

LOCAL INTELLIGENCE.

THE MAYOR AND THE BOARD OF ALDERMEN.

We regret the apparent discordancy between the chief Executive and the City Council. We are sure that the Mayor convoked the Board with the purest motives. He is exceedingly anxious for the speedy and complete organization of the police. His entire policy springs from the re-establishment of public order, and the welfare of the community cannot be guaranteed until this leading measure has been consummated.

His desire for the speedy organization of the Guard and Police is justified by the near approach of a public festival, when breaches of the peace and irregularities are apt to occur. It is his intention, too, we understand, to nominate, next Monday, the forty additional men authorized by the new law; and he was desirous that the regular bodies might have become, in some degree, accustomed to discipline before their ranks should receive such an accession of recruits.

It may be inferred, also, that he felt some regard for Mr. Thomas's position. This gentleman, we are informed, has maintained an unblemished reputation for moral integrity and strict sobriety for several years. It is the undoubted right of the board, however, to request time for the investigation of any scruples which may be entertained against a nominee, but we trust that the soundest discretion may be used, when the security of our citizens is compromised.

We regret that the corporation attorney recognized the committee of the Board of Aldermen the other evening, for the reason that the law of 1853, which prescribes his duties, makes it appear that his opinions should only be given at "the request of the Mayor." In cases where there exists a difference of opinion between the mayor and a branch of the City Council, both parties ought to be heard before a decision is promulgated.

CRIMINAL COURT.—TRIAL OF THE DEVILIN BROTHERS FOR MURDER. SATURDAY, July 3.—The court met at the usual hour. Mr. Old made some further remarks in reference to the instructions which had been prayed, and was followed by Mr. Cross. The court then proceeded to instruct the jury in reference to the several questions of law involved in the case. As to the first and second instructions prayed for by the United States, the court remarked that during the discussion of the instructions asked for by these prayers, the District Attorney had stated that his object was to refer the homicide not to anything which occurred on the day it happened, but to a grudge which had a prior existence; and therefore the court instructed the jury that if they believe from the evidence that the act of killing, if perpetrated by the defendants or either of them, proceeded not from anything that occurred on the 6th of April, but from a grudge and malice that existed prior to, and independent of, that day and its occurrences, then the killing would be murder.

The third instruction prayed for by the United States was granted, as follows: "If the jury believe from the evidence that the deceased was a married man at the time he pretended to enter into a marriage contract with the sister of the defendant, such a fact is not material, or except for a small point upon the deceased, either with or without a deadly weapon."

The first part of the fourth instruction prayed for was refused, as not founded on any evidence in the case; and in reference to the latter part the court instructed the jury as follows: "If you believe from the evidence that either of the said defendants prepared himself with a deadly weapon for the purpose of using it in an anticipated combat with the deceased, and did use it fatally, according to such intention, he would be guilty of murder, in the absence of any other qualifying proof."

The fifth prayer is as follows: "If the jury believe from the evidence that the deceased, at or about the time of the homicide, was committing a trespass against the property of Mr. Devilin, but not against the dwelling-house, then such trespass is not in law a sufficient provocation to warrant the owner or any other person in using a deadly weapon, or in aiding or abetting in such a deadly weapon, under such circumstances, be used, and the trespasser be killed by it, such offence is murder, although the jury shall further believe that such killing was actually necessary to prevent the trespass."

