

# Ferguson's Trial.

Never in the history of Abbeville county has so much interest been manifested in a trial for homicide as has been evinced by the public in the second trial of John C. Ferguson for the killing of Arthur Benedict. Full reports having been made, by the papers, of the last trial, great difficulty was experienced in securing a jury who had not formed or expressed some opinion on the case. The prisoner selected his jury from ninety-six of his country. The whole of Tuesday and the greater portion of Wednesday was taken up in securing the jury. Nearly every juror that was presented was put upon his *voir dire*, either by the defendant or by the State. Finally on Wednesday evening the following jury was obtained:

A. O. Grant, foreman; W. R. Powell, Jerry Bacon (colored); T. C. Seal, R. E. Henderson, Samuel Wilson, R. L. Clinkscales, Robert W. Hester, T. M. Warren, W. F. Magill, J. Strother Graves and J. C. Jennings.

The evidence in the case was much the same as that published at the last trial, that we have abridged it as much as possible, giving only the main points testified to by each witness. The speeches in the case were unusually good, being full of pathos, feeling and zeal on the part of the defendant, and as fair and impartial as possible on the part of the State.

Never do we remember to have seen a Judge exercise such patience as was done by His Honor, Judge Wallace. Although the case was a very tedious one, occupying four whole days, Judge Wallace never exhibited the least impatience.

There were a great many ladies present while the speeches in the case were being delivered, and during the whole trial there were large crowds of anxious hearers present.

Mr. A. O. Grant was made foreman of the jury.

Before the solicitor had put up the first witness for the State, Mr. Benet stated that he desired to make a motion for the court to consider. The defendant had entered a special plea of unsoundness of mind at the time of the homicide, and he contended that by this plea the defence assumed the burden of proof, and under the rules of the court was entitled to open and close, both in the evidence and the argument. This rule, has been established in the civil court, but it is not so well settled in the sessions court. He quoted Rule 69 of the court and continued: "When the defendant admits the State's case he cannot set up witnesses to disprove anything about the killing. The plea of unsoundness of mind is an affirmative plea, and the defendant assumes the burden of proof. We admit the State's case and the State is not bound to prove anything, but simply to rebut the plea of unsoundness of mind. What has the jury to decide upon? The one question raised by our plea. The nature of the issue must control the opening and reply. Our plea is one of affirmation that we stand here with the hope of sustaining. We are the actors and are entitled to open and close. We admit everything that may be proved to sustain the indictment. There is but one issue before the court, and we take the burden of proof upon ourselves." He hoped the court would grant them the privilege of opening and replying.

Judge Wallace held that this plea was similar to that of self-defence and other like defences and overruled the motion of Mr. Benet, to which he asked his Honor to note an exception on the part of the defence.

Testimony for the State.

WM. G. RILEY

testified that he was town marshal, and at the time of the killing near Auerbach's store. He met Benedict running out of the store from behind the counter. He said: "Oh! he shot me." Saw John C. Ferguson in the store with a pistol in his hand, who admitted that he did the shooting. Ferguson asked if he could not give bail. Hammond told him to wait and see how badly Benedict was shot. I found out he was dying and took Ferguson to jail.

Cross-examined: Have seen Ferguson drunk several times; was pretty drunk that day. He spoke of getting bail on the street, and not in the sheriff's office. Ferguson gave as the reason why he shot Benedict that the rascal was trying to kill him. He said afterwards that Benedict was trying to cut him.

J. S. HAMMOND:

Was at the time intendat of the town. He saw Ferguson that day go into Auerbach's store. Ferguson applied to him for bail. Said he wanted to give bail as there would be a wedding at home that he wanted to go to. There was a wedding at Mr. Brook's, Ferguson's father-in-law.

Cross-examined: Do not remember ever seeing him drunk before. Did not think that he drank.

ELIJAH VANCE, COLORED:

Saw Ferguson on the day of the shooting leaning against the counter in Auerbach's store. Saw him take a pistol from his back hip pocket. A few minutes after that the shooting took place.

Cross-examined: Ferguson said nothing that he heard, neither did Benedict.

