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**Trial of HENRY PHILLIPS**

FOR THE

**MURDER**

OF

**GASPARD DENNEGRI.**

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Supreme Judicial Court, Boston,

JANUARY 9, 1847.

PRESENT, PARKER, Chief Justice,  
JACKSON and }  
PUTNAM, } Justices.

THE Prisoner, Phillips, being arraigned with Joseph Mc'Cann, they were asked by the Court if they wished to have Counsel assigned.

*Prisoner.* Yes.

*Court.* Who do you wish, should be assigned ?

*Phillips.* LEMUEL SHAW, Esq.

*Mc'Cann.* GEORGE SULLIVAN, Esq.

*Court.* They are assigned.

These gentlemen undertook the defence jointly.

*Mr. Shaw.* We wish to have the prisoners tried separately, as they are charged, one with an offence, in the first degree ; the other, in the second.

*Court.* Let Phillips be tried, and Mc'Cann remanded to prison.

The Clerk then called the Jurors, and the following Gentlemen were sworn.

BENJ. P. HOMER, *Foreman.*  
JAMES DAVIS,  
GEORGE DARRICOTT,  
JOSHUA EMMONS,  
JOHN ELIOT,  
JOSHUA GILMAN,

ANDREW HOMER,  
DANIEL MESSINGER,  
JOSEPH POWELL, *jun.*  
SETH PIERCE,  
WILLIAM WELLS,  
JAMES BIRD.

The prisoner challenged a number, being prompted by Mr. Sullivan.

# Commonwealth of Massachusetts.

SUFFOLK AND NANTUCKET, SS.

*At the Supreme Judicial Court, begun and holden at Boston, within the said County of Suffolk and for the said Counties of Suffolk and Nantucket, on the fourth Tuesday of November in the year of our Lord One Thousand, Eight Hundred and Sixteen; and continued in Session from that day, until the Eleventh day of December, in the same year.*

The Jurors of the said Commonwealth of Massachusetts, upon their oath, present, that Henry Phillips, now resident in Boston, in the said County of Suffolk, Mariner; and Joseph McCann of Boston, in the said County of Suffolk, Mariner; not having the fear of God before their eyes, but being moved and seduced by the instigation of the Devil; on the first day of this present month of December, in the year of our Lord One thousand eight hundred and sixteen, with force and arms, at Boston aforesaid, in the County of Suffolk aforesaid; in and upon one Gaspard Dennegri, in the peace of God, and of the Commonwealth aforesaid—then and there being, feloniously, wilfully, and of their malice aforethought, did make an assault; and that the said Henry Phillips, with a certain iron loggerhead, of the value of fifty cents, which he the said Henry Phillips, in both his hands, then and there, had and held, the said Gaspard Dennegri, in and upon the right side of the head of him, the said Gaspard Dennegri, then and there feloniously, wilfully, and of his malice aforethought, did strike; giving unto him, the said Gaspard Dennegri, then and there, with the said iron loggerhead, by the stroke aforesaid, in manner aforesaid, in and upon the right side of the head of him, the said Gaspard Dennegri, one mortal wound, of the length of five inches, of the breadth of three inches, and of the depth of one inch; of which said mortal wound, the said Gaspard Dennegri, from the said first day of December, in the year aforesaid, until the eighth day of the same month of December, in the same year, at Boston aforesaid, in the County of Suffolk aforesaid, did languish, and languishing did live; on which said eighth day of December, in the year aforesaid, the said Gaspard Dennegri, at Boston aforesaid, in the County of Suffolk aforesaid, of the mortal wound aforesaid, died. And that the said Joseph McCann, at the time of committing the felony and murder aforesaid, in manner aforesaid, feloniously, wilfully, and of his malice aforethought, was present, aiding, helping, abetting, comforting, assisting and maintaining the said Henry Phillips, the felony and murder aforesaid, in manner and form aforesaid, to do, commit, and perpetrate; and so the Jurors aforesaid, upon their oath aforesaid, do say, that the said Henry Phillips and Joseph McCann, him the said Gaspard Dennegri, in manner and form aforesaid, feloniously, wilfully, and of their malice aforethought, did kill and murder, against the peace of said Commonwealth, and against the form of the Statute, in such case made and provided:

DANIEL DAVIS, *Solicitor General.*

A TRUE BILL,

JOHN JAMES, *Foreman.*

DAVIS, *Solicitor General,*

Opened the cause by remarking that the Prisoner, though a stranger, from the benignity of our laws, has no injustice to fear. He has the same rights that a citizen would have, on a trial for Murder. Two eloquent gentlemen are assigned to defend him; even the Court is required, by our laws, to be his Counsel.

He is charged with the greatest crime that can be committed, one that is punished with death in every country, and one to which that penalty is equally assigned, both by the laws of God and Man. It is a crime no less against the laws of nature, than those of society. If the people of New-England, have any prejudice or bias upon this subject, it is against the shedding of blood; and against capital punishments generally. But if any such prejudice exists, you, Gentlemen of the Jury, are not to be influenced by it. If the occasion for changing the sentiment, in regard to capital punishments, has not already come, it soon must. It is a well known, and unprecedented fact, that within the last nine months, there have been four homicides committed in this town. But whatever may be the public sentiment, you Gentlemen, are not to be influenced by any motives, in this case, except those of justice, to the Commonwealth and the prisoner.

The Solicitor then stated some general principles of law to the jury, and to enable them to understand the testimony more easily, as it should be given by the witnesses on the stand, he gave a sketch of the evidence as it had been given to the Grand Jury, and as he expected it would turn out on the trial.

The witnesses were then examined. Dr. George C. Shattuck was called to the stand and sworn.

*Solicitor General.* You will testify what you know, relative to the present cause.