On this the Court said, that "every man has the legal right to order one who intrudes into his house to withdraw, and, if he does not, to compel him to do so. But it is not every man's duty to use a deadly weapon, or to authorize the use of a dangerous or deadly weapon; he should abstain from such use unless violently assaulted by the intruder, he (the owner) having no other means of avoiding the assault, or having reason to apprehend some great bodily harm or injury to himself, or being unable to obtain his lawful possession. His efforts to remove the intruder, following a request for his withdrawal, should commence in moderation, and be confined until a necessity for a different course is forced upon him. The proprietor may delegate the power he possesses, and it may be properly and lawfully exercised by a son or other person in his lawful method. If he be the proprietor, without any request from her. The homicide in this case is said to have taken place in the yard or small garden attached to the house by enclosure, within the curtilage, and so is the evidence; and the instruction asked supposes the same protection is not extended to the curtilage as covers the house. This is not the point it is necessary for the court to decide, but it has been contended with force, and argued with at least great plausibility, that every part of the curtilage, and the buildings within it, though not in point of fact a part of the dwelling house, are shielded by the same right which is thrown over the house. Burglary, which is a breaking into a dwelling house in the night to steal, or a felony, may be committed by breaking into an outhouse within the curtilage. In the case before you, if you believe the evidence, there was an intrusion into the dwelling, and one attended with violence exerted against the efforts to exclude the intruder; the proprietress withdrew, desiring one of the prisoners to follow her, from her parlor to her kitchen, whether they were followed by the deceased, and upon retiring from the kitchen to the yard the deceased, having first taken off his coat and hat, which he left in the kitchen, joined them in the yard, and the younger prisoner was, and where the unfortunate was fatally shot. It is not necessary to inquire into these circumstances to say that this whole very brief affair may be regarded as an invasion of the Devilin dwelling, and was in law, according to my judgment, a continuous invasion of it, especially as the deceased, it may be fairly inferred, intended, and might be expected, to go back to the kitchen for his coat and hat."

The sixth prayer was granted, in the following words: "If the jury believe from the whole evidence that the defendants intended to kill the deceased, or to do him some great bodily harm, which intention may be inferred from the weapon made use of, or from any other circumstance in proof, then such homicide is murder, notwithstanding the jury may believe that, at the time of the killing, the defendants had received a slight provocation."

The seventh instruction prayed for by the United States is as follows: "If you believe from the evidence, the jury shall find that a sudden quarrel between the deceased and the prisoners was acting as the cause of the homicide, and that the instruction is granted, except that, to entitle them to the benefit of the saving clause of the prayer, it is not necessary that they should have retreated, being within the walls of the house, as stated in the fifth construction. But if you believe from the evidence that they were acting in concert for the purpose of robbing an attack by the deceased, or were engaged in an affray arising out of

the invasion by the deceased of their and their mother's property, or to expel him from their premises, and that one of them, without the knowledge of the other, having a knife about him, used it in stabbing the deceased, he only who had used the knife would be guilty of the homicide. There may be many cases in which two or more men, acting in concert, would make the act of one done in prosecution of the common purpose, the act of one or both of all. This case is not within that principle."

The eighth instruction prayed for by the United States is as follows: "If, from the evidence, the jury shall find that one of the prisoners inflicted the stab wound of the deceased, Thomas B. Berry, died, and that the other was aiding, abetting, and assisting thereto, it is immaterial which gave the blow, and both are responsible; but if the jury shall find that John Devilin, one of the prisoners, inflicted the stab wound at the time of giving the same was insane, still James Devilin, if he was present aiding and assisting, is responsible."

This instruction is granted, provided the jury believe, from the evidence, that the prisoner who did not inflict the stab was aiding and assisting the other in the commission of the homicide—not that he was there and engaged in the affray, but participated in the killing, and knew that the act was a murder, and that the act is protected by insanity, James might still be guilty. The ninth instruction prayed for by the United States is in these words: "To relieve the prisoner, John Devilin, from the consequences of his acts in connection with the homicide of Thomas B. Berry, on the ground of insanity, the evidence must establish to the minds of the jury, beyond all reasonable doubt, that he was insane at the time of the commission thereof, and that the insanity was such as to deprive the prisoner of the use of reason as applied to the acts in question, and the knowledge that he was doing wrong in committing them."