HETTIE BELTON, COLORED:

Was in Auerbach's store on December 24, 1884. Went in there to get shoes. When she asked for the shoes Benedict was on the left-hand side of the store. He then came out and went on

down the right-hand side to the shoe box, which was in the middle of the store between the counters. Ferguson and Benedict were on the opposite sides of the box. Could not hear what Ferguson said to Benedict, but Benedict said, "What did you say?" The shooting then took place.

LUCY SANDERS, COLORED:

Went to Auerbach's store to get shoes on the 24th of December, 1884. Ferguson was leaning against the right-hand counter when the shooting was done. Benedict was on the left-hand side of the store. Did not hear either Ferguson or Benedict say anything. When I first saw the pistol it was cocked. I was not ten steps off.

RICHARD SONDLLEY:

Saw Benedict coming out of the store. He asked me to catch him. He had his hand on his heart. Helped to carry him to the hotel. He lived twenty or thirty minutes. Benedict had nothing in his hand. Witness had had a difficulty with Ferguson about a year before the shooting. There was no provocation for the row that he knew of. Ferguson at the time looked natural. He saw nothing wrong with him. We came to blows. I thought he acted foolishly. Pretty hard words passed between us. He struck the first blow. I would have hit him first if he had given me a little more time.

D. J. JORDAN,

Saw Benedict and Ferguson on Saturday before the homicide. The shooting was on Monday. Heard words pass between them. Ferguson said to Benedict you are a d—d liar," and Benedict replied: "You are another." They then separated. Ferguson looked like a man that had been drinking.

M. KALISKI

said that Ferguson came into his store on the day of the homicide and asked for cartridges. He called for thirty-two or thirty-eight. Told him he did not have any. He then felt in his pocket and said he had enough to kill a man. This was not more than fifteen minutes before the shooting. Ferguson was drinking. He talked well and appeared in a good humor.

SAMUEL MILFORD,

Said that he was seventeen years of age. Was in town the day before Christmas. He saw Ferguson in Rube Haddon's barroom sitting on a box. He saw Ferguson with Stark Martin near Knox's corner. Ferguson asked Martin to come on down here if you want to see me kill a d—d Jew." Martin told him not to do it. Ferguson said what he did in his regular voice. He looked like a drunken man. He was not noisy. Witness had never seen him drunk before.

Evidence for the Defence.

The State closed here, and the defence put up as their first witness,

PROF. J. R. RILEY,

who is a minister of the Presbyterian church but who has been engaged in teaching for some time. Ferguson had boarded with him, and he also taught him at Adger College in 1880. The first time he noticed anything wrong with him was in the class room. He turned pale and seemed to be about to fall over. Witness could get no intelligent answer from him. Another time was at the breakfast table at witness's house, when he was affected in the same way. He turned pale. Witness asked him about the matter and he said that he had frequently had similar attacks before. He frequently came to be excused from recitations on account of his mind.

Cross-examination: He said he had those feelings though he did not always get down. He had strange sensations about the head. He was punctual at school and made considerable progress. He was ordinarily diligent. Have had boys to make excuses, but they were not of the same kind as Ferguson's. The motions of his body were the same as if he had fainted. Noticed nothing but a peculiar paleness. Did not know what he was suffering from. Knew it was some disease of the head. Did not say on former trial that it was vertigo. Saw no indications of weakness of mind except at those two times. When he had those attacks water was put on him. Saw him after class adjourned and he was about as usual.

The attack at the table was not as severe as the other one. Never noticed any mental weakness.

MARTHA WHARTON, COLORED,

Used to nurse Ferguson when he was a baby. He was more than a year old when she began to nurse him. She nursed him about five years. He was given to those spells. He would fall in the yard, and she would have to carry him in the house and rub him to bring him to life. When he got large enough he would put his hands to his head and complain. She was 7 or 8 years old when she began to nurse him. She can remember right smart about his spells. He would complain a day or two before he would have one of these spells. He never complained of them after they were over. He always complained before he had them. We rubbed him with camphor and things. He would lay still like he was dead, perfectly quiet, still and motionless.

MRS. A. A. FERGUSON,

Is no kin to the defendant. She knew him in 1870. He went to school to her. He was about ten years of age then. He was with her two sessions of five months each. The first time she noticed anything wrong with him was when he was reciting a lesson. She gave him a word to spell. He said nothing. She saw that he was very pale. He fell to the floor. She sent for his father. He had other spells. She can remember three. He was quiet when he had these spells. A little water and camphor would revive him.

