VOL. XII.

SALT LAKE CITY, UTAH TERRITORY, THURSDAY EVENING, MARCH 6, 1879.

THE RE

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In the matter of the estate of EZRA OAK-

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and Longevity demand it, the customs of social ife require it. The matter is of great important case, and it now devolves upon me to direct your attention to such aurpassing crown of glory, and for the loss of view to assist you in arriving at a

beyond a reasonable doubt; or, in case you do not find the defendant guilty of murder in the first degree, you can, under this indictment, find the defendant guilty of murder in the second degree; if you be-

fullty of murder." Manslaughter is the unlawful killing of a human being without malice.

Malice aforethought is, therefore

the chief characteristic, the grand criterion by which murder is distinguished from any other species of homicide, and it is therefore necessary to inquire concerning the causes in which malice has been held to exist. It should, however, be observed that when the law makes use of the term "malice aforethought," as descriptive of the crime of murder, it is not to be un-derstood merely in a sense of a derstood merely in a sense of a principle of malevolence to particulars, but as meaning that the homicide was attended with such circumstances as are the ordinary symptoms of a wicked, deprayed, and malignant spirit; a heart regardless of social duty and deliberately bent on mischief; and in and malignant spirit; a heart re-gardless or social duty and delib-erately bent on mischief; and in general, any formed design to commit a crime may be called malice. and from the testimony that Mrs. And therefore, not only such kill- Rowman was unintentionally killed ing as proceeds from premeditated hatred and revenge, against the person killed, but also in many cases such killing as is accompanied

with circumstances that showed the heart to be perversely wicked, is adjudged to be malice aforethought, and consequently murder.

Under the same Territorial act before referred to, "when the murder is perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious and premeditated killing, or when a murder is committed in the respective. der is committed in the perpetration of, or attempt to perpetrate, any arson, rape, robbery, burglary or maybem, it is murder in the first degree. The unlawful killing of a human being with malice aforethought, other than that which constitutes murder in the first de-gree, as above stated, is murder in the second degree. You will ob-serve, therefore, that manslaughter is principally distinguished from murder in this: That although the

act which occasions the death is unlawful or likely to be attended with bodily mischief, yet the malice aforethought, either ex-pressed or implied, which is of the essence of murder, is presumed to be wanting in man-slaughter. When the act is delib-erately done with a deadly weapon, and is likely to be attended with dangerous consequences, no con-siderable provocation appearing, the malice requisite to constitute murder may be inferred; for the law infers that the natural or probable
effect of an act deliberately done is
intended by the actor, when the intended by the actor; when the act is deliberately done and is unlawful and is of a character ordinarily productive of great bodily harm, it will subject the doer to the charge

of murder whenever death comes from it; but if the act is not danger-ous in itself, yet is unlawful, and unexpectedly death comes as a con-sequence, the offense is not murder but may be manslaughter. So it the act is one of a nature to be lawful, if properly performed, and it is performed improperly and death comes from it unexpectedly, it is not murder, but it may be manufactured. The warrant put in evidence bearing date and attested June 11, 1862, purporting to have been issued by this court, and requiring the arrest of Joseph Morris, tohn Banks and others for the ofthe act is one of a nature to be

D. Rear Femmie Street, Louis Fort and Louis Bills.

the first degree have been proven such as to excite the fears of a reasonable person that Joseph Morris, and others acting in concert with him, were about to do great bodily harm and injury to the defendant and others acting under his courmand, in his or their endeavors to material facts necessary to consti-tute murder in the second degree have been proven beyond a reason-able doubt, or in case you do not find defendant guilty in either the first or second degree. You can find defendant guilty in either the first or second degree, you can, under this indictment, find the death of revenge, such killing was justifiable. The necessity of taking human der this indictment, find the defendant guilty of manslaughter, if from the evidence you believe the facts necessary to constitute manslaughter have been proven beyond a reasonable doubt.

If you find the defendant guilty danger is actual and imminent, although it may turn out that he was

imminent danger, in order to expected the slayer have been proven beyond a reasonable doubt.

If you find the defendant guilty of murder you must specify in your verdict whether it is murder in the first or second degree, and if you find the defendant guilty of mansalaughter you must so state in your verdict. The Territorial act of 1852 which was in force at the time of the defendant is being tried, provides that "whoseever kills any human being with malice aforethought either expressed or implied, is guilty of murder." Manslaughter you must.