*Dr. Shattuck—*

On the 2d day of December last, I was called to examine Gaspard Dennegri: he had a large contusion on the head, above and behind the ear; there was no depression of the skull; he had symptoms of lung fever. From an examination of the injury, it appeared that there was an effusion of blood between the scalp and the skull; and an incision being made a few days after in the scalp, a bloody *serum* was found. He died on the 8th of December, having been deranged for two or three days before. I examined the body and found the skull to be fractured. The fracture was two or three inches in length, and wider toward the base of the skull, than

in the middle of the fracture. The brain was found to have been inflamed, and the blow had caused a partial separation of the sutures of the skull.

*Solicitor General.*—Have you any doubt that the diseased state of the brain was occasioned by the blow?

*Witness.*—Before opening the brain, I thought the disease arose very much from the exposure of the man after the violence was committed, and from his state of intoxication. There was a great deal of coagulum between the *lateral sinus* and the substance of the brain.—This could not have been discharged, as no surgeon would think of opening the *lateral sinus*. I should think the effects of the blow an adequate cause of the death.

In answer to a question by Mr. Sullivan, Dr. Shattuck then explained the structure of the head, and the membranes of the brain. The *pia mater*, he said, was in this case separated from the skull, but whether by the blow or by the subsequent inflammation, he could not say. Sometimes relief is obtained by trepanning; in this case the extravasated blood could not be let out without separating parts of the skull, to separate which would produce death.

*Mr. Sullivan.*—Do you not think that the intoxication and exposure increased the inflammation?

*Witness.*—I should think that the tendency,

*Dr. Ezekiel Cushing*—being sworn, said he saw the deceased the evening before his death, and attended the dissection. He knew no other cause of the death than the wound, and thought that an adequate one.

*Ques.* What was the immediate cause?

*Wit.* The inflammation, I should think. This was increased by intoxication and exposure. No surgical operation could have been performed.

*Lawrence Nichols*, being sworn, stated that the deceased lived with him. He saw him on the day he received the injury. The deceased had then apparently no disease; he was well on the 1st of December. The prisoner had no acquaintance with Dennegri.

The Solicitor General then exhibited to the Jury, a plan of the house, at which the transaction took place; and the adjoining houses and streets.

*Charles Rogers*, being sworn, said he was present and saw the whole transaction. It was at the Roe-Buck Tavern, near the Fish Market. Foster, the son of the hostess, was reading by the light of a candle, which he held in his hand; Dennegri blew it out. It being lighted again, Phillips, the Prisoner, then took it and said he would knock down the first one that blew it out. A friend of Dennegri, who understood English, (for D. was an Italian, who had lived in this country but about four months, and had not learned the language) told him what Phillips said. Upon this, another person present, Vautier, thrust his fist into Phillips's face, and offered to fight him. Phillips wished to fight Vautier, but the others interfered and prevented it. Mrs. Foster, who keeps the tavern, came into the room and took Phillips out. Phillips came into the room again, and wished to fight Dennegri, who was now out. Phillips having left the room again; Dennegri came in and expressed a wish to fight with him. Phillips returned while Dennegri, was in the room, and no fighting took place, but all seemed to be quiet. They afterwards went out. Dennegri was very angry when he came into the room to fight. The witness heard Phillips say, that the next time he came ashore he would bring his pistols and blow out *his or their* brains, he does not recollect which.

*Solicitor Gen.* Was Dennegri present when Phillips said this?

*Wit.* He was not: he had gone out with his friends. In about half an hour he came back alone, and went into the back room, where Phillips then was. The dispute about the candle had ceased before Dennegri went out.

*Ques.* When did Phillips say he would bring a pistol on shore, and blow out Dennegri's brains?

*Wit.* It was after the dispute about the candle, before Dennegri went out. Phillips was talking with the people in the room.

*Mr. Sullivan.* You said that Dennegri took off his coat—For what purpose?

*Wit.* It was when he wished to fight with Phillips. After Dennegri returned, some one present said he had

a knife about him. Miss Foster immediately called him to her, and felt his arms and bosom, and thought she felt a knife. She mentioned this to Mary Davis, who told it to Mrs. Foster. Mrs. Foster then went to the door and called Dennegri to her, and put him out of the house. He stayed at the door knocking. I then went out the back door to go home. I stayed in the passage-way a few minutes. Mc'Cann, Kerr, Phillips and Foster, called after me : they came out at the back door, and overtook me in the passage-way. Kerr and Foster went as far as the Shoe-store, at the corner made by the passage-way and Ann-street. They turned the corner, came round and stood opposite to Mrs. Foster's front door. Dennegri went from the front door round to the back door. Phillips and Mc'Cann followed him, and I walked on after, and pretty near them, at the distance of nine or ten feet. Dennegri knocked at the back-door. When he had been there a minute or two, Phillips went up to him and said, "Halloo, shipmate," and gave him a blow on the head, with a loggerhead which he brought out with him. Dennegri's face was turned towards the door, and he had not time to turn round after Phillips spoke to him before the blow was given; he struck before the words were out of his mouth. Dennegri fell at the first blow.— Phillips struck him again. I called to him not to strike a man after he was down. After this, he struck him on the thigh. All these blows were given with a loggerhead, (which was produced in Court.) As soon as he desisted from striking, Mc'Cann got astride of Dennegri and struck him two or three blows with a rolling-pin.— They then began to search him for a knife, but could find none. In doing this, they rolled him over two or three times. Dennegri did not speak after he fell.

I then went into the house. Phillips came in soon after, and said he had found a knife about the deceased. The people wished to see it. He at first refused to show it, but afterwards consented, and took out of his jacket pocket, a small desert knife. Mary Davis on seeing it, said it belonged to the house. Kerr said, that he himself took it out of a chair, while standing in the passage-way, and that Phillips took it out of his hand. Phillips then acknowledged that Kerr gave him the knife.

*Ques.* Was it so light in the passage-way, that objects might be distinctly seen?

*Wit.* It was—When Phillips was going towards the back door, I saw the loggerhead in his hand.

