

impose a high degree of responsibility both upon the Court and upon the jury. Nothing might reconcile us to such a responsibility, but the stern necessity of maintaining the supremacy and integrity of the laws. Unless we do that, we prove recreant to the solemn trust which society has reposed in us, and which the public good requires us faithfully to fulfill. The laws must be strictly carried into effect, while the rights of the accused are entitled to all the consideration which is guaranteed to them. You are selected therefore, for a duty which imposes upon you a high responsibility. . . . Now, gentlemen, being thus constituted, and being constituted to act in accordance with truth and justice, there remains nothing more to be done but to obtain all the light that can be found, and render that judgment which the principles of law and equity require. If that is done, we have performed all our duty. If an error should happen to be made after carefully considering the question, and after carefully weighing the evidence and deriving conclusions by the aid of those means which are specified as the best, it would be an excusable error. "To err is human," yet this should not deter us from acting under the weight of high responsibilities. . . . With these remarks, gentlemen, I propose now to proceed on the part of the Court to the exercise of that duty which devolves upon us. It belongs to the legislator to prescribe the punishment, and if the offender is entitled to mercy, it must proceed from the peculiar prerogative of the executive power. In all free governments, laws are not instituted that have not some avenues of mercy. Every government which is not so constituted is an imperfect government. Mercy arises after conviction has taken place, and a jury would depart as far from the exercise of their functions in refusing to convict upon the evidence of guilt, in consequence of an improper assumption of clemency, as they would in refusing to acquit upon just grounds of innocence. . . .

The defendant, gentlemen, stands charged with the crime of wilful murder—the highest crime known to the law. The question is, whether he is guilty of the offense. It turns out