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DAVID O. CALDER,
EDITOR AND PUBLISHER.

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THE RICKS TRIAL.

JUDGE EMERSON'S CHARGE TO THE JURY.

Gentlemen of the Jury: There has been but little disagreement among counsel about the law as applicable to this case, so that it will hardly be necessary for me to make any extended remarks to you upon the subject. The trial is one of fact and not of law, and the trial of the facts are peculiarly in your province and not in the province of the court. It becomes my duty to give you, as briefly as I can, the rules and principles of law necessary to aid you in arriving at a correct conclusion, from the facts as you shall find them from the evidence as presented before you.

The respondent has been represented to you as a man of somewhat influential standing in the community where he resides—who has been trusted with various public official positions by his fellow citizens, and was so trusted at the time of this homicide. The condition of society, the time when, and the circumstances under which the alleged crime is said to have been committed, are such as are likely to attract attention. All the surroundings give to the case more than an ordinary interest, which has been manifested by the vast concourse of people who have thronged the court room from day to day as the trial has progressed. It will therefore be your especial duty to guard against any outside influence, and to try this case as calmly and dispassionately as you would any other, and to decide it according to the law and the evidence uninfluenced by any bias against, or sympathy for, the respondent. Neither his position nor social standing entitles him to any immunity from punishment for crime, and if he is guilty it is your duty to say so, no matter what the consequences may be. Divest your minds of every feeling of prejudice which may prevent you from carefully and accurately weighing the evidence, and giving a true and impartial verdict, just alike to the respondent and to the people.

The indictment in this case charges the respondent with murder in the first degree, and for this crime he is upon trial. The wise and beneficent provision of the law is that the presumption is that he is innocent until proven guilty, and it is upon this theory—this presumption—that you are to try him; and he cannot by the rules of law be convicted unless all the facts which constitute the crime with which he is charged in this indictment, are proven beyond any reasonable doubt. He cannot be convicted by the rules of law unless all the substantial and material facts that are necessary to make out the crime with which he is charged are proven beyond any reasonable doubt; so that it is of great importance for you to understand at the very threshold of your investigations what is a reasonable doubt, or what is proof beyond a reasonable doubt. It is much easier to be understood than to explain and define; that is, it is easier to think what it is than to tell what it is. I will explain it in the fewest and in the plainest words I can: A reasonable doubt is such a one as would arise in the minds of reasonable men on any subject—such men as you are, who are selected because it is supposed and expected that you are reasonable, competent men to try such a question. Proof beyond a reasonable doubt is such as will remove all such doubt, and such as will produce an abiding conviction in the mind to a moral certainty that the fact exists that is claimed to exist; that the fact to be proven actually exists; such proof as produces an abiding conviction in the mind of moral certainty that the fact exists, so that you feel certain that it exists; a balance of proof is not sufficient. In a civil case a balance of proof is sufficient. A balance of evidence is that which you think is most likely to have been the fact; the way your mind preponderates upon a question of fact, that makes out a balance, but that will not answer here; you must go beyond that. There must not only be a balance of proof, but there must be this measure of proof which removes all reasonable doubt—all doubt that arises in your mind as reasonable men, and produces an abiding conviction—to a moral certainty—that the facts charged exist. A juror in a criminal case ought not to condemn unless the evidence excludes from his mind all reasonable doubt as I have endeavored to explain it, as to the guilt of the accused; that is, unless he be so convinced by the evidence, no matter what the class of the evidence, of the defendant's guilt, that a prudent man would feel safe to act upon that conviction in matters of the highest concern and importance to his own dearest, personal interests under circumstances where there is no compulsion resting upon him to act at all. Proof beyond a possibility of doubt is not required, because such proof never can be made. It is not necessary to be shown to you that it is not possible that this respondent is innocent, to show beyond all possibility of doubt that he is guilty; but it is required of the government to produce such evidence that when you look it over as reasonable men, no doubt arises in your mind; that is, no reasonable, fair doubt as to any fact necessary to be made out to establish the crime charged upon the respondent. I have been thus particular in stating this to you to impress it upon your minds, as the guide by which you are to be governed throughout this whole case in your investigation of the facts in controversy.

I now turn your attention to the crime charged itself. But first let me observe to you that a "homicide," or the mere killing of one person by another, does not, of itself, constitute murder. It may be murder, or manslaughter, or excusable or justifiable homicide, and therefore entirely innocent, according to the circumstances or the disposition or state of mind or purpose which induced the act. It is not, therefore, the act which constitutes the offense, or determines its character; but the *quo animo*, the disposition or state of mind with which it is done. To give the homicide the legal character of murder, all the authorities agree that it must have been perpetrated with malice prepense or aforethought. This malice is just as essential an ingredient of the offense as the act which causes the death; and as every man is presumed innocent of the offense with which he is charged till he is proved guilty, this presumption must apply equally to both ingredients of the offense, to the malice, as well as to the killing. Hence, though the principle seems to have been sometimes overlooked, the burden of proof, as to each, rests equally upon the prosecution, though the one may admit and require more direct proof than the other; malice, in most cases, not being susceptible of direct proof, but to be established by inferences, more or less strong, to be drawn from the facts and circumstances connected with the killing, and which indicate the disposition or state of mind with which it was done.