Afterwards I went out to try to get Dennegri home. He was lying in the passage-way. I could not get him home alone; Kerr came to my assistance. We got him to the gate where he fell down. All he said was, *tout le meme, tout le meme*. I left him there.

The witness did not know of any previous quarrel between Phillips and the deceased. Phillips did not seem disposed to fight till Vautier had thrust his fist into his face. The witness held Dennegri, when he had discovered a disposition to fight. He struggled violently.—There was great confusion in the room.

*Mr. Sullivan.* Was Dennegri boisterous when he stood at the front door? *Wit.* No.

*Mr. S.* Who is Kerr?

*Wit.* A fellow apprentice with Foster.

*Mr. S.* At what time did the transaction take place?

*Wit.* About ten o'clock.

*Mr. S.* At what distance was you when the blows were given? *Wit.* About six feet.

*Mr. S.* How soon was the back door opened?

*Wit.* Immediately after the striking ceased.

*Mary Davis* was sworn. She said the candle was blown out and lighted three times; Phillips was standing on the opposite side of the room. Phillips then took the candle into his hand, and said that if any one blew it out, let it be who it would, he would blow out his brains. It was blown out. This caused the dispute between Dennegri, Vautier, and Phillips. The dispute soon spread through the room. Dennegri threw off his coat. Rogers held him and prevented him from fighting. Mrs. Foster stilled them, and took Phillips out of the room. They returned, and Mrs. Foster wished them all to drink together, and make friends. They all refused.—They were calm before they went away. Dennegri was very pleasant and good humoured when Charlotte Foster examined him to find a knife about him, and she thought she found one in his bosom. Witness told Mrs. Fos-

ter of this. Mrs. Foster then came into the room, and said to Dennegri, "Come here, my son, I wish to speak to you; upon which she took him by the hand, and led him to the door, and told him to go home to his master. He stayed and knocked. She told him he should not come in. Meantime Rogers, and after him, Phillips, Mc Cann, Foster, and Kerr, went out as Rogers has stated. Soon after Foster and Kerr returned into the kitchen by the back door, which they fastened. Dennegri soon came round to that door and knocked against the glass. (There was a window in the door). When he had been knocking some time I went to let him in. I saw Phillips there with a loggerhead in his hand. He raised it with both hands, and struck Dennegri on the side of the head. He fell. He then struck him with the loggerhead across the shoulders, I believe but once. He then stepped away, and Mc'Cann came up and struck him on the body once or twice with a rolling-pin. Then there was a cry made that Dennegri was dead, and the door was opened. Phillips and M'Cann were *pulling him over* and searching for a knife. This continued for some time. I went out and saw it. They then went into the house; Dennegri *came too* pretty soon, and was carried into the kitchen, and set in a chair by the fire. He asked Mrs Foster to give him a bed. She told them to lay him upon the sofa in the dining room. We all thought him a little the worse for liquor. She could not say whether Phillips had drunk too much. It was light, so that she could see the striking plainly.

When Phillips came in he said he had found the knife. He had it in his pocket. C. Foster and I asked him to let us see it. He refused; we insisted; he then took it out and shewed it to us. He said "here's the knife." It was a small *tea-knife* belonging to Mrs. Foster. We told him that it belonged to the house. We [Charlotte and I] had both seen it the afternoon before lying in a chair back of the house. Phillips then threw it on the table and said he would go off, he would not stay in a house where he was in danger of his life.

On being questioned, witness said Dennegri stood looking into the door, with his face close to the glass, when he was struck. He was only knocking, not using any violence.

The loggerhead being shewn to the witness, she said it appeared to be the same she had seen in the house; she saw it the afternoon, before the occurrence took place; it was not bent then. [The loggerhead had been considerably bent, and was broken, when produced in court.]

*Ques.* Had you known Dennegri long?

*Wit.* I had not. During my acquaintance with him he used to go to Mrs. Foster's on Sunday afternoons and evenings.

*Ques.* Was there any quarrel between Dennegri and Phillips.

*Wit.* I knew of none. The only quarrel I witnessed was between Vautier and Phillips. Foster appeared to be angry with Dennegri. Phillips appeared to resent the injury done to Foster.

When C. Foster searched Dennegri, she said aloud, "he has a knife." Dennegri did not appear to understand it. He knocked at the kitchen door pretty hard. All in the kitchen supposed he had a knife. When Phillips and others went out of doors they appeared to be very much *flustered*. Charlotte took down the rolling-pin and handed it to Kerr.

Phillips and Mc'Cann, and another, brought Dennegri in. When he was brought in, he was bleeding at the mouth, nose and ears. We all thought he was not much hurt. They supposed him to be much the worse for drinking.

*Ques.* Was Phillips intoxicated?

*Wit.* I do not know.

*Ques.* Was it light enough to see distinctly?

*Wit.* I saw the striking very plainly.

*William Kerr, sworn.* I was at Mrs. Foster's in the evening, on the 1st December. I saw Nathan Foster reading before the fire. Dennegri blew out the candle. Phillips was standing behind Foster. Phillips said, give me the light; and let any body blow it out, and see what

a clip he'll get across the face. Vautier went to Foster and said, I understand you are going to give this man three or four hard knocks. Foster said he did not say it, it was Phillips. Vautier said he should not think more of Phillips, than he should of a child. Vautier then asked Phillips if he said so, Phillips said, yes. I say, the man who blows out the candle, I'll blow his brains out. Vautier then shook his fist in Phillips' face. They wished to fight, but were prevented.

After Dennegri was heard to fall, the door was opened, and I saw Phillips and Mc'Cann overhauling him, and unbuttoning his waiscoat to find his knife. After they had searched some time, I looked round and saw a knife in a chair. I said, do you think this is the knife? Phillips replied, give it me. He took it, and put it into his pocket, and then went into the house. They asked him if he had the knife. He said he had got it. He seemed loath to show it, but finally did. Charlotte Foster said, she knew the knife, and where it was. I don't know that I said then that I took the knife from the chair.

