

the artful and experienced would not fail to embrace.

The defense of insanity is not uncommon. It is by no means a new thing in a court of justice. It is a defense often attempted to be made, more especially where aggravated crimes have been committed under circumstances which afford full proof of the overt act, and render hopeless all other means of evading punishment. While, then, the plea of insanity must be regarded with great care, unless full and complete, it is not a humane defense when satisfactorily established; and while you should guard against inflicting a penalty for a crime upon an unfortunate maniac, you should be equally careful that you do not suffer an ingenious counterfeit of the malady to serve as protection to his guilt.

So that, gentlemen, it all comes back to the one point: What was the state of mind of the defendant at the time he fired the shot that killed Pike? It does not matter that he was insane before he fired the shot. The question for you to determine is, Was he sane or insane at the time he fired the shot? It is his state of mind at that time, his condition at that time, concerning which you are to inquire. If the proof shows that he was insane at the time he fired the shot, and that such insanity was the result of a diseased or injured brain, and not of a mere tentative or temporary character, the presumption would be that that insanity continued until the proof showed a contrary condition of things to exist. And in considering whether the defendant was sane or insane at the time he fired the shot, you will look to the proof to see whether it establishes the fact that he was insane prior to the time, as illustrating his condition of mind at the time he fired the shot that killed the deceased, if he did so fire such shot. Witnesses have stated the facts concerning such conduct, and acts, and declarations of the defendant, and upon that have given you their opinion as to his mental condition. Likewise, physicians have been called upon both sides who have undertaken to give their opinions upon supposed or hypothetical cases. Of course you are to understand that you are not bound by any opinion or opinions any witnesses may have stated, whether such witness undertakes to give his opinion from facts within his knowledge or upon supposed cases. It is, after all, the facts that are stated to you by the witnesses which are of the most value, and from which you can best judge. The facts having been detailed to you of the conduct and character of the defendant's acts and declarations, you are as competent to judge of his mental condition as any witness, and, I may say, much more so than the expert witnesses, for I charge you that so far as this expert testimony is concerned, you should receive it with great caution. For, as stated by Mr. Wharton in his work on criminal evidence, that it has been discovered that no expert, no matter how learned or incorrupt, speaks for his

science as a whole. Few specialties are so small as not to be torn by factions; and often the smaller the specialty, the bitterer and the more inflaming and destroying are the animosities of which these factions are possessed. Peculiarly is this the case in matters physiological, in which there is no hypothesis so monstrous that an expert cannot be found to swear to it on the stand, and to defend it with vehemence when off the stand. And in view of the fact that this class of evidence is of such a doubtful character, I feel it my duty to caution you that in your investigation in this case, you will give it just such weight and credence as, in your opinion, the actual facts testified to before you warrant, and no farther.

As I said, in determining the mental status of the defendant, having gotten the facts concerning his act, acts, conduct and declarations, you are as competent to judge of his mental condition as anyone else, and you are not bound by the opinion or opinions of any witness or witnesses.

And now, gentlemen, in conclusion upon the subject of insanity, I repeat: Does it appear that at the time this defendant fired the shot that killed Pike, he was a free agent in forming that purpose? Was he at the time the act was committed capable of judging whether that act was right or wrong, and did he know at that time that it was an offense against the laws of God and man? If you say nay, he is insane; if yea, he is guilty.

Gentlemen, if you find the defendant guilty of murder in the first degree, your verdict will be, "We the jury, find the defendant guilty in manner and form as charged in the indictment." That is the first form of verdict. Or, if you should find the defendant guilty as charged in the indictment, if you should think from the facts and circumstances of the case that there were mitigating facts attending the killing, your language will be guilty as charged, with mitigating circumstances, recommending him to the mercy of the court. Or, you may find the defendant guilty of murder in the second degree, or of voluntary or involuntary manslaughter; in which case your verdict will be according to the finding. Or, you may find a verdict of not guilty.

Gentlemen, I warn you that no side influence move you in your investigation of this case, but set your eyes upon the golden apple of truth and justice, and by the path of the law and the testimony march steadily forward, looking neither back nor to either side, and when you have rendered your verdict you can go forth from this court-house to again resume your places among your fellow men, conscious that you are honest men, which, after all, is the highest round in the ladder of humanity that a man can reach in this world.

It was about 5:30 o'clock when the jury retired, the court instructing them to return their verdict at 9:30 next morning. Shortly after 9 o'clock at night they were seen wending their way to the Cliff House, in

charge of a bailiff, and the inference was that a verdict had been reached.

After the retirement of the jury, Mr. Arthur Brown, of counsel for the defense, informed the court that they would take exception to that part of the charge relating to insanity, to the refusal to make the charges required by the defense, and to about thirty other items in the court's instructions to the jury.

Court then adjourned to 9:30 a.m. next day, May 12.

At 9 o'clock next morning the jury announced that they were ready with a verdict, but the court was not in session. At 9:30, however, they filed into court and took their seats. The clerk inquired, "Gentlemen of the jury, have you agreed upon a verdict?"

John M. Young, who had been selected as foreman, replied, "We have," and handed a paper to the clerk.

The clerk then read the verdict, which said, "We, the jury, find defendant not guilty."

At this announcement a murmur of applause ran through the courtroom, which was well filled with spectators. This demonstration was promptly checked.

Judge Judd then turned to the jurors and said:

"Gentlemen of the jury. In the verdict that you have rendered you have doubtless followed your oath according to your consciences, and you have doubtlessly done it honestly. But if this is not a case of murder—speaking from a practice of over twenty-three years—I have never seen one in a court of justice. I am now of opinion that Brother Young was exactly right in his opinion in argument to the jury, when he said that the law in courts of justice in this country was no protection. You may now be discharged."

A glance at the audience sufficed to show that the judge's remarks met with no sympathetic response. The defendant was warmly congratulated by all classes on the result, and when he left the court room and mingled with people on the street the same feeling was manifest among the public, who would have been disappointed at any other result.

It is claimed that two professors connected with the Pasteur Institute have discovered the generative microbe of diphtheria, and that a preventive of this disease by means of vaccine virus is expected to follow. Should this expectation be realized, the discovery and its successful application will certainly take rank among the most important triumphs in the realm of medical science. The prevalence of diphtheria, especially in the principal cities, and the very large proportion of fatal cases, is little dreamed of excepting by those who are giving special attention to the subject. In Brooklyn, New York, for instance, there were in 1898 984 deaths from diphtheria, which probably represented 3000 cases.—*Scientific American*.