I will here read to the jury such of the instructions that the respective counsels have asked the court to charge the jury, and which I deem it proper to give. First on the part of the prosecution:

1. If the jury believe from the evidence that at the coroner's inquest the witness Chambers assented to the assertions of Ricks and made the statements he is said to have made there, through fear of personal danger to himself, should he state the facts as they actually occurred, then the statements made at that time should not discredit his testimony given when such fear is removed.

2. The killing being proved or admitted, the burden of proof is on the defense to show that there was justifiable grounds for the killing before the prisoner can be found not guilty.

3. In case of an attempt of a prisoner to escape his custodian is never justified in using more force than is necessary to prevent an escape.

On the part of the defense:

3. Since 1855 judges of the probate courts in this territory could be, and by law have been, conservatives of the peace in their several counties.

4. As such conservator of the peace, the judge of probate of Cache county, in 1860, was authorized upon complaints made to him, under oath, that a crime had been committed in said county, to cause the arrest upon his warrant, of the person accused, and to hold a preliminary examination to ascertain whether there was probable cause, and on probable cause appearing to hold such accused person for trial before a court having criminal jurisdiction.

5. The warrant put in evidence, dated June 27, 1860, purporting to have been issued by Peter Maughan, judge of the probate court of Cache county, commanding the arrest of David Skeene, for larceny, was a valid and lawful warrant on its face; and in the hands of the sheriff of said county was ample and lawful authority to him to arrest said Skeene, and to detain, convey and dispose of him according to the exigency of said writ.

6. If the jury find that Thomas E. Ricks, the prisoner at the bar, was sheriff of said county in 1860, and, having said warrant, arrested said Skeene, then the jury must regard Ricks, as such sheriff, bound by the laws of this Territory to keep said Skeene in his custody, until let to bail, acquitted, or otherwise discharged by competent authority, and not to permit him to escape.

7. If the jury find that said Ricks, as such sheriff, had the lawful custody of said Skeene, after arresting him on said warrant, that no order had been made to discharge him from such custody, then if he were to escape therefrom with the knowledge of said Ricks, by his consent or negligence, said Ricks being able, with reasonable diligence, to prevent it, such escape would be felonious—that said Ricks would be guilty of felony for permitting it, and said Skeene for escaping.

8. If said Ricks, as such sheriff, had said Skeene in lawful custody on a charge of larceny, amounting to felony, and was detaining said Skeene pending proceedings to let him to bail, or for trial for said offence, and that said Skeene made a forcible attempt to escape, and that such escape could not be prevented but by disabling him by shooting, and that said Ricks shot said Skeene for that purpose and under that necessity, and for no other purpose and with no other intent, and that said Skeene died of the wounds so received, and that he is the person whom said Ricks, in said indictment, is charged with killing, then the jury should render a verdict of acquittal.

10. The presumption of law is that the defendant is innocent of the crime charged; and this presumption continues during the trial. It authorizes and requires every fact proved to be construed by the jury, so far as it possibly can, so as not to convict, and so as to harmonize with such presumption—that the jury may suppose and take for granted the existence of such other possible and supposable facts, whether proven or not, as are not inconsistent with the facts proved, if thereby the facts proved can be made consistent with the conclusion that the respondent is not guilty.

11. The proof to justify conviction must be so strong and conclusive as to exclude and negative every other reasonable hypothesis but that of the defendant's guilt; otherwise it can not properly convince the minds of the jury beyond a reasonable doubt.

12. If it appear that the defendant as sheriff had Skeene in his custody on a criminal charge, amounting to felony, and shot him; then, unless all the circumstances connected with the homicide are shown, and negative the charitable intendment of the law in his favor, the homicide must be presumed to have been committed under such supposable circumstances not contradicted by the proof as would give the defendant a legal excuse or justification to take life.

The following seems to be the admitted state of facts in this case, that is, facts admitted by the prosecution and the defence, viz: That at the time of the killing of the deceased, that is, on or about the 3rd day of July—and the day of the killing is not in question— the respondent was sheriff of the county of Cache in this Territory; that by virtue of a warrant of arrest, charging the deceased with a crime amounting to a felony, the respondent as such sheriff had arrested the deceased and held him in custody pending further proceedings for the crime charged against him; that he came to his death by the hands of the respondent at the time mentioned.

The responded claims that the killing was justifiable upon his part; that he had no desire to take the life of the deceased, and only did so to prevent his escape. If you find from the evidence before you that this was a fact; that the deceased was at the time endeavoring to make his escape; that there was no other way left to the respondent to prevent it but by disabling him, and in so doing the fatal wound was given, then, under the law, the respondent was justified and your verdict should be not guilty; but it should be shown that this absolute necessity existed. A man may act in his own defence upon what he had reasonable ground to consider was imminent danger or urgent necessity, and he will be justified, although his apprehensions were in reality mistaken. But in taking life to prevent the commission of crime upon another, or to prevent the escape or effect the arrest of a person accused of crime, there must be actual necessity of such homicide, and not merely reasonable grounds to suppose that it was necessary; and this must be shown to the jury. In the language of the books, "One having custody of an arrested person should treat him kindly; but he may even inflict death to prevent his escape, when no other means are available;" and you must inquire and determine from the evidence before you whether this necessity existed or not.