On being questioned, the witness said, I never saw Dennegri or Phillips before that day: did not see Dennegri until the quarrel happened. Phillips would not strike Vautier while Rogers held him. Dennegri was noisy at the time that Phillips was called out of the room. When Phillips returned, Vautier asked him if he would drink a glass of wine with him. Phillips said, yes a gallon; and give you another. I went up stairs while Dennegri was knocking as the front door; when I came down, there was an impression among the people there, that Denegri had a knife about him. I was afraid to go home. I went round the house because some of the others did. I thought Dennegri might hurt Rogers, and we went to protect him. I armed myself with a rolling pin, when I got to the middle of the passage way, Mc'Cann said, "I want something, give me this," and I let him have the rolling pin. After I returned to the kitchen and fastened the back door, the first thing I heard was the fall of Dennegri. I was in the middle of the room.

*Ques.* Did you see Mary Davis at the door?

*Ans.* I do not recollect seeing her there. Phillips's face was toward the door when I took the knife out of the chair.

*The Sol. Gen.* produced a knife and asked the witness if it was the one he took from the chair.

*Wit.* It is of the same kind—it looks like it. I did not think that the wounds Dennegri had received were mortal. After he was carried in, Phillips washed his head with rum. Nothing was then said about Dennegri's having been struck. Phillips said he guessed he was not much hurt.

*Question by Mr. Sullivan.* When you sallied out the back passage-way, had any of you an intention to injure Dennegri?

*Ans.* I had not; I took the rolling pin to defend myself.

[The examination of the witnesses on the part of the government being concluded, the court was adjourned to the afternoon.]

The court being opened after the adjournment, the Solicitor General read the authorities quoted below, in regard to the weapon used in a homicide, and the kind and degree of malice necessary to constitute murder. † Blackstone's Commentaries, 199.—1 East. Chapter on Homicide § 2.—4 Black. Com. 200.—1 East. Chap. on Homicide § 13 and 55.

The examination of witnesses on the part of the prisoner then commenced.

*Nathan Foster*, sworn—I was reading in my mother's kitchen, on the evening of the first of December, before the fire. Some one blew out the light. I did not like it. Phillips said, let me take the light. Vautier said to me, "Did you say, Nathan, that you would give some hard knocks to any one who blew the light out?" I replied, it was Phillips who said so. Upon this, there was some confusion. Vautier pulled off his coat.—He was held by the others, to prevent his fighting. They afterwards went into the bar-room, and drank together.—I did not go. Dennegri and three of his companions went out, and some time afterwards, he returned alone. It was supposed he had a knife, at which the others were very

much alarmed, and there began to be another row. After Dennegri was put out of doors, I heard him knocking at the front door, and went up stairs to look out at the window to see what he was doing. I then came down and went out with others at the back door, and round the corner, and saw Dennegri standing by the front door, and Phillips and Mc'Cann on the opposite side of the street. We all thought that Dennegri had a knife.

When Dennegri returned after going out with his companions, Phillips did not seem to be angry.

Kerr was with me when I went out. I walked a-head of him. I did not see Rogers in the passage.

[Foster left the stand, and C. Rogers was again called.]

*Mr. Sullivan.* Did you stop in the passage when you went out? *Rogers.* I did a few minutes.

*Charlotte Foster,* sworn. Nathan had a Bible, and was looking for the text. Dennegri blew out the light three times. Phillips took it and said, if any one blows out the light, I will blow his brains out. I saw Phillips light the candle, and it was blown out. I do not know by whom. Vautier asked him if he would blow any one's brains out, who blew out the candle; Phillips said, yes; and they then went into the other room, where this was all settled.

I felt of Dennegri's sleeves and bosom, and thought at first he had a knife, and told him that it was said he had one. He jerked away, but said nothing. It was the general opinion that he had a knife.

I gave the rolling-pin to Kerr when he went out.

*Ques.* Was Dennegri boisterous and violent at the door?

*Wit.* He kicked at the front door, but not at the other.

We thought that Dennegri was not severely wounded, but supposed him to be very much intoxicated, and expected he would be better in the morning. I assisted in taking care of him—he lodged all night on the sofa, in a room not all plaistered, into which there are two or three doors, and on that night, there was no fire. He was covered with five blankets.

Phillips brought in a knife in his hand, and afterwards put it into his pocket. I, and Mary Davis, told him the

knife belonged to the house. Soon after, he went away peaceably.

*Solicitor G.* Was he not asked two or three times to produce the knife before he did?

*Wit.* I did not hear him asked.

*Mrs. Foster*, sworn. She gave a general statement of the facts, not materially varying from the testimony already given.

About 8 o'clock in the evening, I heard a conversation in the kitchen, louder than I wanted. I went in and spoke to Phillips, and calling him aside, talked to him; we then returned, and I told him, and the others, to drink and be friends.

Dennegri went out with his friends, and in about three quarters of an hour, returned. Mary Davis came to me and told me that Dennegri had a knife. I went into the kitchen and called him to me, and led him to the door. I told him that I heard he had a knife, and that, in this country, it was a dreadful thing to carry a knife, and bid him go home.

After the affray at the door, somebody came and told me he was dead; upon which I went into the kitchen and saw him, and directed them to carry him into the other room, and bathe him. I did not take that care of him I should, had I known he was dangerous.

I have known Phillips four or five months, during which time, he has always been very peaceable, polite, and honest, and was very kind to my young children. He was in the Revenue Cutter some time. When he went to sea, he used to leave his trunk and clothes with me.

*Benjamin Trevett*, sworn. Phillips was under my command from Oct. 12th, to Dec. 9th, in the Revenue Cutter. He was always considered to be a peaceable man, and trustworthy. I never knew him engaged in any quarrel.

