TRIAL OF DANIEL E. SICKLES.

SIXTH DAY

On Saturday morning, the sixth day of the above trial, the attendance of persons at the Criminal Court appeared to have increased even upon the numbers of the previous days. Almost immediately after the opening of the Court and the prisoner's entrance, the names of the Jury were called over and answered

Mr. Graham then, at a few minutes after ten o'clock, proceeded to open the case for the defence:*

May it please the Court and Gentlemen of the Jury: This is to me a time for solemn thoughts, and I rise to address you laboring under a severe struggle of feelings. It is a beautiful sentiment, better expressed in the Latin than in the translation, *amicos res opimæ pariunt; adversæ probant* Prosperity is the parent of friends; bad fortune is the fire in which they are tried. Friendship is the most sacred of all artificial as distinguished from our natural attachments; it stands next to those which by the hand of Nature have been interwoven with the objects which she herself creates. Upon the altar of this relation I cast my present offering It carries with it the unction of a warm heart. May it prove to be an efficacious tribute in favor of my client! I have been the companion of his sunshine, and I am now called here to participate in the gloom of his present affliction. Trouble is a mysterious visiter. It seems to be the unshunable doom of man. It has been well said that, "although affliction cometh not forth of the dust, neither doth trouble spring out of the ground; man is born unto trouble, as the sparks fly upwards." That same great influence which has impressed laws upon all parts of creation; which has studded the heavens with their fires and ordained the boundary line between day and night; that same great influence which stretches over the face of Nature verdure's green mantle and again supplants it for the less pleasing dress of winter, that same great influence which has designated the time for the dropping of the leaves and the falling of the sparrow, is the will that guides and the hand that holds the rod with which in this life we are punished. As we pass from the proceedings in which we are here engaged may we be permitted to repeat over their result, which I confidently anticipate, as a congratulation to this defendant for the severe ordeal through which he has passed "Behold, happy is the man whom God correcteth; therefore despise not thou the chastening of the Almighty, he maketh sore and he bindeth up; he woundeth and his hands make whole; he shall deliver thee in six troubles—yea, in seven there shall no evil touch thee"

A few weeks since the body of a human being was found in the throes of death in one of the streets of your city. It proved to be the body of a confirmed and habitual adulterer On a day too sacred to be profaned by worldly toil; on a day when he was forbidden to moisten his brow with the sweat of honest labor; on a day when he should have risen above the grossness of his nature, and though on no other day he had sent his aspirations Heavenward, he should have allowed them then to pass in that direction, we find him besieging with the most evil intentions that castle where, for their security and repose, the law had placed the wife and child of his neighbor. Had he observed the solemn precept, "Remember the Sabbath day to keep it holy," he might at this moment have been one of the living The injured husband and father rushes upon him in the moment of his guilt, and, under the influence of phrenzy, executes upon him a judgment which was as just as it was summary

The issue which you are to decide here is whether this act renders its author amenable to the laws of the land In the decision of this issue, gentlemen of the jury, you have a deep, a solemn interest. You are here to fix the price of the marriage bed You are here to say in what estimation that sacred couch is held by an honest and an intelligent American jury. You are favored citizens. You live in the city which constitutes the seat of our Federal Government; a city consecrated to liberty above all others, but not to the liberty of the libertine; a city bearing the name of the illustrious Washington, the "Father of his Country," of whom it has been emphatically and truly said that he was "first in war, first in peace, and first in the hearts of his countrymen " You may feel a pity, in reviewing this occurrence, for the life which has been taken; you may regret the necessity which constrained that event; but, while you pity the dead, remember also that you should extend commiseration to the living That life, taken away as it was, may prove to be your and my gain.

An interference with the marriage relation must strike every reflecting mind as the greatest wrong that can be committed upon a human being It has been well said that affliction, shame, poverty, captivity are preferable; and I do not know that I can express the sentiment more happily than in reciting the lines which the great dramatist has placed in the mouth of the Moor, over the supposed discovery of the inconstancy of his Desdemona.