This prayer is based on the idea that the jury must be satisfied beyond all reasonable doubt of the insanity of the prisoner for whom the defence is set up, precisely as the United States are bound to prove the guilt of a defendant to warrant a conviction. I am well aware, and it has appeared in this argument, that it has been held by a court of high rank and reputation that there must be a preponderance of evidence in favor of the defence of insanity to overcome the presumption of the fact, that every killing is murder, and that the same right has said, that if there is an equilibrium (including, I suppose, the presumption mentioned) of evidence, the presumption of the defendant's innocence makes the preponderance in his favor. Whether a man is insane or not is a matter of fact, which being of insanity will relieve him from responsibility in a matter of law, the fact of the degree to which he was insane at the time of the homicide must be proved by the evidence. Murder can be committed only by a sane man. Everybody is presumed to be sane who is charged with a crime, but when evidence is adduced that a prisoner is insane, and conflicting testimony makes a question for the jury, they are to decide it like every other matter of fact, and if they should say or conclude that there is uncertainty, that they cannot determine whether the defendant is or is not so insane as to protect him, how can they render a verdict that a sane man perpetrated the crime?—and no other can. Nor is this plain view of the question unappreciated by the court. (Here Justice authorized an appeal.) The humane, and I will add just doctrine that a reasonable doubt should avail a prisoner belongs to a defence of insanity as much, in my opinion, as to any other matter of fact.

A defendant is not to be excused from responsibility if he is capable and conscious to enable him to distinguish between right and wrong, and to the particular act he is doing—a knowledge and consciousness that the act he is doing is wrong and criminal, and will subject him to punishment. In order to be responsible, he must have sufficient power of memory to recollect the relation in which he stands to others and in which others stand to him; that the act he is doing is contrary to the plain dictates of justice and right, injurious to others and a violation of the dictates of duty. Although he may be laboring under a partial insanity, if he still understands the nature and character of his act, and its consequences—if he has a knowledge that it is wrong and criminal, and a moral power sufficient to apply that knowledge to his own case and to know that if he does the act he will do wrong and receive punishment, such partial insanity is not sufficient to exempt him from responsibility for criminal acts. (7 Metcalf's Reports, 501—3.) Lord Denham, Chief Justice of the Queen's Bench, said it is not that if the prisoner was laboring under 'insane controlling disease' which was in truth the acting power within him which he could not resist, then he will not be responsible; and in another part of his opinion said, 'the question is whether he is laboring under that species of insanity which satisfies you that he was quite unaware of the nature, character, and consequences of his act; he was, in fact, ignorant of what he was doing, or, in other words, whether he was under the influence of a diseased mind, and was really unconscious at the time he was committing the act that it was a crime.'

The tenth instruction prayed for by the United States is in these words: "If the jury believe from the whole evidence that a sudden quarrel existed between the deceased and the prisoners, and that blows passed between them without any intention to kill or injure each other materially; and that, in the course of the scuffle, after the parties became heated by the contest, James Devilin killed the deceased with a deadly weapon, and that John Devilin was present and aiding and abetting in such killing, and that the deceased was unarmed, then the said defendants are guilty of manslaughter."

In reference to this, the Court remarked that it was the same with the eighth and must receive the same answer. The first instruction prayed for by the defence, is as follows: "If you believe from the evidence that the deceased was a married man at the time he pretended to enter into a marriage contract with the sister of the defendant, such a fact is not material, or except for a small point upon the deceased, either with or without a deadly weapon."

On this the Court said, that "every man has the legal right to order one who intrudes into his house to withdraw, and, if he does not, to compel him to do so. But it is not every man's duty to use a deadly weapon, or to authorize the use of a dangerous or deadly weapon; he should abstain from such use unless violently assaulted by the intruder, he (the owner) having no other means of avoiding the assault, or having reason to apprehend some great bodily harm or injury to himself, or being unable to obtain his lawful possession. His efforts to remove the intruder, following a request for his withdrawal, should commence in moderation, and be confined until a necessity for a different course is forced upon him. The proprietor may delegate the power he possesses, and it may be properly and lawfully exercised by a son or other person in his lawful method. If he be the proprietor, without any request from her. The homicide in this case is said to have taken place in the yard or small garden attached to the house by enclosure, within the curtilage, and so is the evidence; and the instruction asked supposes the same protection is not extended to the curtilage as covers the house. This is not the point it is necessary for the court to decide, but it has been contended with force, and argued with at least great plausibility, that every part of the curtilage, and the buildings within it, though not in point of fact a part of the dwelling house, are shielded by the same right which is thrown over the house. Burglary, which is a breaking into a dwelling house in the night to steal, or a felony, may be committed by breaking into an outhouse within the curtilage. In the case before you, if you believe the evidence, there was an intrusion into the dwelling, and one attended with violence exerted against the efforts to exclude the intruder; the proprietress withdrew, desiring one of the prisoners to follow her, from her parlor to her kitchen, whether they were followed by the deceased, and upon retiring from the kitchen to the yard the deceased, having first taken off his coat and hat, which he left in the kitchen, joined them in the yard, and the younger prisoner was, and where the unfortunate was fatally shot. It is not necessary to inquire into these circumstances to say that this whole very brief affair may be regarded as an invasion of the Devilin dwelling, and was in law, according to my judgment, a continuous invasion of it, especially as the deceased, it may be fairly inferred, intended, and might be expected, to go back to the kitchen for his coat and hat."