*Zenas Weldon*, sworn. I have known the prisoner from the cradle, have sailed in the same ship with him, he was always like a brother, always humane. I never knew any bad passion in him.

*Jedediah Beals*, sworn. I was in the Revenue Cut.

ter with Phillips. He was as agreeable a ship-mate as ever I sailed with in my life.

——— *Lamprell*, sworn. Phillips has sailed with me in a voyage to New-Orleans, he acted as second mate. He sustained a good character.

*Samuel Maire*, sworn. I keep a Boarding House. Phillips has frequented my house. He was always peaceable and generous, and humane in his feelings.

*William Taylor*, sworn. I took the plans which are used in this cause. The meridian line is correct.

The pane of glass next to the latch, in the back door, is an ox-eye; all the rest are common glass.

*Joseph Pope*, sworn. The Moon passed the meridian at 10 o'clock, on the night of Dec. 1st. The altitude was 49°. It would cast a shadow twelve feet into the passage-way.



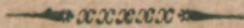
The examination of the witnesses being closed, Mr. SULLIVAN commenced the Defence of the prisoner, in an argument of between two and three hours in length.

When Mr. SULLIVAN had concluded, it being late in the evening, the Court directed three officers to attend the Jury during the night; and the Jurors being cautioned not to converse with one another on the subject of the trial, the Court was adjourned to 9 o'clock the next morning.

On the following day, (Jan. 10th.) the Court being opened according to adjournment, Mr. SHAW commenced his argument in defence of the prisoner, which occupied a little more than an hour. He was followed by the Solicitor General, on the part of the Government.

The ability, learning, and eloquence displayed by the Gentlemen, both on the part of the prosecution and the defence, excited a great interest in the hearers, and commanded their undivided attention. We cannot gratify our readers with a report of their arguments, as it would swell this sketch of the trial beyond convenient limits; and though the respectable character of the arguments, is an inducement to the reporter to publish them,

and to the reader to wish them to have been published; yet their omission is less a subject of regret, since the Chief Justice, in charging the Jury, went into a full and minute examination of the facts in the case, and the principles of law applicable to them.



### *CHARGE of His Honor the Chief Justice.*

#### *Gentlemen of the Jury—*

HENRY PHILLIPS stands before you indicted for the crime of Murder. He has appealed for his trial to God and his country. You Gentlemen, have been selected from your fellow-citizens for this purpose, and you are this country. I need not say, Gentlemen, to a jury consisting of such men as I see among you, that you are not to give way to fanciful fears and unreasonableness prejudices. The Counsel, on both sides, have shewn a proper regard for your character, and have not endeavoured to excite your passions. If you have occasionally felt emotion, when you retire and converse among yourselves, I am persuaded you will divest yourselves of every feeling, which may be adverse to cool and impartial deliberation.

You are told, Gentlemen of the Jury, that you are the judges of both the law and the evidence; practically, Gentlemen, you are so: that is to say, a general verdict of guilty, or not guilty, embraces a decision upon the facts, and upon the law applicable to those facts. But you will not differ, Gentlemen, from the opinions and decisions of wise and learned men, as reported in our books of law, nor from the direction of the Court. The responsibility in regard to the law rests upon the Court. If the Court mistake the principles of law, and the jury under that direction, bring in a verdict of condemnation, the Court, Gentlemen, is responsible, and you will stand acquitted to your consciences.

The question for you to consider, Gentlemen, is whether a crime has been committed, as alleged. First, whether a homicide has been perpetrated on the person of GASPARD DENNEGRI; and secondly, whether the Prisoner at the Bar was the perpetrator. Two witnesses whom you have seen, and of whose testimony

you will judge, say that they both, on the evening of the first of December, saw the prisoner strike the deceased with an iron loggerhead, and that the blows were repeated. You will have little doubt, whether a blow of this kind on the head, would be sufficient to cause death. You have the testimony of two respectable physicians, to this point. Dr. *Shattuck* tells you the deceased had symptoms of lung-fever, when he was called to attend him. He found a large contusion on the head. Afterwards, he, in company with Dr. *Cushing*, examined the head. They found the membranes of the brain, and the brain itself disordered, and a vital part, called the *medulla oblongata*, injured. The skull was fractured; this must have produced the interior derangement. Was this fracture then the cause of the death? The physicians say that this injury, in the skulls of most men, would be an adequate cause of death. *Nichols* says the deceased was well on the first day of December. After the injury was received, he remained at the house of Mrs. *Foster*, languishing, and died there.

It has been argued to you by the Prisoner's Counsel, that he died by reason of exposure; if that was the case, and this wound hastened his death; you will have little hesitation in pronouncing the wound to be the cause. If a man would have died soon, this furnishes no excuse for accelerating his death. If the party was sick and might possibly have died; we are not to speculate upon the question, whether he would or not. You are not to go into these considerations. It is sufficient that a man in full life, was destroyed by this blow.

If you are satisfied that a homicide has been committed, and by the prisoner at the bar, you will then see what is the character of the homicide.

Homicide is divided into three kinds: Justifiable, Excusable, and Felonious. This last is sub-divided into murder and manslaughter. Justifiable homicide, is that committed by an officer, in the execution of public justice, &c. Homicide committed in self-defence, is excusable. It is not necessary to make a distinction between these two kinds.

A distinction existed in England, which does not exist in this country; *there* the man who had committed an excusable homicide, forfeited his goods and chattels; while he who had a justification, forfeited nothing. Here, a man is discharged entirely, whether the homicide be justifiable or excusable. You will consider, Gentlemen, whether this case comes under either of these kinds.