"Had it pleas'd Heaven
To try me with affliction; had it rain'd
All kinds of sores and shames on my bare head:
Steeped me in poverty to the very lips,
Given to captivity me and my utmost hopes;
I should have found in some part of my soul
A drop of patience; but, alas, to make me
A fixed figure for the time of scorn
To point his slow unmoving finger at,
O! O!
Yet I could bear that too, well, very well,
But there, where I have garnered up my heart:
Where either I must live or bear no life,
The fountain from which my current runs,
Or else dries up; to be discarded thence:
* * * * * * *
Turn thy complexion there!
Patience, thou young and rose-lipped cherubim;
Ay, there look grim as hell."

You are here to decide whether the defender of the marriage bed is a murderer, whether he is to be put on the same footing as the first murderer, and is to be presented in his moral and legal aspect with the same hues of aggravation about him.

Gentlemen, the murderer is a most detestable character Far be it from me to defend him before this or any other jury Society cannot, it ought not to contain him Calm, cold, and calculating, he saves his malice as the miser saves his treasure His bosom is the vault in which he deposits it Age possesses no claim upon his consideration, nor does sex interfere with him in the execution of his bloody purpose. In the very air he sees his weapon, and it marshals him the way that he was going He selects some object of innocence for his victim, and choses some lonely spot for the perpetration of his horrid deed. In the drapery of the night he wraps himself, and at that hour when

"O'er the one half world
Nature seems dead and wicked dreams abuse
The curtain'd sleeper,"

he steals forth to the accomplishment of his bloody design. Afraid of his own movements, he is compelled to address the very earth itself in the language of supplication—

"Hear not my steps which way they walk, for fear
The very stones prate of my whereabouts."

If, between the act which has placed the defendant in his present position and the act of a criminal like that, you can trace any similarity, it will be for you to institute and perfect the comparison. It is not in my power to do so

There are some other matters, gentlemen, to which I shall very briefly allude before I proceed to the discharge of the important duty which has been cast upon me by the concurrence of my learned associates for the defence There are some features of this trial which are to be borne in mind by you at this time

In the first place, there was an extraordinary occurrence in the empanneling of the body which is composed of yourselves You have heard the explanation of the learned prosecuting officer for the course he then pursued The Court had no alternative but to administer the law, the object on was a matter entirely for the license of the District Attorney but you were called upon to witness the moving spectacle of the son of misfortune being thrust from his rights for no other reason than because he had the misfortune to be unfortunate It does not speak strongly in favor of the intelligence of the law, and you will remember how soothingly his Honor upon the bench expressed himself at the time he was forced to sustain these objections, because he evidently desired to avoid inflicting anguish upon the bosoms of those unfortunate men, you will remember how tenderly his Honor expressed himself. I say that it speaks not strongly in favor of the intelligence of the law, and, from what transpired at the time the objection was discussed before the Court, it appears that this feature of the law has about it an error of a century's age.

Another feature to be regarded about this trial is the presence of extra counsel on the part of the prosecution I have been informed that extra counsel have not been assigned to this case by the act of the Government, and it will be for you to say, although there may be a legal propriety in the appearance of extra counsel, how far the exigencies of this case justify the appearance of such counsel on this occasion.

Another feature of the case to be borne in mind by the jury is this: the extraordinary character of the opening of the learned counsel for the Government It was an able, it was an eloquent production It reflected credit upon the mind from which it emanated, for it was stamped with a high order of ability, but it will be for you, gentlemen, to say, when you pass that opening in review before your minds, whether or not it was warranted by the humanity that should ever attach itself to his position. You will remember the extraordinary expressions at the "prisoner coming to this carnival of blood," of his being "a walking magazine," of his "adding insult to murder," of his "standing bravely over his victim as though with dagger drawn ready to plunge it in his bosom" Gentlemen, you would have thought from his opening that the learned counsel for the Government was describing a case of the most deliberate homicide, and yet the case he was describing was the case of a man, who while acting in a sense and under the influence of a sense of right, was nevertheless no doubt at the time entirely bereft of his reason. At the time he alluded to the magazine which he described as being in the possession of this defendant, did it occur to the learned counsel for the prosecution to describe also the weapons that were in the possession of this adulterer? For with his opera-glass and white handkerchief he was capable of carrying death just as certainly to the domicil of this defendant as the weapons with which this defendant was provided were capable of carrying death to him. The sight of that opera-glass and those other appliances with which this man was furnished in the prosecution of his unhallowed purposes were just as certain death to the happiness and hopes of this defendant as though the pistol of this adulterer had been presented at his breast.