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This prayer is based on the idea that the jury must be satisfied beyond all reasonable doubt of the insanity of the prisoner for whom the defence is set up, precisely as the United States are bound to prove the guilt of a defendant to warrant a conviction. I am well aware, and it has appeared in this argument, that it has been held by a court of high rank and reputation that there must be a preponderance of evidence in favor of the defence of insanity to overcome the presumption of the fact, that every killing is murder, and that the same right has said, that if there is an equilibrium (including, I suppose, the presumption mentioned) of evidence, the presumption of the defendant's innocence makes the preponderance in his favor. Whether a man is insane or not is a matter of fact, which being of insanity will relieve him from responsibility in a matter of law, the fact of the degree to which he was insane at the time of the homicide must be proved by the evidence. Murder can be committed only by a sane man. Everybody is presumed to be sane who is charged with a crime, but when evidence is adduced that a prisoner is insane, and conflicting testimony makes a question for the jury, they are to decide it like every other matter of fact, and if they should say or conclude that there is uncertainty, that they cannot determine whether the defendant is or is not so insane as to protect him, how can they render a verdict that a sane man perpetrated the crime?—and no other can. Nor is this plain view of the question unappreciated by the court. (Here Justice authorized an appeal.) The humane, and I will add just doctrine that a reasonable doubt should avail a prisoner belongs to a defence of insanity as much, in my opinion, as to any other matter of fact.

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In reference to this, the Court remarked that it was the same with the eighth and must receive the same answer. The first instruction prayed for by the defence, is as follows: "If you believe from the evidence that the deceased was a married man at the time he pretended to enter into a marriage contract with the sister of the defendant, such a fact is not material, or except for a small point upon the deceased, either with or without a deadly weapon."

On this the Court said, that "every man has the legal right to order one who intrudes into his house to withdraw, and, if he does not, to compel him to do so. But it is not every man's duty to use a deadly weapon, or to authorize the use of a dangerous or deadly weapon; he should abstain from such use unless violently assaulted by the intruder, he (the owner) having no other means of avoiding the assault, or having reason to apprehend some great bodily harm or injury to himself, or being unable to obtain his lawful possession. His efforts to remove the intruder, following a request for his withdrawal, should commence in moderation, and be confined until a necessity for a different course is forced upon him. The proprietor may delegate the power he possesses, and it may be properly and lawfully exercised by a son or other person in his lawful method. If he be the proprietor, without any request from her. The homicide in this case is said to have taken place in the yard or small garden attached to the house by enclosure, within the curtilage, and so is the evidence; and the instruction asked supposes the same protection is not extended to the curtilage as covers the house. This is not the point it is necessary for the court to decide, but it has been contended with force, and argued with at least great plausibility, that every part of the curtilage, and the buildings within it, though not in point of fact a part of the dwelling house, are shielded by the same right which is thrown over the house. Burglary, which is a breaking into a dwelling house in the night to steal, or a felony, may be committed by breaking into an outhouse within the curtilage. In the case before you, if you believe the evidence, there was an intrusion into the dwelling, and one attended with violence exerted against the efforts to exclude the intruder; the proprietress withdrew, desiring one of the prisoners to follow her, from her parlor to her kitchen, whether they were followed by the deceased, and upon retiring from the kitchen to the yard the deceased, having first taken off his coat and hat, which he left in the kitchen, joined them in the yard, and the younger prisoner was, and where the unfortunate was fatally shot. It is not necessary to inquire into these circumstances to say that this whole very brief affair may be regarded as an invasion of the Devilin dwelling, and was in law, according to my judgment, a continuous invasion of it, especially as the deceased, it may be fairly inferred, intended, and might be expected, to go back to the kitchen for his coat and hat."