Two of the witnesses, Charles Rogers and Mary Davis, who are intelligent persons, and apparently have no motives to misrepresent, give a full account of this transaction. They have been examined separately, and agree very nearly in their statement of the circumstances. Rogers states the dispute concerning the candle. It seems that Mrs. Foster had been to a lecture, and her son was employed in looking for the text, which had been the subject of the preacher's discourse. Dennegri blew out the candle, but it does not appear that he was induced to this by any very bad motives, but rather by levity. Phillips took the candle and said, "if any one blew it out again, he would blow out his brains" or "knock him down" or "give him a clip;" for the witnesses testified differently in regard to the words. This difference is not important. Whichever of the expressions he may have used, the words from the mouth of a man of Phillips's profession and situation in life, are not a strong proof of a bad disposition. He was afterwards quieted by Mrs. Foster. When the confusion and disorder, which had taken place, had subsided, and all parties seemed peaceably disposed, Dennegri and his companions went away. In about half, or three quarters of an hour, Dennegri returned, and it does not appear, that, in so doing, he had any criminal design. He was remaining peaceably in the kitchen, and while he was there, it appears that an unfortunate suggestion was made concerning his having a knife. This suspicion may have arisen from the dread our people have of an Italian, and which is not perhaps altogether groundless. It is well known that assassination by stabbing, is a frequent mode of revenge, both in Italy and Spain. That this is not the practice here is perhaps owing more to the difference of our government from those of Italy and Spain, than to any difference in the characters of the people; for it is generally found that Spaniards and Italians, who come to this country, readily adopt our manners, and confide in our laws for protection.

In the present case, the suspicion that Dennegri had a knife, was sufficient to induce Charlotte Foster to search him, at the same time telling him of the suspicion of the company. He started back; perhaps it was from surprize, and this may have been the cause of his making no answer to Mrs. Foster when she turned him out of her house.

Miss Foster told Miss Davis, and she, Mrs. Foster, that Dennegri had a knife; upon which Mrs. Foster put him out of the house, and told him to go home. Perhaps he was indignant at

this treatment. He remains about the house, and knocks at the front door. Rogers, meantime, goes out at the back door, and is soon followed by the others. After turning the corner, he sees Phillips and Me'Cann, standing opposite to Dennegri, who still remains at the front door. Dennegri does not go towards them. Foster and Kerr arm themselves, one with a loggerhead, the other with a rolling-pin, before they go out. There seemed to be a delirious fear, that Dennegri was going to commit some violence. When Foster and Kerr see Dennegri, they turn and run back. Dennegri follows them, and is followed by Phillips and Me'Cann, Phillips having a loggerhead in his hand, and Me'Cann the rolling-pin. Rogers places himself in the passage-way, and sees Dennegri at the back door, and Phillips and Me'Cann near him, armed as has been stated. He hears Phillips call out to Dennegri, "halloo shipmate," and sees him immediately strike the deceased with the loggerhead, before there was time to reply. The deceased falls at the first blow. The witness then saw Phillips strike him two or three times on the thigh, with the same weapon, after he was down. Me'Cann then advanced and strode the body, and gave a number of blows with the rolling-pin. Rogers goes up to them, and says, "don't strike a man after he is down." Phillips and Me'Cann having left Dennegri in this situation, Rogers attempts to raise and assist him home, but is able to get him no further than the gate. He there leaves him to the care of the others.

Miss Davis's testimony does not differ, in any material circumstance, from that of Rogers. She was in the house during the transaction, and saw what took place through the window of the back door. It is not necessary to recapitulate her testimony, in respect to the quarrel concerning the blowing out of the candle, and the other previous circumstances. She says, that Dennegri came and knocked at the back door. She was not frightened, but went to the door to let him in. There, looking through the window, she saw Phillips strike the deceased, with this deadly instrument, and saw him repeat the blow, after Dennegri had fallen. She also saw the search for the knife. If these are the facts, you can have no difficulty in deciding on your verdict. It is the duty of the Court to say, that they would unquestionably constitute murder. There is malice in the act itself. To make a homicide murder, it is not necessary that there should be a previously concerted scheme to kill. The striking a fatal blow, with a deadly wea-

pon, without a previous assault, is evidence of that malice, which constitutes unqualified and undoubted murder. The fact that the prisoner followed up his blows, after the deceased was down, is an additional evidence of his malice.

Is there then any reason to doubt the testimony of these witnesses? It is said that Rogers' situation, his excitement, his fear, were such as to dispose him to give a colouring to his testimony. Of this there is no evidence. He went out with the intention of going home, and had not, apparently, any apprehension of danger. If his testimony be false, it must be perjury of the most atrocious kind, dictated by a desire to take away the life of another. It is said he is mistaken in regard to the circumstance, that the moon shone into the passage-way, and to prove this mistake, Mr. Pope has been called to state what was the altitude of the moon, and how far it shone into the passage-way, at 10 o'clock, on the evening of this transaction. But it does not appear that this was precisely the time of the transaction: no one looked at the clock.—Perhaps Rogers could see, with sufficient distinctness, what took place in the shade. It is to be considered also, that he testifies, with great confidence in the correctness of his statements, and that his testimony is of a positive kind.

What is there to discredit Miss Davis's testimony? Kerr states that he was in the middle of the room, at the time when Miss Davis testifies, that she stood at the door, and he did not see her there. He did not hear the knocking. She swears positively to the facts, which she states. She stood at the door but a very short time, probably not longer than a minute, or a half of a minute, during which time Kerr might have stood in the middle of the room, as he represents himself to have done, without observing her, and this is rendered more probable, from the consideration that Kerr seems to have been very much agitated. It is to be considered also, that Kerr's testimony in this respect is wholly negative, and consequently the less to be relied upon, and that of Miss Davis of a positive nature, and on that account, of greater weight.

