ryan, 2 Wheeler, 447, and recapitulated the circumstances of that case and the rulings of the court. The law there laid down was the law which the prosecution here recognised, and the law by which they were ready to stand. If the theory of the defence were true, that adultery was a justification of homicide as well as a provocation, how could the learned judge in Ryan's case have said that the circumstances there might constitute the crime of murder, or constitute the crime of manslaughter? There was an entire uniformity of judicial interpretation running through all the cases reported. In the case of Jarboe, the question was distinctly propounded to his Honor, whether, if the deceased had seduced the prisoner's sister, and committed all the turpitude charged in the case, it constituted either a provocation or justification, and his Honor had decided that it amounted to neither. In the two Virginia cases, Berryers and Hayes', cited yesterday, there was no trial before a judge—

Mr. Magruder. Before a magistrate.

The Judge. They were tried before an examining court.

The District Attorney. They were not to be controlled in this issue by the ipse dixit of a magistrate's court, composed probably of men who know nothing about the law. In Singleton Mercer's case the whole energies of the defence were directed to the solitary and exclusive issue of insanity. So it was in Smith's case, in Philadelphia. As to Stump's case, in Maryland, he did not know what the facts were; but, if Judge Legrand there decided that adultery constituted either justification or [illegible], he would like to see such decision.

Mr. Magruder. The jury so held [illegible] committed on a legal provocation. In the case cited to support that theory, the question was, what constituted the proof of adultery. But the question here was not what constituted proof of adultery, but what constituted proof of "finding" in the act of adultery. There could not be any proximate fact with regard to that. There was but one method of proving it. The proof must be that the party found was surprised in the act of adultery.

The waving of the handkerchief and the occupation of the house in Fifteenth street, might tend to show that in this case adultery was committed, but they did not tend to show that the parties were "found" in the act. If they were, then the law says the homicide may be reduced to manslaughter; but if the husband pursue the adulterer, and slay him out of revenge, it is murder. The very phraseology of the rule showed that it was intended to apply to the proximate facts, as to whether the party was found in the act. The counsel for the defence had contended, that even if the wife had consented, still the adultery was forcible. He asked then, and he asked now, whether, if that were so, the distinction between the rape and the seduction was not obliterated? If forcible, it was rape, and if rape the defence had wasted all their thunder, for Philip Barton Key might have been indicted by the Grand Jury, and visited with condign punishment.

He understood why the defence had started such a theory. They knew that before a party was justified in using a deadly weapon, the aggressor must have used actual force, otherwise the killing would be aggravated murder. Hence the counsel for the defence had striven to show that every act of adultery was necessarily an act of force. That, however, was neither law nor common sense. There was no foundation for such a theory in nature, in morals, or in law. It had been set up by the other side that adultery was malum in se, and that the protection of a right was never an act of lawless violence. He held, however, that the party is limited by the law to just that degree of defence of his right which the law gives him, and is not to follow his own passions or desire.

It is the right of a creditor to have his debt paid to him by his debtor, but it does not follow that he has the right to take the law into his own hands and commit an assault and battery on his debtor. The law limits the resorts which a man has for the defence and maintenance of his rights.

The last ground which the defence assumed was that this case stood on the great doctrine of self-defence. Self-defence against what? Did the principle of self-defence apply to past transactions in any sense? Such a theory excluded all the past and all the provocation, and stood upon the right which the injured husband had to protect himself in the future. When the injury is consummated against a man, all his rights of self-defence are ended.

The law of self-defence never, therefore, applies to a past transaction, and can never be confounded with the law of vengeance. Where that doctrine is properly applied, his Honor had decided that it was not material to show that there was actual danger, but only that the party supposed there was. To extend that principle to this case, it would follow that whether the adultery was ever committed or not, provided the injured husband supposed it was, then if he sallied out and shot the person who he supposed had injured him, he would be justified. That, said the District Attorney, could not be the law. Society could not exist on such a basis, and human civilization would be an impossibility.

