

an apprehension, by no means unreasonable, for the quiet and safety of the affrighted women and helpless children of the neighborhood, and for the security of the persons and property of the whole district. The treason of adherence cannot be committed by one whose heart is warm with all the honorable feelings of the man and the patriot. "Overt acts undoubtedly do discover the man's intentions; but I conceive they are not to be considered merely as evidence, but as the means made use of to effect the purposes of the heart." Foster, 203.

This is the master key which lets you into the whole secret of this title of the criminal law. Sir Walter Tyrrel, who, in shooting at a deer, killed the king, could not be convicted of treason. The killing was *per infortunium*. So, where a person *non compos* slays another designedly; still he is innocent, because there is no malignity in his heart. So in every homicide, it is felonious, justifiable or excusable, according to the purpose with which the act was perpetrated. It is murder where it is done through malice—manslaughter, if without malice. Where it is done through misfortune, or in self-defense, it is excusable, and it is justifiable when done in advancement of public justice, in obedience to the laws. If the heart be uncontaminated by corrupt intentions the man is innocent, for it is motive that qualifies actions. As it will be with God, so it is with man. The latent intention of the heart must be searched.

Look at the *locus in quo*—the scene where the plot of this treason is laid. A hostile force, but the day before, had traversed the country in all the pride of victory. The *jus belli* was lord of the ascendant. The army, if such a force may deserve the name, which had been relied upon for the defense of the capitol, had been broken up and dissipated to every quarter of the compass. The country was menaced by an enemy, with whom, to adopt the language of Caesar, it was easier to do than to say. If I were addressing the jury I might appeal to their love of country. I might remind them that they are administering law for posterity as well as for us. But I am