The sixth prayer was granted, in the following words: "If the jury believe from the whole evidence that the defendants intended to kill the deceased, or to do him some great bodily harm, which intention may be inferred from the weapon made use of, or from any other circumstance in proof, then such homicide is murder, notwithstanding the jury may believe that, at the time of the killing, the defendants had received a slight provocation."

deceased had a wife then living, and thereupon the father of the prisoners prohibited the deceased from ever coming into his house, and prohibited the said prohibition till his death, which is conceded occurred some time in September last; if they shall further find that the prisoner, John S. Devilin, was from his birth of weak and feeble mind, and of highly excitable, nervous temperament, and notwithstanding the circumstances aforesaid, continued to associate and correspond with the deceased, and associate with him as his friend—that the father by his will disposed of his estate so that the said John S. Devilin could not rightfully have had any control over the family or estate of his father, but from the infirmity of his mind really believed that the whole case of said family and estate was devolved on him; and if they shall further find that both before and after the death of his father the said John S. Devilin was subject to sudden, violent, and capricious exasperations of passion, and these mental defects and perversions greatly increased after his father's death, so as to render him at times incapable of acting with will, conscience, and controlling mental power; and if they shall further find that the said John S. Devilin killed the said deceased Berry by stabbing him on the 6th of April last, and at the time of his killing him as aforesaid the said John S. Devilin was acting under the influence of dementia combined with monomania, produced by the causes aforesaid, or other causes with which said deceased was acquainted, and he was really unconscious that he was committing a crime, then the jury will find him not guilty; and unless they find from the said evidence that James Devilin either influenced and assisted the said John to kill said Berry, or, knowing that he was about to do so, used him as an instrument for effecting said Berry's death, and intentionally assisted him in effecting it, he also is not guilty."

The jury retired at twenty minutes before one o'clock; and they having returned with a verdict at four o'clock, the court adjourned until 7 o'clock, p. m.

The Court met at seven o'clock. The deputy marshal was sent to the jury room to ascertain if they had agreed upon a verdict, and soon afterwards returned and reported that they had not agreed, and that there was no immediate prospect of an agreement. Whereupon, the Court adjourned until to-morrow at one o'clock.

FIRE-WORKS ON THE FOURTH. We paid another visit to the Arsenal yesterday, and were received by Major Ramsey, the accomplished commandant, with his usual courtesy; but finding him busy testing a new projectile, we strolled into the laboratory to look at the fire-works in preparation for the ensuing Monday. Mr. Engle, the chief pyrotechnist, was absent, but Mr. Brown, his assistant, politely escorted us through the combustibles. The display this year will surpass that of any previous occasion, and will brilliantly illustrate the patriotic liberality of the Secretary of War. Governor Floyd, engrossed by the general cares of his new office, inadvertently disappointed us on the last 4th of July, not having issued the necessary orders soon enough; but the arrangements this year are amply compensated. By permission of Major Ramsey, we have been furnished by Mr. Allen, the gentlemanly and efficient clerk, with the annexed list of fire-works to be set off at the Monument grounds on the 4th inst.

The place selected for the exhibition is well adapted for the public accommodation, and a fine opportunity will be afforded for the Mayor's new police force to display their abilities by protecting the vast assemblage from the perils of heedless curiosity.

We cannot refrain from calling the Mayor's attention to the danger of allowing carriages and equestrians to be mingled, indiscriminately, amongst the sitting and standing multitude. A single frightened horse might cause terrible disaster; and a general stampede would render the Monument Square a field of death and blood. Let the carriages and horses be stationed outside of the fence. The scaffolding will be erected facing the President's House, and Mr. Engle has orders to elevate it so as to afford an unobstructed view from any point in the southwestern part of the city.

The display will commence about 8 o'clock, and in accordance with the following programme. Two orders of succession will not be altered unless circumstances render a change necessary. A new kind of fire-works, called the Buchanan shell, will be fired from a mortar and bursts at a great height. May the weather be propitious!