It would follow, as an inevitable consequence from this—where the prosecution cannot go into the antecedents of the party—that the prisoner himself may be stained with corruption; that throughout the whole course of his life he may have proved himself totally regardless of the calls of duty, and insensible of conjugal proprieties; that, to use the language of my associate, (though I do not mean to apply it in this case,) he may have been bred in brothels—nay, that he may have offered his own wife for a price to the very man whom he slew—and that all this cannot be given in evidence before the court and jury; but that under these circumstances, although he may have committed an act of homicide, he is to be justified on the ground of suspicion.

All these dictums, these heresies, these aberrations flow necessarily and correctly from the doctrine of self-defence, as applied to the case.

On this point of self-defence, he would refer his Honor to the case of the People vs. Shester, 4 Barbour, p. 460.

Mr. Brady. That has been overruled by the Court of Appeals of New York, as reported in 2d Comstock.

The District Attorney would refer to 2d Comstock to see how far it overruled the case of Barbour. He referred to these authorities, and also to the case of the People against Dove, 1st Manning's Michigan Reports. Was there, he asked, any danger of bodily harm to Daniel E. Sickles at the hands of Philip Barton Key, at the time of the homicide? If not, he put it to his Honor and the jury, that the principle of self-defence did not apply. Nay, more: if Mr. Sickles believed that Mr. Key was then and there proceeding to his house for the purpose of committing a felony, much less a misdemeanor, the principle of self-defence could not even then apply as a justification for the taking of human life. It had been said by the defence that, unless their doctrine was announced by this court, and sustained by this jury, the doors of the people of this District would have to be closed. Standing here, said he, not as a public prosecutor, but as a private citizen, I, on the part of the people of this District, denounce the doctrine that the protection of the wife or daughter's virtue is to be found in the husband's or brother's revolver. It may do for other countries, for other climes, and for other religions, where the law of force, as applied to woman, is carried out in all its violence and wrong. But in a Christian community, where woman is [illegible] the true and only protection to female chastity is to be found in the woman's own virtue, and in her own character. Stronger than bars and bolts, the flash of woman's virtue is as quick as God's lightning, and as sure; far more effectual is it for silencing seducers or revellers in licentiousness than a Derringer or a revolver. Every pure woman, necessarily and by the gift of God, in Christian communities, carries that weapon along with her. There is no seducer, no villain, I care not from whence he comes, or how he may have trained himself in the arts of seduction, who does resist the showing of that weapon for one solitary instant. I thank God that the matrons and maids of our land have a surer protection than the pistol or the bowie-knife. Sad indeed would be their fate if it were not so. If it were not so, one-half of this whole community would not use a weapon, and the other half would use it wrongfully and improperly. The spirit of virtue God has implanted in the woman's heart, tells her, as if by the flash of lightning, what are the intentions towards her of a man, whether honorable or dishonorable; and she has but to use, for one moment, this gift which God, in his benevolence and bounty, has given her for the purpose of silencing and stifling, not in death, but in shame to the proposer, every offer that would imply the slightest touch of contamination or of insult. It is found everywhere. It is a circle of glory which adorns a female brow, and sheds its blessed and happy light alike on the hovel and on the palace. It stands there as the protector of the wife, though the husband may be on distant seas, far away from home, with his protecting arm. It is there, ready to resist at a moment, and to resist effectually, the advance of every slimy reprobate, who, under the guise whether of friendship or fraud, walks into the house of purity for the purpose of defiling one of its inmates. The very moment you bring the law of force for the purpose of protecting female honor, that moment you sacrifice female honor.

If it is to be protected by the sword, the knife or the pistol, it is unworthy of protection. Unless it be that God-ennobling nobility in and of itself, and unless it exists of itself, and for itself, it is unworthy to be cherished or known. The history of the world in past times had shown that to be true. Go back as far as you please, and trace history from the earliest dates down to the present—examine all the eras and all the peoples, and I say that it stands out on the pages of history, at all times and throughout each of its lustres, as the fixed and recorded truth, that wherever woman has been left alone to the vindication of her own virtue, and wherever man has kept the contaminating hand of violence from her, for the purpose of protecting her, she has risen in her purity, God-ennobled and self-vindicated. The great God of Heaven has laid his hand with consecration and blessing on the fair head of virtue, and when the virtuous woman ceases to be her own protector and her own guardian, by force of the power which God has given to her, she and her virtue both sink into the dust, and in its stead rises the crest of murder, and of violence, of wrong, and of debauchery.