It has been urged to you, Gentlemen, that if a person is in the act of committing a felony, it is lawful to kill him. And that it is also lawful, if there is a reasonable ground to believe that he is committing a felony. On these points there seems to be some misunderstanding as to the principles of law, or the facts to which they are applied. It is my duty to state to you what I think to be the law; if no other Judge expresses his dissent, you will take what I say, to be the opinion of the whole court,

The substance of the defence, is, that admitting the deceased had not any criminal intention, yet, if the prisoner believed that he was going to commit a felony in this house, it was justifiable to put him to death. The law surely cannot have such a chasm, as to permit this without more qualification, than the counsel for the prisoner seem to contend for. I make no question of the right of self-defence ; I doubt whether it can be taken away by any law, in any country. It is the dictate of nature. When a violent assault is made upon any person, and with a deadly weapon, and he cannot escape, he is not to wait for the law to protect him ; it is justifiable in him to kill the person assaulting. Likewise if he is assaulted, and is under a reasonable apprehension of such an attack under the same circumstances, the law will excuse him, although it should turn out that no attack was intended. If a man comes towards you with a pistol pointed at you, using violent menaces against your life, and you kill him ; and it turns out that the pistol was loaded with powder only, will any reasonable man say that you are more criminal, than you would have been, if there had been a bullet in the pistol ?

The substance of the law as to this point is laid down by Lord Hale. [His Honour then read from Hale “ that a mere fear of death will not justify killing ; there must be an inevitable necessity” &c.]

The law as to a *belief*, is a corollary from this. But this apprehension should be founded on overt acts, an apparent immediate danger to one’s person, there being no other means of escape.

A suspicion prevailed that the deceased had a knife. The prisoner’s counsel contend that he partook of the general alarm. The deceased had no weapon apparently. The prisoner comes behind him, and gives the fatal blow. Was the prisoner in any danger of his life ? Mc’Cann was near him. Suppose the deceased had a knife. The only reason given in the books, for taking away the life of another, is that we have no other means of preserving our own. Was it so here ? Could not the prisoner have gone back out of the passage-way ? Could he not have taken the deceased round the body and secured him, when Mc’Cann was near to assist him ?

Dennegri, it is said, was going to commit a felony—an assassination of some one in the house. Was there any evidence of this ? Consider the circumstances. He was knocking at the door ; Mary Davis was coming to admit him. Do you believe

that this apprehension will justify or extenuate the coming behind the deceased, and striking him with a deadly weapon? If you believe that the deceased was going to commit a murder, and that there was no other way to prevent it, the action was praiseworthy. If the prisoner killed him as the only means to save his own life, it is justifiable.

When a homicide is committed, Gentlemen, the law implies malice. It is incumbent on the person who committed it, to prove the absence of malice, by evidence produced in his defence; or the proof may arise out of the evidence on the part of the Government.

The definitions in the books, sometimes lead people astray, who are not conversant in the law. Malice aforethought is said to be necessary, to constitute the crime of murder. [His Honor here read a passage in Blackstone's Commentaries, describing the nature of malice, and the two kinds, express and implied.] Here this learned writer says, there may be malice, even if the party did not intend to kill. I think you will easily be persuaded, that this is not said upon slight grounds. Suppose a skilful fencer should think he could run a man through, without touching a vital part, and attempting it, should unexpectedly kill him, or a marksman should endeavour to shoot a man's ear off, and owing to an unlucky motion of the head, the arrow proves fatal; would you say there is no malice in these instances? If so, the life of every citizen would be put at hazard. Whenever a person attempts to do another a great bodily harm, or to do any unlawful act, and death ensues, he is responsible for all the consequences.

If a man kills another suddenly with slight, or no provocation, the law implies malice. You will consider what circumstances of justification or excuse there are in this case, whether there was any provocation, previous heat of blood, or quarrel. The Counsel for the prisoner very judiciously passed over the first quarrel.— Considerable time elapsed between that and the fatal transaction, and there was sufficient opportunity to cool. Was there any provocation? Was there any assault, or any menacing gesture? Is it to be supposed that Phillips was put into a sudden passion, by seeing Dennegri knocking at the door? If so, he was put into a passion very unreasonably. This was doubtless a very sudden transaction; there is no ground to suppose he left the room with an intention to kill. But he doubtless aimed the iron at the head of the deceased, and intended to do some great bodily harm.

The prisoner's character has been allowed to be given in evidence, in order that, if a doubt existed concerning any of the facts,

they might receive a construction most favourable to him. If there is no doubt, his good character can be of no avail in his defence. Men of good character and great intelligence, have sometimes been guilty of atrocious crimes, and their general rectitude and wisdom, seems often to have been an aggravation of their offences. There is a tribunal where a man's character is perfectly known and will have its due weight. Here men often have a reputation to which they are not entitled.

I have endeavoured, Gentlemen, clearly to state to you the law, as it is applicable to the present case ; and I have been the more solicitous to do this, that we might take upon ourselves the responsibility of the trial in this respect. If I have unintentionally and unconsciously discovered any leaning against the prisoner, I wish that it may have no influence in your opinions. If after duly weighing the facts in your minds, you can conscientiously acquit the prisoner, I shall be heartily glad. Kindness and mercy are natural and congenial to the heart of man, firmness and justice are the virtues of citizens. I leave the prisoner in your hands.

The Jury retired a few minutes past two o'clock ; at half past three, they brought in a verdict of **GUILTY!**

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SATURDAY, JAN. 11, 1817.

At 1 o'clock this day, *Henry Phillips* was brought into Court to receive his SENTENCE—

*Clerk.* Henry Phillips :

*Prisoner.* Here.

*Solicitor General—May it please the Court,*

HENRY PHILLIPS has been indicted by the Grand Jury for the Counties of *Suffolk* and *Nantucket*, for the Murder of *Gaspard Dennegri*. To this indictment he has pleaded Not Guilty. The Court has assigned him learned and eloquent Counsel. He has had an able defence. He has been tried by an impartial jury of his country. They have returned a verdict that he is Guilty. The punishment of the crime of Murder, by our laws, is Death !

I now move this Court to pass sentence upon the prisoner at the bar.

*Chief Justice* Henry Phillips,

*Prisoner* Here.

