

I shall now consider the several divisions of law, under which the evidence will arrange itself.

The act now before you is homicide, that is, the killing of one man by another; the law calls it homicide, but it is not criminal in all cases for one man to slay another. Had the prisoners been on the plains of Abraham, and slain an hundred Frenchmen apiece, the English law would have considered it as a commendable action, virtuous and praiseworthy; so that every instance of killing a man is not a crime in the eye of the law.

The law divides homicide into three branches; the first is justifiable, the second excusable, and the third felonious. Felonious homicide is subdivided into two branches: the first is murder, which is killing with malice aforethought, the second is manslaughter, which is killing a man on a sudden provocation. Here, gentlemen, are four sorts of homicide, and you are to consider, whether all the evidence amounts to the first, second, third, or fourth, of these heads. The fact, was the slaying of five unhappy persons that night; you are to consider, whether it was justifiable, excusable, or felonious; and, if felonious, whether it was murder or manslaughter. One of these four it must be; you need not divide your attention to any more particulars. I shall, however, before I come to the evidence, show you several authorities which will assist you and me in contemplating the evidence before us.

I shall begin with justifiable homicide. If an officer, a sheriff, execute a man on the gallows, draws and quarters him, as in case of high treason, and cuts off his head, this is justifiable homicide; it is his duty. So, also, gentlemen, the law has planted fences and barriers around every individual; it is a castle round every man's person, as well as his house. As the love of God and our neighbor comprehends the whole duty of man, so self-love and social comprehend all the duties we owe to mankind, and the first branch is self-love, which is not only our indisputable right, but our clearest duty; by the laws of nature, this is interwoven in the heart of every individual; God Almighty, whose laws we cannot alter, has