Another feature of this trial which I think it proper to present to your minds is this: you will remember that the learned counsel for the Government, in questioning one of the witnesses, asked him to describe what he saw at the time of the occurrences which led to the death of the unfortunate deceased. You will remember that the witness to whom that question was put desired to spread before the court and jury all that he saw and heard upon that fatal occasion. The learned counsel for the Government rose in his place and protested against the witness stating what was not responsive to his question, and the gentleman made an admission in the hearing of this jury which seems to me, at all events, to be unfortunate so far as the success of this prosecution is concerned. Knowing that some of the witnesses might testify to a fact which might detract from the aggravated hue sought to be put upon the occurrence by the testimony for the prosecution, the learned counsel for the Government stated that he put the question, intending that the witness in his answer should discriminate between what he saw and what he heard. You will remember, gentlemen, that the honest Judge upon the bench—and I can never forget that occurrence, no, not even to the latest hour or minute of my existence you will remember, gentlemen, that not in a spirit of severe but rather of kind reproof the judge said: "When a witness is put upon this stand, no matter how he is questioned, he is put here to tell the whole truth and nothing but the truth, and it is the duty of the Court to see that the witness is protected in stating all the knowledge which he may have gained upon the occasion in question"

Now, gentlemen, I ask you this why is it that this prosecution is thus technically managed? Is there any thing behind which, if it escaped, would satisfy this jury that this is an unhallowed prosecution? I do not mean by this to impeach the integrity of the authorities in any way. I use the word unhallowed rather in the sense that it ought not to succeed through the instrumentality of an intelligent jury Is there any thing in this prosecution which requires that the case should be tried in the way in which it has been tried, that from this jury all but property holders should be excluded, that in the opening address of the learned counsel for the Government the occurrence should be presented under a hue which the facts do not impart to it, that strong extra counsel should be employed in order to sustain the prosecution; that witnesses should be examined in a particular form so as to exclude from the ears of this jury that fact which, when it becomes a part of this case, must incline the scale in favor of the defendant? It will be for you, gentlemen, under all the circumstances as I have presented them to you, to account for these extraordinary features of this prosecution

In relation to your province, gentlemen of the jury, as I understand it, the Court has invested you with the largest powers I have read several of the charges of the learned Judge upon the bench to juries, and I find that he is imbued with a spirit which has been only exemplified in an equal degree in one instance, to my knowledge by any other jurist, and that is by the great Chancellor Kent The greatest champion that juries ever had in this country was probably that great and now deceased jurist; and the same spirit which seemed to have entered into the instructions and judgments of that learned jurist with reference to the rights of juries seems to influence the learned Judge upon the bench in relation to your province As I understand it, every thing is to be passed upon by the jury not only the facts entering into the occurrence which is charged as a crime, but the state of mind, the intention, the motives, that impalpable influence, if there is such an influence, which set on the defendant to the commission of the act for which he is now arraigned as a criminal before you

The learned counsel then proceeded to call the attention of the jury to the definition of murder as given in Blackstone's Commentaries—a book which, he said, was of the highest authority—and the law of murder, as there laid down, was to control the jury in the discharge of their duty Blackstone—borrowing his definition from Coke—defines murder to be

"When a person of sound memory and discretion unlawfully killeth any reasonable creature in being and under the King's peace (or, in this country, under the peace of the people of the United States) with malice aforethought, either express or implied "

I shall (continued Mr Graham) presently call the attention of the jury to the question whether, at the time of the death of this deceased, he was in the peace of this great Government—whether the adulterer, when he goes forth on his mission, does not cease to be in the peace of the community; and whether he is not making direct war upon those great fundamental principles on which not only the institution of marriage, but our whole social system rests Manslaughter is defined by Blackstone (page 191) to be "the unlawful killing of another without malice, either express or implied, which may be voluntarily, as upon a sudden heat, or involuntarily, but in the commission of some unlawful act "

The difference between murder and manslaughter—and it was so stated by the District Attorney—is that one is supposed to be committed in cold blood, as the result of premeditation, and the other is supposed to be committed in a state of heat resulting from passion, but resulting from passion that ought to be controlled, but was not controlled, because I shall presently insist that passion which cannot be controlled is not passion which places any man within the pale of criminal accountability