In the alleged killing for which the defendant is being tried, provides that "whoseever kills any human being with malice aforethought either expressed or implied, is guilty of murder." Manslaughter you have the slayer, so far as he is able to judge at the time. In estimating all possibility; but it is required of all possibility all possi judge at the time. In estimating the circumstances which will justify or excuse the taking of human evidence that when you have tify or excuse the taking of human life, the slayer may properly considered it no reasonable doubt remains in your minds as to any material fact necessary to constitute the guilt of the defendant, at the time of the homicide ant, at the time of the homicide might, in connection with other circumstances, take into consideration his knowledge and information of the previous reputation of Joseph Morris and his followers and of the influence which he exerted over them, as well as what he knew or them, as well as what he knew or was told of their antecedent acts.

the defendant or any of the perso acting under his authority. If ye Bowman was unintentionally killed by the defendant, directly or indi-rectly, in the act of killing Joseph Morris, and that if Morris had been killed by that act it would have been justifiable homicide, you should acquit, unless you believe from the testimony that the killing of Mrs. Bowman showed a wantom disregard of human life on the part of the defendant. In criminal cases you should not convict on a mer preponderance of the testimony; a verdict of guilty should not be ren-

dered unless the evidence is so convincing as to exclude every reasonable doubt of the defendant's guilt. Before you are warranted in convicting, you must be satisfied from that the charge is true. Any reasonable doubt whether the killing was justifiable or excusable or not was justifiable or excusable or not will require the acquital of the defendant. Among the acts done by permission of the law for the advancement of public justice, are those of efficers, who, in the execution of their offices, either in a civil or criminal case, kill a person who assaults and resists them. The resistance may justify an officer in proceeding to the last extremity—so that in all cases, whether civil or criminal, where officers having authority to arrest and imprison. authority to arrest and imprison and choosing the proper means fo that purpose, are restricted in ac doing, they may repel force with force, and need not give back, and out it the public peace and tran-quility cannot possibly be main-tained, or private property secured nor would, ordinarily, offenders be brought to justice. For these res sons, the killing of officers when a

LATIER, TAYLOR & CO.,

Does Block East of Depot,

The Block East of De

Judge Schaeffer's Charge.

Following is Chief Justice Schaeffer's charge to the jury in the Burton trial:

Feople vs. R. T. Burton. Indictment for nurder.

Gentlemen of the Jury:—You have faithfully and patiently listened to the evidence and the arguments of counsel in this important case, and it now devolves upon meant and abettors, be necessarily resist them of circet year attention to such principles of law as are deemed by interest you in arriving at a just verdict.

The indictment under which the defendant with killing Mrs. Bowman, although not intended for her, "you are the sole been evidence and of the set with the with the state of the sets. The serve was the said that the defendant was not only authors and hinder and the leves of his assailants, their aid.

The indictment under which the defendant is being tried, charges the defendant with killing Mrs. Bowman, although not intended for her, "you are the sole been evidence and of the weight of the evidence and of the set with the wind the constitution of his difference and of the fact and thinder in the first degree, with the view to assist you in arriving at a just verdict.

The indictment under which the defendant with killing Mrs. Bowman, although not intended for her, "you are the sole with the defendant was not only author the said with, the with the with and the case of his did the clere such as the first degree, with the view to assist you in arriving at a just verdict.

The indictment under which the defendant with killing Mrs. Bowman, although not intended for her, "you are read with the evidence of the said with, the with the with and the case of the said with the said with the case, with the view to assist you in arriving at a just verdict.

The indictment under which the defendant with killing would be excessity in order to execute his should retreat, and he may proceed the proposition of the probabilities of their state which, if true, make the killing murder in the first degree and the view of any attempting, under the limit of the with th

of mind as will cause you, as reasonable men, to feel after a careful and conscientious consideration of all the facts and circumstances in proof that you are not satisfied that the defendant is guil-ty. Proof beyond a reasonable doubt is such as will remove or exclude all such reasonable do and such as will produce an abiding conviction in your minds to a moral certainty that the facts necessary to be proven actually exist.

A mere balance of proof is not sufficient. A balance of proof is that which you would think is most likely to be the fact, i. e., it is the

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