

and it shocks the moral sense to assert it as a rule of judgment. "Murder must be committed by a sane person." The law has so far shifted the onus, as to presume sanity. It is but a presumption—an arbitrary, artificial presumption—liable to be repelled by other presumptions, so that whether balanced or completely overthrown by other presumptions, the affirmative rests on the State.

There is said to be a presumption of law that one in the possession of the property recently stolen, is the thief; but that presumption may be balanced or repelled by proof of good character, which raises another presumption of innocence. If I were sitting as a juror in a case of life and death, and on the whole proof could not satisfactorily determine, whether the prisoner was sane or insane, there is not a power on earth strong enough to make me give judgment against him. A verdict of death signed by me, when I could not determine whether the prisoner was or was not a being responsible to human punishment! I would act on the presumption of the law of insanity till I heard the proof, and then if the presumption was staggered or balanced, it could no longer have power over my conscience. Something more would be required to move me to judgment.

Once more, gentlemen, I return to a ground of defense; it is the last which I make for the prisoner, if you should hold him amenable to human tribunals. If you are not satisfied with his total irresponsibility to law, by reason of insanity, you have a right to regard his mental disorder; to see whether his mind was clouded by disease or any other cause, so as not to be in that specific condition necessary to the perpetration of murder in the first degree. The law does not forbid in such case you should "temper the wind to the shorn lamb." You have in such case power to save life, by a verdict of murder in the second degree.

And now, jurors, the defense is ended. I think it ought to be successful, but you are to determine. The lawful power of death is in your hands, the life of my client is like that of the sparrow which the Greek boy held in his closed hand before the Oracle, with the words "alive or dead?"—intend-