PROGRAMME OF FIRE-WORKS. Rockets. Shooting Piece. Shells. Cascade. Rockets. Shells. Rockets. Shells. Maroon Battery (of 32 New Tree guns.) Spiral Wheel. Rockets. Bengala Light. Shells. If the jury believe from the whole evidence that the deceased was a married man at the time he pretended to enter into a marriage contract with the sister of the defendant, such a fact is not material, or except for a small point upon the deceased, either with or without a deadly weapon."

On this the Court said, that "every man has the legal right to order one who intrudes into his house to withdraw, and, if he does not, to compel him to do so. But it is not every man's duty to use a deadly weapon, or to authorize the use of a dangerous or deadly weapon; he should abstain from such use unless violently assaulted by the intruder, he (the owner) having no other means of avoiding the assault, or having reason to apprehend some great bodily harm or injury to himself, or being unable to obtain his lawful possession. His efforts to remove the intruder, following a request for his withdrawal, should commence in moderation, and be confined until a necessity for a different course is forced upon him. The proprietor may delegate the power he possesses, and it may be properly and lawfully exercised by a son or other person in his lawful method. If he be the proprietor, without any request from her. The homicide in this case is said to have taken place in the yard or small garden attached to the house by enclosure, within the curtilage, and so is the evidence; and the instruction asked supposes the same protection is not extended to the curtilage as covers the house. This is not the point it is necessary for the court to decide, but it has been contended with force, and argued with at least great plausibility, that every part of the curtilage, and the buildings within it, though not in point of fact a part of the dwelling house, are shielded by the same right which is thrown over the house. Burglary, which is a breaking into a dwelling house in the night to steal, or a felony, may be committed by breaking into an outhouse within the curtilage. In the case before you, if you believe the evidence, there was an intrusion into the dwelling, and one attended with violence exerted against the efforts to exclude the intruder; the proprietress withdrew, desiring one of the prisoners to follow her, from her parlor to her kitchen, whether they were followed by the deceased, and upon retiring from the kitchen to the yard the deceased, having first taken off his coat and hat, which he left in the kitchen, joined them in the yard, and the younger prisoner was, and where the unfortunate was fatally shot. It is not necessary to inquire into these circumstances to say that this whole very brief affair may be regarded as an invasion of the Devilin dwelling, and was in law, according to my judgment, a continuous invasion of it, especially as the deceased, it may be fairly inferred, intended, and might be expected, to go back to the kitchen for his coat and hat."

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The eighth instruction prayed for by the United States is as follows: "If, from the evidence, the jury shall find that one of the prisoners inflicted the stab wound of the deceased, Thomas B. Berry, died, and that the other was aiding, abetting, and assisting thereto, it is immaterial which gave the blow, and both are responsible; but if the jury shall find that John Devilin, one of the prisoners, inflicted the stab wound at the time of giving the same was insane, still James Devilin, if he was present aiding and assisting, is responsible."

This instruction is granted, provided the jury believe, from the evidence, that the prisoner who did not inflict the stab was aiding and assisting the other in the commission of the homicide—not that he was there and engaged in the affray, but participated in the killing, and knew that the act was a murder, and that the act is protected by insanity, James might still be guilty. The ninth instruction prayed for by the United States is in these words: "To relieve the prisoner, John Devilin, from the consequences of his acts in connection with the homicide of Thomas B. Berry, on the ground of insanity, the evidence must establish to the minds of the jury, beyond all reasonable doubt, that he was insane at the time of the commission thereof, and that the insanity was such as to deprive the prisoner of the use of reason as applied to the acts in question, and the knowledge that he was doing wrong in committing them."

