

The opinion of Lord Denman is cited in 1 Archbold's Crim. Prac., 12, 10, 11, and is recognized as the law by our Supreme Court in the case of the State v. Hutting, 21 Mo. Rep. 464. The question of incapacity to determine between right and wrong, and to choose between good and evil, is a fact to be established affirmatively by the defendant, and it must be so established as to leave no doubt upon the minds of the jury; for the mere fact that the defendant might possibly be insane is no ground for acquittal.

This, gentlemen, is a safe rule, and one which will afford you much assistance when you come to deliberate upon your verdict. Can any man suppose, who has heard the evidence in this case, that at the time of the commission of the murder the prisoner had not sufficient mind to distinguish between right and wrong; did not know that he was violating the law of God and man; or can any person suppose that he was acting under an influence which he was incapable of resisting? Does not his whole life, particularly that portion spent in the army, give such an idea a positive contradiction?

Lieut. Robinson was stationed with defendant at Fort Leavenworth in 1854, and during that year crossed the plains with him as far as Fort Union, New Mexico; yet he never saw anything like elilepsy or unsoundness of mind about him. He further states that the office of orderly-sergeant is the most important in the company, its duties being very arduous, and that no man can fill the place whose mind is in the slightest degree impaired. Yet the prisoner discharged the duties well, and was considered the best orderly at the fort. It is furthermore a regulation in the army to receive no man who labors under mental or bodily disease. These are facts worthy of serious consideration. Notwithstanding he was in the army for a considerable length of time, continually with arms about him and in daily intercourse with men armed like himself; yet no instance is given in which he was seized with this sudden impulse to take the life of his fellow-man, and is it not remarkable that this impulse should take possession of him at the particular spot where Gordon was killed; and is it not strange that this impulse should drive