The learned gentleman (Mr. Stanton) had said that when the law does not or cannot give redress it is left to natural right. It is not necessary to rebut this position, although we think it could be successfully rebutted. It certainly gives no right of vengeance. In the 4th book of Blackstone, p 6, the doctrine on which this defence seems to rest is utterly exploded by this commentator. The theory of law is (and this is not contradicted) that every man is presumed to consent to the laws of society, which are made in behalf of society. The law punishes murder, but it is said it does not properly punish adultery; therefore, a man may say I am remitted to my original rights for punishing where the law does not inflict punishment. This is manifestly an absurdity. According to the first theory, it is man's duty to acquiesce in such laws as are positively made. There is a positive law of this community with regard to murder. According to all rational theory, this prisoner has assented, or is supposed to have assented, to that enactment. He is prohibited from committing murder, and although the law might not have specific punishment for adultery, he is not, therefore, privileged to supply such defect. Although he may have a right to punish, he has no right to violate another provision. If he does, he becomes a wrong doer, although he may have a right to redress wrong, yet he has no right to redress it by an infraction of the human compact into which he has entered.

Having endeavored to answer the arguments of Mr. Stanton, the District Attorney proceeded to notice those of Mr. Brady. He understood him as contending that the jury are the judges of the law, as well as of the facts. But the administration of the law is divided into three different compartments. The judge has his functions, the jury have their functions, and the Executive his. Who wears the gladis justiciae? If he (Mr Ould) had read the law aright, it was for the court to pass on all questions of law. It was for the jury to pass on all questions of fact; and the duty of the Executive under the Constitution of the United States to decide on the propriety of inflicting the punishment. These functions are separate and distinct, and when one trenches on the other, a usurpation is committed. The court has not only to decide questions of law, but all the law which belongs to the case, it made no matter whether it be civil or criminal law. The very moment it becomes a question of law it became the court to decide it. It becomes the jury to find the facts and to apply the law as it is laid down by the court. [illegible] is a matter of law, and cooling time is a question of law, and in this connection [illegible] in support of his position. He also quoted authority which, he said, was recognised as controlling in this District, from 5th Cranch, in which was embodied the remark of Judge Story, that it is the duty of the court to instruct the jury as to the law, and the duty of the jury to follow the law thus laid down. The District Attorney had stated what are the functions of the court and jury. In addition, the Constitution of the United States has imposed on the President a certain duty to perform in connection with the administration of public justice—namely, the pardoning power. This, by the true policy of the law, is given to the Chief Magistrate for the express purpose of keeping the court within its functions, and the jury within theirs; also, with the view of preventing gross and aggravated injustice from being perpetrated on a party under the form of law.

As the circumstances of this case have been referred to by the defence, he would say, in reply, a pistol was found. His learned and distinguished friend, Brady, inquired to whom did it belong, and who used it? He (Ould) should not pretend to give the answer. He would let the witnesses speak. Mr. Van Wick said he saw a pistol in the hands of Sickles. Mr. Read, the clearest witness, whose statement seemed the most coherent, said he saw a pistol in Sickles' hand at the very spot; and further, that he saw no pistol in the hand of Key at the time. Not only had Key no pistol at that time, but had none at any time. Not a solitary witness stated any pretence of the fact. Who, then, had the pistol, and who fired it? To whom did it belong? It must have been the man who was seen to have a pistol, and not him who had none at all. In the same connection it was asked, why not produce witnesses to show that Mr. Key was not in the habit of going armed? Was it incumbent on the United States, to show he was not in the habit of going armed, when there was no pretence that he was armed at all?

Mr. Brady. You have not forgotten that we offered to show that Mr. Key said he was prepared for any emergency, at the same time placing his hand on the breastpocket of his coat.