This prayer is based on the idea that the jury must be satisfied beyond all reasonable doubt of the insanity of the prisoner for whom the defence is set up, precisely as the United States are bound to prove the guilt of a defendant to warrant a conviction. I am well aware, and it has appeared in this argument, that it has been held by a court of high rank and reputation that there must be a preponderance of evidence in favor of the defence of insanity to overcome the presumption of the fact, that every killing is murder, and that the same right has said, that if there is an equilibrium (including, I suppose, the presumption mentioned) of evidence, the presumption of the defendant's innocence makes the preponderance in his favor. Whether a man is insane or not is a matter of fact, which being of insanity will relieve him from responsibility in a matter of law, the fact of the degree to which he was insane at the time of the homicide must be proved by the evidence. Murder can be committed only by a sane man. Everybody is presumed to be sane who is charged with a crime, but when evidence is adduced that a prisoner is insane, and conflicting testimony makes a question for the jury, they are to decide it like every other matter of fact, and if they should say or conclude that there is uncertainty, that they cannot determine whether the defendant is or is not so insane as to protect him, how can they render a verdict that a sane man perpetrated the crime?—and no other can. Nor is this plain view of the question unappreciated by the court. (Here Justice authorized an appeal.) The humane, and I will add just doctrine that a reasonable doubt should avail a prisoner belongs to a defence of insanity as much, in my opinion, as to any other matter of fact.

A defendant is not to be excused from responsibility if he is capable and conscious to enable him to distinguish between right and wrong, and to the particular act he is doing—a knowledge and consciousness that the act he is doing is wrong and criminal, and will subject him to punishment. In order to be responsible, he must have sufficient power of memory to recollect the relation in which he stands to others and in which others stand to him; that the act he is doing is contrary to the plain dictates of justice and right, injurious to others and a violation of the dictates of duty. Although he may be laboring under a partial insanity, if he still understands the nature and character of his act, and its consequences—if he has a knowledge that it is wrong and criminal, and a moral power sufficient to apply that knowledge to his own case and to know that if he does the act he will do wrong and receive punishment, such partial insanity is not sufficient to exempt him from responsibility for criminal acts. (7 Metcalf's Reports, 501—3.) Lord Denham, Chief Justice of the Queen's Bench, said it is not that if the prisoner was laboring under 'insane controlling disease' which was in truth the acting power within him which he could not resist, then he will not be responsible; and in another part of his opinion said, 'the question is whether he is laboring under that species of insanity which satisfies you that he was quite unaware of the nature, character, and consequences of his act; he was, in fact, ignorant of what he was doing, or, in other words, whether he was under the influence of a diseased mind, and was really unconscious at the time he was committing the act that it was a crime.'

The tenth instruction prayed for by the United States is in these words: "If the jury believe from the whole evidence that a sudden quarrel existed between the deceased and the prisoners, and that blows passed between them without any intention to kill or injure each other materially; and that, in the course of the scuffle, after the parties became heated by the contest, James Devilin killed the deceased with a deadly weapon, and that John Devilin was present and aiding and abetting in such killing, and that the deceased was unarmed, then the said defendants are guilty of manslaughter."

In reference to this, the Court remarked that it was the same with the eighth and must receive the same answer. The first instruction prayed for by the defence, is as follows: "If you believe from the evidence that the deceased was a married man at the time he pretended to enter into a marriage contract with the sister of the defendant, such a fact is not material, or except for a small point upon the deceased, either with or without a deadly weapon."

On this the Court said, that "every man has the legal right to order one who intrudes into his house to withdraw, and, if he does not, to compel him to do so. But it is not every man's duty to use a deadly weapon, or to authorize the use of a dangerous or deadly weapon; he should abstain from such use unless violently assaulted by the intruder, he (the owner) having no other means of avoiding the assault, or having reason to apprehend some great bodily harm or injury to himself, or being unable to obtain his lawful possession. His efforts to remove the intruder, following a request for his withdrawal, should commence in moderation, and be confined until a necessity for a different course is forced upon him. The proprietor may delegate the power he possesses, and it may be properly and lawfully exercised by a son or other person in his lawful method. If he be the proprietor, without any request from her. The homicide in this case is said to have taken place in the yard or small garden attached to the house by enclosure, within the curtilage, and so is the evidence; and the instruction asked supposes the same protection is not extended to the curtilage as covers the house. This is not the point it is necessary for the court to decide, but it has been contended with force, and argued with at least great plausibility, that every part of the curtilage, and the buildings within it, though not in point of fact a part of the dwelling house, are shielded by the same right which is thrown over the house. Burglary, which is a breaking into a dwelling house in the night to steal, or a felony, may be committed by breaking into an outhouse within the curtilage. In the case before you, if you believe the evidence, there was an intrusion into the dwelling, and one attended with violence exerted against the efforts to exclude the intruder; the proprietress withdrew, desiring one of the prisoners to follow her, from her parlor to her kitchen, whether they were followed by the deceased, and upon retiring from the kitchen to the yard the deceased, having first taken off his coat and hat, which he left in the kitchen, joined them in the yard, and the younger prisoner was, and where the unfortunate was fatally shot. It is not necessary to inquire into these circumstances to say that this whole very brief affair may be regarded as an invasion of the Devilin dwelling, and was in law, according to my judgment, a continuous invasion of it, especially as the deceased, it may be fairly inferred, intended, and might be expected, to go back to the kitchen for his coat and hat."