If you find from the evidence that this necessity did not exist, then a crime was committed by the respondent, that is, the killing was unlawful, and you must again turn to the facts in evidence before you to determine and fix the grade of the crime. The indictment charges the crime of murder in the first degree. Now, an indictment which properly sets forth a murder in the first degree, includes murder in the second degree and one lower grade of the same kind of crime, and that is manslaughter. Now, these degrees of crime cannot be established at all except upon this full measure of proof I have spoken to you about, in all material respects. That is, if the unlawful killing has not been made out beyond a reasonable doubt, then no crime at all has been made out, and the respondent must be acquitted. If the unlawful killing is made out, it is manslaughter, and not murder at all, unless the malice aforethought is shown beyond a reasonable doubt. That is, unless it was done with a wicked mind, for the purpose of wrong doing; a wicked mind, fatally bent on mischief. The malice aforethought must be proven or else the crime is not raised above the degree of manslaughter. The taking of human life, with premeditated design and with malice, *is* murder; is about as brief a description as can be given you. Then, again, if the malice aforethought is shown, it is murder in the second degree, and not in the first degree, unless it is also shown, beyond a reasonable doubt, that the respondent wilfully, deliberately and premeditatedly attempted to and did kill the deceased. So you see that you must find, from the evidence, that the unlawful killing is made out in the first place, and that is but manslaughter, unless there is proof enough to raise the crime up to the second degree of murder, and that is the proof of malice aforethought, either express or implied—that is, expressed by threats or a malevolent feeling against the deceased, or implied by the circumstances surrounding the killing, so as to have no other conclusion but that the respondent entertained this malice against the deceased; that is, if it was done wantonly and wickedly, and with a design to do mischief and to kill, and if that *is* made out, still it is not murder in the *first* degree, unless it has been shown to have been a wilful, deliberate and premeditated design to take the life of the deceased, carried out and accomplished. I have made these classifications and distinctions in the different degrees of an unlawful killing with as little technicality as possible, and I presume you will find no difficulty in applying the facts as you shall find them to these rules of law, thus given to aid you in arriving at your verdict. You have heard witnesses on the part of the prisoner testify that they knew him as a peaceable and quiet man, and as a good citizen. "The good character of a prisoner is always a proper subject for the consideration of a jury, and is to be taken into consideration, not only in cases where doubt of guilt exists, but it may sometimes of itself generate a doubt in the mind of the jury." But, gentlemen, you will perceive at once that where a clear case of guilt is made out on the proof, evidence of good character is of comparatively little importance.

A good deal has been said to you about the importance of your duties. It is not probable that any words of mine can add anything to the feeling of your responsibility. I only caution you in this respect, so you will be careful to do your duty on account of the responsibility. This is not a government of men, but a government of law. What I say to you now is because I am required to give these instructions to you as a part of my duty, under the law of the land. What you do, you do not do as men, but as jurors under the law. We do not administer the law as we wish it was, or as we would make it, had we the making of it. With that we have nothing to do. The court has been sworn to administer it as it finds it, and you should do the same thing. You should not shrink from doing your duty manfully and carefully. Your duty to the respondent requires that. Your duty to the public requires the same thing. You should be careful to be *right*. You need fear nothing except to be wrong; if you are right you will have nothing to fear or care for. Therefore, you are to take this case and look over it with all the care of which you are possessed, and bring to it the best powers of mind and the best judgment you have, with a stern desire to do your duty in regard to it. If you come to the determination that the respondent is guilty, convict him of what the evidence shows clearly he is guilty of, and if he is not guilty, acquit him. You have probably felt this responsibility from the commencement of the trial until now. It is that you properly perform your duty that a trial here has been had. All the evidence that has been given, and everything that has been done has been done for the very purpose of enabling you to do thoroughly and carefully what you now have to do, and that is, to decide upon the guilt or innocence of the respondent. I trust that you will not allow any matter of convenience to yourselves, or to any other person, to hasten you in the examination of the case. Take the evidence and look it all over, and devote such time to it as you desire, and so much time as is necessary in order that you carefully look this whole matter over, and come to a conclusion in your own minds as to whether the respondent is guilty or not.

Gentlemen, I say to you again, discharge your duty to the prisoner and to the people, and render such a verdict upon the law and evidence as they shall be given you in open court as shall satisfy your consciences under your oaths in the years that are to come, whether they be few or many, and as will enable you in that great day when we must all stand before that Great Judge from whose decree there is no appeal, to say with truth, "I discharged my duty to myself, to the people of the United States in this Territory, and to Thomas E. Ricks."

PRICE OF GOLD.

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