District Attorney. I am speaking of the testimony in the case. His Honor's ruling was that that did not shed any light on the question, and was immaterial.

Mr. Brady. But I understand you now to say that there is no pretence that Mr. Key was armed. I pretend that he was armed.

The District Attorney explained that he spoke only of the testimony. But if the gentleman wanted to give evidence to the jury to show who used that pistol, why did not the defence summon Mr. Butterworth? That the defence complained that the prosecution did not produce the friends of Mr. Key to give negative proof that the deceased did not carry arms habitually, but why did not the defence itself produce that friend of Mr. Sickles who witnessed the whole transaction, and who could say positively who it was that used the pistol in question?

The defence had alluded to the case of Mingo, but that was a case of mutual combat.

Mr. Brady. The question there arose as to whether malice should be proved, and Judge Curtis ruled that under all the circumstances of the case the responsibility devolved on the prosecution to prove malice. He contended that where the prosecution failed to give evidence as to the controversy between the parties at the moment of the homicide the jury should acquit.

The District Attorney replied that the plea in Mingo's case was a plea of self-defence, and that that was so sustained by the evidence that the judge had the impression that it was a case of self-defence. But in this case the defence was put upon the issue that Mr. Sickles intended to kill Mr. Key, and that he was justified in killing him. The counsel for the defence had argued that the cooling time applied only to cases of mutual combat, and that, this not being a case of mutual combat, the principle of cooling time did not apply.

Mr. Brady. Cooling time as to the adultery?

District Attorney. It seemed to be a "concessum" in this case that there was an intention to kill. Now, he held, that where there was an intention to kill, that is a proof of malice; malice and the intent to kill, were, in cases where there was no mutual combat, one and the same thing. If the defence claimed the exclamation of Mr. Sickles as a proof, at the moment of the homicide, that there was no malice, he asked, could not he refer to that other declaration, wherein the prisoner followed up the first exclamation, by the question: "Is the damned villain dead?" To his mind, that inevitably proved malice. His learned friend, (Mr. Brady,) in one of his airy wheelings, had said that if Philip Barton Key could be put upon the stand he would say so and so. I would to God, said the District Attorney, that Philip Barton Key could be put upon this stand. Perhaps much that is now dark, much that is now covered with gloom, much that is not now understood, could be made plain as if by the flashing of the sunbeam. Perhaps the gentleman himself (Mr. Brady) might be put in possession of facts of which he does not now dream, and which he does not now believe to exist. It might show a very different transaction from that which has been painted by the evidence. The only party who could array facts in his defence, or in his behalf, has been silenced in death; and the testimony which might have been adduced for the purpose of vindicating his character is unknown and unheard. Therefore, so far as he is concerned, it is the same as if that testimony had never existed. He might have shown, perhaps, that although sinning himself, he was sinned against; that instead of, as has been charged in this case, his entering into the house of his bosom friend, for the purpose of wronging him malignantly and violently, in defiance of all the laws of God and man, and of the sacred obligations of friendship, he himself was seduced [illegible] the opportunity of bringing that evidence here and vindicating his character is gone. I say not what the fact was.

Mr. Brady. The District Attorney will recollect that we offered to prove his own declaration that this was a mere child, and that he stood in parental relations to her.

The District Attorney made no reply, and pursued that point no further. There was but one other position to which he would allude, and that was the connection of this question with insanity. The matter of insanity had been frequently under the consideration of this court; and he would, therefore, simply refer to some of the doctrines which, with great solemnity and authority, had been given at other times, bearing on the question now under discussion. He would refer particularly to the opinion rendered by the twelve judges in England in the McNaughten case, in response to certain queries propounded by the House of Lords—that the decision as rendered by Chief Justice Tindall appeared to him a model—not only of eloquence, but of judicial learning. The counsel read some of the queries and responses, commenting upon them as he proceeded, and referred to other authorities bearing on the same point, among them to Chief Justice Hornblower's ruling in Spencer's case, quoted in Wharton's Criminal Law, 712. His Honor had decided that it was not necessary for the United States to prove the sanity of the accused. This plea of insanity was in the nature of a special defence; nay, in the nature of a plea of confession and avoidance. It was necessary for such a plea to be proven to the satisfaction of the jury. If a suit were brought against a married woman on a bond, and if she pleads that she is a married woman, unless she succeeds in satisfying the jury of the truth of that plea, the issues of law and fact are both found against her.