tical objections to the admissibility of his caption, as well as to the theory which it implies, provided Fairbank will come down an inch or two at least before Tuesday evening. Edward Wootton, of Maryland, will close these interesting exercises by a dissertation on the "Internal Possibility of Things," and will also defend his "Thea." Then we may anticipate a rich intellectual treat; and while we ourselves enjoy the rare privilege of participating, if we feel so disposed, in the bloodless combat, we will also encourage by our presence and appreciation the youthful competitors for the philosophic prize.

One word of warning.—The graduates in philosophy will be under the watchful care of their Professor, Rev. F. Welsh. This distinguished scholar is a graduate of Yale. To the varied stores of learning acquired in that famed institution he has added the rich treasures gathered during a protracted tour through Europe, where he made himself familiar with all the modern discoveries and inventions in metaphysical science, and carefully examined the very latest phases and follies of German transcendentalism.

Our warning is, that as Professor Welsh will preside over the exercises of the evening, he will see fair play between his devoted philosophers and those who may challenge the orthodoxy of their Thesis. Virtum est.

THE PUBLIC SCHOOLS.—The monthly meeting of the trustees of the public schools of Washington city was held yesterday evening at the City Hall. Mr. HARRINGTON, the treasurer, presented a statement setting forth that the sum of \$18,699 will be required for the payment of the salaries of the teachers for the ensuing year, and asking that it be referred to the corporation for their consideration.

On motion of Mr. BRADY, a committee was appointed to prepare, in conjunction with the secretary, the annual report of the board of trustees. Mr. INGRAMS, from the committee on that subject, reported that they had fixed the time for the distribution of the prizes for the Fourth District schools on Tuesday, the 29th inst., at 3 o'clock; for the Third District on Wednesday, the 21st; for the Second District on Thursday, the 22d; and for the First District on Friday, the 23d. The lecture-room of the Smithsonian Institution has been tendered for this purpose, but it remains with the sub-board of trustees to make the selection. A fine band of music will be engaged.

Considerable dissatisfaction was expressed by several members of the board with the course pursued by parents in withdrawing their children before the examinations, and a resolution was offered with a view to its prevention, but, after a brief discussion, it was withdrawn. Other business of minor importance was transacted.

ANNOUCEMENT.—The "city fathers" are a remarkably funny body. Ever since last Monday evening they have been attempting to adjourn to Monday week, but it has been a very faint attempt, indeed! If we were, they succeeded in getting through a joint resolution fixing Tuesday as their next day of meeting, but alas! it was discovered that the charter made it null and void; and here was a difficulty. As a remedy, another resolution was adopted, but this failed to receive the sanction of one of the boards because it was faintly traced in pencil, which was considered as a mortal offence against their dignity. On Friday evening another joint resolution passed one of the branches, and, in fact, passed both, but the eyes of one of the sentinels on duty discovered a reflection upon them as *Scotch-breakers*, and upon his motion the vote was reconsidered and the resolution was laid on the table. So both branches will have a meeting on Monday, and we hope the Mayor will give them considerable work to do.

THE DAILY UNION is the only newspaper published in this city on Sunday morning. By this arrangement work is done on the Sabbath day, and the employes are enabled to attend church. Besides containing the latest news, its literary matter, original and selected, religious intelligence, &c., recommends it especially to the attention of the citizens of Washington. Great pains are taken to render it the best publication of the week. It will be sold at Brown's and the National Hotel.