The learned Counsel then quoted copiously from Foster's Crown Law definitions of manslaughter and also of malice This, he said, is an important point, because the great question to be solved by the jury in this case is what was the state of the defendant's mind at the time he slew the man who had contaminated the purity of his wife It is perfectly immaterial how death was inflicted whether it was the result of one shot or thirty shots, whether the man who was killed stood up or laid down The great question is, what was the influence of the provocation upon the mind of the man who slew him, what was the condition of the mind of the defendant at the time he slew the deceased Foster defines malice in such cases to mean that the killing was "attended with such circumstances as are ordinary symptoms of a wicked, depraved, malignant spirit " And as, therefore, the jury are prepared to find that the act of a husband who vindicates the marriage bond by slaying the man who has dared to violate it is symptomatic of a wicked, depraved, and malignant spirit, there would seem to be an end of the case, or that branch of it I have given the jury the definitions of murder and manslaughter, and it will be for them to say whether this case comes within either of those definitions. If it is a crime for a husband to defend his altar, his humble family altar, and if death is to be visited on him for defending it, then the highest honor that can be conferred upon any man is to compel him to die such a death

Now, three things are to be noticed—first, that human laws do not shield us in the enjoyment of all our rights, second, that a right created by divine law is perfect, though not recreated by human law; and, third, that to certain relations the divine law has attached responsibilities to execute which is not to commit a crime The two first considerations are properly considered together Our legal system does not reach the case of every wrong that can befall us There are certain wrongs which we are not protected against at all by human laws, and therefore the only law which protects us against them is the law which is traced in the human bosom by the finger of God: the law of human nature; the law of human instinct When human laws do not protect us against injury we appeal to our instincts; then we are thrown upon the laws of our instinct, and have a right to defend ourselves against those wrongs. This position will be perceived upon reflection to be well founded There is no law which says you have a right to defend yourself against attack except the Law of nature It would be folly to pass a statute to say that a man may defend himself against the attack of a highwayman Self preservation is nature's great law, and it overrides all other laws Two men are floating on a plank, and it is necessary that one should be drowned in order that the other may be saved It is not murder in the person who, to save his own life, drowns the other when two persons are so situated, because the Law considers that all social regulations must yield to those great principles of nature which are implanted in us and are a part of us as we come from the hands of the great Creator [The counsel here made further citations from Foster's Crown Law]

Not only is the right of self defence founded in human nature, but society cannot supersede the right What is the law of self-defence? Is it merely the right of defending *yourself* and allowing any person to come along and slay your wife or child? Has the Creator made you so abominably selfish that you satisfy the demands of your nature when you defend yourself, though you allow the partner of your bosom or the off-spring of your loins to be stricken down under your eye It is not so, as I shall presently show and that involves the consideration of the last of the propositions to which I have thus preliminarily directed your attention Before civil societies were formed for mutual defence and preservation the right of self-defence remained in the individual, and it could not reside elsewhere

[The learned counsel then read further extracts from the same authority to show that to a certain extent nature's law is our protection, and that social laws cannot supersede or divest us of that protection]

Now, gentlemen of the jury, if, as I shall presently show you by numerous citations from Scripture, by the laws of that the adulterer is allowed to be slain, and the right of a man to protect his wife against contamination is made a natural right, then, within the authorities which I have read to you, it is not in the power of human laws to take away that right from those upon whom it is thus conferred Do you mean to tell me that, when the great Being above has said "thou shalt not steal," it is not as high a crime to steal before as it is after human legislation has said "thou shalt not steal"? When the Great Being above said "thou shalt not kill," and "thou shalt not bear false witness against thy neighbor," those crimes were perfect He himself pronounced these ordinances Human laws may enforce them with additional sanctions, but do not impart to them additional solemnity. The crime would be just as great and smell as rank in the nostrils of Heaven if human legislation should ignore the subject entirely as though human legislation had undertaken to embody all that is in the Decalogue in their own statutes. In this District no protection is provided against an adulterer unless you can protect yourself against him. There is no law which provides such protection What is the inevitable result? Why, that you are thrown upon the principle *se et sua defendendo*—defend yourself and yourown I put it to you, do you not desire to be just as safe against the adulterer as against the house breaker? Has society redeemed

* Notwithstanding the commendable discretion which the Reporters have observed in the preparation of this address, the Editors have, for obvious reasons, found it necessary to omit a few passages and to modify the phraseology of some others.