Mr. Brady. How would it be if the general issue was on record?

District Attorney. The question cannot arise except on a plea of confession and avoidance, and that admits the plaintiff's case. So a plea of insanity admits the charge.

Mr. Carlisle. The confession stands without the avoidance.

District Attorney. Certainly. He would not put to his Honor the argument as to the facility with which insanity may be simulated or feigned, and how wrong it would be to let the party accused thus escape the just punishment which his crimes should bring down on his guilty head.

The prisoner having been brought into court, from which he had been temporarily absent, Judge Crawford proceeded to address the jury.

Gentlemen of the Jury. The court is asked to give to the jury certain instructions, whether on the part of the United States or on the part of the defence.

The first instruction asked for by the United States is in these words: If the jury believe, from the evidence in this whole cause, that the prisoner on the day named in the indictment, and in the county of Washington aforesaid, killed the said Philip Barton Key, by discharging at, against, and into the body of him, the said Philip Barton Key, a pistol or pistols, loaded with gunpowder and ball, thereby giving him a mortal wound or wounds, and that such killing was the wilful and intentional act of the prisoner, and was induced by the belief that the said deceased had seduced his (the prisoner's) wife; and on some day or days, or for any period, definite or indefinite, prior to the day of such killing, had adulterous intercourse with the said wife, and that the prisoner was not provoked to such killing by any assault or offer of violence then used and there made by the deceased upon or against him, then such wilful and intentional killing, if found by the jury, upon all the facts and circumstances given in evidence, is murder. But such killing cannot be found to have been wilful and intentional in the sense of this instruction, if it shall have been proven to the satisfaction of the jury, upon the whole evidence aforesaid, that the prisoner was in fact insane at the time of such killing.

This instruction embodies the law of this case on the particular branch of it to which it relates, and is granted, with some explanatory remarks as to insanity, with a reference to which the prayer closes.

A great English judge has said on the trial of Oxford, who shot at the Queen of England, 9 Carrington and Paine's Reports, p. 533, "That if the prisoner was laboring under some controlling disease," which was "in truth the acting power within him which he could not resist, then he will not be responsible."

And again: "The question is, whether he was laboring under that species of insanity which satisfies you that he was quite unaware of the nature, character, and consequence of the act he was committing; in other words, whether he was under the influence of a diseased mind, and was really unconscious at the time he was committing the act that it was a crime." "A man is not to be excused from responsibility, if he has capacity and reason sufficient to enable him to distinguish between right and wrong, as to the particular act he is doing—a knowledge and consciousness that the act he is doing is wrong and criminal, and will subject him to punishment. In order to be responsible, he must have sufficient power of memory to recollect the relation in which he stands to others, and in which others stand to him; that the act he is doing is contrary to the plain dictates of justice and right, injurious to others, and a violation of the dictates of duty." "On the contrary, although he may be laboring under a partial insanity, if he still understands the nature and character of his act [illegible] partial insanity is not sufficient to exempt him from responsibility for criminal acts." 7 Metcalf's Reports, p 501 to 503.

The second and third instructions asked for by the United States will be answered together. They are in these words:

"If the jury believe from the evidence that the deceased was killed by the prisoner by a leaden bullet, discharged from a pistol, such killing implies malice in the law, and is murder.

"That the burden of rebutting the presumption of malice, by showing circumstances of alleviation, excuse, or justification, rests on the prisoner, and it is incumbent on him to make out such circumstances to the satisfaction of the jury, unless they arise out of the evidence produced against him."

Both these instructions are granted.

