

sons, may not be precisely ascertained, except in the case of Killroy, against whom I think you have certain evidence.

It is a rule of law, gentlemen, when the fact of killing is once proved, every circumstance alleviating, excusing, or justifying, in order to extenuate the crime must be proved by the prisoners, for the law presumes the fact malicious, until the contrary appears in evidence.

There is another rule I shall mention also, and that is, that it is immaterial, where there are a number of persons concerned, who gave the mortal blow, all that are present, are in the eye of the law principals. This is a rule settled by the Judges of England upon solid argument. The question, therefore, then will be, what species of homicide this is, and the decision of that question must be deferred until the defense comes out by the evidence on the other side.

The laws of society, gentlemen, lay a restraint on the passions of men, that no man shall be the avenger of his own cause, unless through absolute necessity, the law giving a remedy for every wrong. If a man might at any time execute his own revenge, there would be an end of law.

A person cannot justify killing, if he can by any means make his escape; he should endeavor to take himself out of the way, before he kills the person attacking him.

The Court thought it improper for the Counsel in opening the cause to anticipate the defense.

*Mr. Quincy.* I was about to make some further remarks, but it is thought by the honorable Court improper to anticipate what may be urged on the other side. I shall, therefore, rest the case as it is, and doubt not but on the evidence as it now stands, the facts, as far as we have gone, against the prisoners at the bar, are fully proved, and until something turns up to remove from your minds the force of that evidence, you must pronounce them guilty.

MR. JOSIAH QUINCY FOR THE DEFENSE.

*Mr. Quincy.* Gentlemen of the jury: The prisoners at the bar stand indicted for the murder of five of his Majesty's