*Chief Justice.* Have you aught to say why judgement should not be passed upon you ?

*Prisoner.* I was persuaded into it.

*Chief Justice. Henry Phillips*—You have now been placed at the Bar, that you may have awarded against you that judgement, which the law has appointed for the crime of which you have been convicted. Against rendering this judgement, no objection has been suggested by your counsel or by yourself, nor are we, whose painful duty it is to declare it, aware of any which ought to be raised. The forms of law, which have been established to secure a fair and impartial trial, have all been scrupulously observed. At an early day of this term, the Grand Inquest of these Counties of Suffolk and Nantucket, returned a bill of indictment against you, charging you with the murder of Gaspard Denegri. You were immediately set to the Bar, and informed of this charge, that you might have time to prepare for your defence, this court as then sitting not having the power to arraign you and put you upon trial; but you were permitted to choose your counsel, and with your consent, under the advice of the counsel whom you had chosen, a time was appointed for your trial, which allowed full opportunity to them to inquire into the accusation against you, and make the most satisfactory arrangements for your defence. At the day thus appointed, you were again placed at this Bar, and a Court competent for your trial, being assembled, you were formally arraigned; and having pleaded not guilty to the charge, two able and learned counsellors of this court, whom you had before selected, were assigned by the court, at your renewed request, to assist you in your defence. Twelve jurors selected by yourself from thirty-two, who had been regularly returned to serve at this term, were duly impanelled and sworn to pass between the Commonwealth and you, on the charge which had been made against you.

After the proofs exhibited by the Solicitor General on behalf of the Commonwealth, your Counsel have been heard in your defence, as long as they or you required, upon all the matters of evidence and law, which faithful labours, diligent research, and professional learning and ingenuity, could summon to the aid of a man in your unhappy condition. After such a charge from the Court, as their solemn duty required them to give, the Jury so appointed by the law and selected by yourself, being intelligent, upright and disinterested men, have by their verdict pronounced you guilty of the crime whereof you were charged by the Grand Inquest. That crime is Murder, most heinous in the sight of God, and most destructive to society of which you are a member; the wilful killing of a fellow being with set purpose and malice aforethought.

THOU SHALT NOT KILL! is a command of the everlasting God, taught you in your earliest infancy, if you were born and educated in this land where the poorest people have access to the source of light and truth, the scriptures of the Old and New Testament; and the blood of him, who has shed the blood of a brother, is required by human justice, as well as by divine authority. We set before you the incidents which attended the commission of this crime, not with a view to create unnecessary distress, under circumstances which of themselves must oppress and overwhelm you; but in conformity with humane and pious usage, that you may become deeply sensible of the enormity of your guilt, and employ the time which the humanity of the Government will yet allow you, in deep contrition, and in solemn preparation for the awful change which awaits you. That mercy, which is thus extended to you, was by you denied to the unhappy young man, who by your brutal violence was in an instant deprived of the faculty of imploring the pardon of his sins, and was sent by your cruel hand, to his great and last account, with all his sins and imperfections, unrepented of, on his head. And this, without the slightest provocation or offence,

against you or any individual, at the time when this sanguinary deed was done. If you truly, as your counsel have suggested, believed that the harmless young foreigner concealed a knife, for the purpose of assassinating you, or any other person, was it necessary that you should barbarously slay him with a deadly weapon of iron, in order that you might be secure? Why did not you and your companions, four at least in number, seize this single, unarmed man, and search him for the supposed hidden knife, or otherwise secure his person, so that he could do you no harm? When you had approached near enough to him to strike, and found his back towards you, if there had been no malice in your heart, you would then have gently confined his arms; and having your friend immediately behind you, and others within call, your suspicions might have been removed without violence to any one. But no! you seized this opportunity for destruction, instead of defense. Seeing your poor victim in your power—unarmed, and his back towards you, you lifted the fatal and terrible weapon, and with a force which ferocious man alone could supply, brought him to the ground; and while there senseless at your feet, you repeated the blow with a barbarity unnecessary for your savage purpose: for the fatal deed was already done—the first stroke, armed with malignant skill and strength, having broke the fountain of reason and of life, and left the sufferer a few days only of pain and insanity, as a miserable remnant of a life which, but for you, might have been long, virtuous and happy. A deed like this can by our laws be expiated only by the death of him who has perpetrated it. That death awaits you—your days are numbered; and they ought to be employed in serious and devout meditations upon your past life, and endeavours by prayers and repentance to appease an offended Deity, into whose presence you are hastening.

Before this awful tribunal you must assuredly appear, and answer, not only for this, but for all the sins of your life. That God is merciful as well as just, and you may yet, short as the time is, by heart-felt repentance, reconcile him to you, through the merits and intercession of Jesus Christ the Saviour.

What remains now but that we should pronounce the sentence and judgment of the law upon you for your crime. [Here all the judges rose.]

That judgment is—That you be carried from hence to the prison from whence you were taken, from thence to the place of execution, where you shall be hanged by the neck until you are dead.—And may the God of infinite grace, have mercy upon your soul!

While his Honour the Chief Justice was pronouncing the Sentence, the prisoner wept with great emotion; and when the Judge uttered the words "You shall be hanged by the neck until you are dead," the prisoner dropped his head upon the side of the bar, became agitated by the most violent grief, and seemed to sink under the weight of his misfortune.

The Trial of JOSEPH Mc'CANN, has been postponed until the next March Term of the Supreme Judicial Court.

ERRATA.—page 1, line 3 from bottom for *Gilman* read *Gilmore*; for *James Bird* read *Henry Blake* Page 2, line 8 from bottom, for *John James* read *John Jarvis* Page 4 line 17 for *pid* read *dura* Page 5, 14 fr bottom, after "not" insert, "in that room" or "had gone" read "afterwards went." Line 8, for "*Dennegri's*" read "*sombody's*" Page 8, line 23, for *too r. to.*

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