The fourth instruction asked for by the United States is in these words: "That every person is presumed to be of sound mind until the contrary is proved, and the burden of rebutting this presumption rests on the prisoner." This prayer of the United States is answered by prayer eleven of the defence.

The fifth instruction asked by the United States is in these words: "If the jury believe, from the evidence, that the deceased, previous to the day of his death, had adulterous intercourse with the wife of the prisoner; and further, that the deceased on the day of his death, shortly before the prisoner left the house, made a signal, inviting to a further act or acts of adultery, which said signals, or a portion of them, were seen by the prisoner, and that, influenced by such provocation, the prisoner took the life of the deceased, such provocation, does not justify the act, or reduce such killing from murder to manslaughter."

Such, the court thinks, is the law, and grants the instruction.

Now we come to those asked on the part of the defence, the first of which is in these words: "There is no presumption of malice in this case, if any proof of 'alleviation, excuse, or justification' arise out of the evidence for the prosecution."

There is, gentlemen, a legal presumption of malice in every deliberate killing, and the burden of repelling it is on the slayer, unless evidence of alleviation, mitigation, excuse, or justification arise out of the evidence adduced against him. The alleviation, mitigation, excuse, or justification must be such as the law prescribes, and within the limits already laid down in the instructions given you.

The second instruction asked for by the defence is: "The existence of malice is not presumable in this case if, on any rational theory consistent with all the evidence, the homicide was either justifiable, excusable, or an act of manslaughter." The answer to the first prayer will be taken, in connection with this response to prayer No. 2. If, upon any course of reasoning consistent with all the evidence, "and the law, as laid down by you to the court," and the rules by which it is ascertained, what is the legal provocation, what is the justification or excuse, you should come to the conclusion that there was such justification or excuse, or that the homicide was manslaughter, then the presumption of malice, which every killing of a human being involves, is met. You will recollect that manslaughter is the killing of a man without malice.

The third prayer on the part of the defence is, "If, on the whole evidence presented by the prosecution, there is any rational hypothesis consistent with the conclusion that the homicide was justifiable or excusable, the defendant cannot be convicted." The answer given to prayer number two is an answer to that.

The fourth prayer is, "If the jury believe that Mr. Sickles, when the homicide occurred, intended to kill Mr. Key, he cannot be convicted of manslaughter." This instruction the court declines to give. Manslaughter may exist, and most frequently does exist, where the slayer intended to destroy life, but under circumstances which reduce the offence.

The fifth prayer is in these words: "It is for the jury to determine, under all the circumstances of the case, whether the act charged upon Mr. Sickles is murder or justifiable homicide." Neither can this instruction be granted. To the jury belongs the decision of matters of fact; to the court the decisions of matters of law, which it is the duty of the jury to receive from the court, and, from the evidence and the law applied to the facts, it is the province and legal right of the jury to return a general verdict of guilty or not guilty of murder or manslaughter.

The sixth instruction for the defence: "If the jury find that Mr. Sickles killed Mr. Key while the latter was in criminal intercourse with the wife of the former, Mr. Sickles cannot be convicted of either murder or manslaughter." If this prayer refers to actual (existing at the moment) adulterous intercourse with the wife of the prisoner, the slaying of the deceased would be manslaughter. And by existing adultery, I do not mean that the prisoner stood by and witnessed the fact of adultery progressing, for it is easy to suppose the actual fact to be established simultaneously with the killing by other evidence, in perfect consistence with the law; if, for instance, the husband saw the adulterer leave the bed of the wife, or shot him while trying to escape from his chamber. If, however, a day or half a day intervened between the conviction of the husband of the guilt of his wife and the deceased, and after the lapse of such time he take the life of the deceased, the law considers that it was done deliberately, and declares that it is murder. Vide Jarboe's case.

The seventh and eighth instructions can be answered together. They are as follows: "If, from the whole evidence, the jury believe that Mr. Sickles committed the act, but, at the time of doing so, was under the influence of a diseased mind, and was really unconscious that he was committing a crime, he is not in law guilty of murder.

"If the jury believe that, from any predisposing cause, the prisoner's mind was impaired, and at the [illegible]

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