DR. GEORGE H. WADDELL,

Testified that epilepsy was classed among the nervous diseases. It has various symptoms. The symptoms are characteristic. The principal ones are grand mal and petit mal; grand mal is the severest form of epilepsy, during an attack of which the patient falls down. Petit mal is the mildest form, commencing with fainting. There is a distinct line between the two forms, yet they are recognized as the same affections. In cases of this kind it is usual for doctors to inquire into the hereditary taint in the blood. Where a person had a sister, uncle or other kin who died with attacks that looked like epilepsy, it would aid in tracing the disease. In grand mal the patient is seized suddenly; he becomes pale and falls to the ground. Every muscle becomes as rigid as a board; especially in this case with the muscles of the throat, rendering it difficult for the air to pass into the lungs. Then come tonic spasms, succeeded by lethargy. After the spasms the blood becomes black and the face purple. After recovery the patient is apt to become moody and morose. A while after a paroxysm a person may not be himself. Petit mal is harder to describe, as there are so many degrees of it. A person may be talking and suddenly he would cease speaking, and after a short time would go on as if nothing had happened, and if accused of it would deny it. Swimming in the head is fainting in its incipency. There is such a thing as epileptic vertigo. Vertigo is no disease. It depends upon something that immediately precedes it, like derangement of the stomach. Epilepsy is recognized as a disease. Paleness of the face does not necessarily go along with vertigo. Vertigo accompanied with pallor and unconsciousness would be pronounced epilepsy. A person has no premonition of vertigo. A person seized with grand mal is harmless, certainly, during the attack. The mind of an epileptic, in neither grand or petit mal, is free between the attacks. If it was there would be no more attacks. The disease is supposed to be in the brain. That is a matter of opinion, though. Persons suffering from epilepsy are possibly liable to act under delusion or illusion. The mind may verge on insanity in epilepsy. Persons suffering from epilepsy act sometimes with deliberation and without mental aid, but they remember nothing, even in crime, after the attack is over. A tendency to homicide and suicide are not the general features of the disease. The disease sometimes manifests itself in deeds of violence. Petit mal predisposes most to acts of violence.

Cross-examined: A great deal of his information was derived by witness from books. There are theories in the books that we cannot adopt. In a practice of twenty-five years had only met with one case of petit mal, and did not recognize that at first. Petit mal was not common in his practice. Foaming at the mouth was another symptom of grand mal. Never saw a case of petit mal make a patient violent afterwards. With vertigo one might or might not have pallor. Pallor is a sign of epilepsy. Vertigo is a temporary unconsciousness. Persons with vertigo would fall, become pale and unconscious. The effect of petit mal upon the brain is more or less unconsciousness. It is very uncertain whether a person suffering with grand or petit mal could conceive or perform any independent action. A person subject to epilepsy for a number of years would show it. He would look stupid and beefy, and his expression would be heavy.

MRS. SUSAN FERGUSON,

The mother of the defendant, corroborated the statement of Martha Wharton as to the fits that Ferguson had when he was a baby, but she recollected little or nothing about the attacks. She never sent for a doctor when he had the attacks. She also testified to other members of her family having similar attacks, especially as to Lizzie, who would foam at the mouth and turn black in the face. Lizzie was about ten then and she died when she was 13. The rest of her testimony was the same as that given on the previous trial.

A. J. FERGUSON,

The father of the defendant, sustained the testimony of Martha Wharton. He testified to a number of attacks that he had seen John have, but he knew very little personally of his drinking, although he knew that he had been drinking very hard for at least two or three months. He tried to keep John away from town the day before the shooting, as he considered him crazy. Did not know he was drinking, but saw the indications. Never tried to get the pistol away from him. Did not try to keep him away from town the day before the killing to keep him from getting whiskey. He was drinking, and lots of it, when he came from Ninety-Six. The rest of his testimony was the same as on the former trial.

LOUIS DELCHER, COLORED:

Was ploughing corn with Ferguson about two years ago. When Ferguson got to the end of the road he fell down and said: "Oh! my head; oh! my head." He did not lie down.

Tom Berry, colored: Was the man that Ferguson collared and tried to kill with an axe. Ferguson said nothing. Mrs. Ferguson came out and caught hold of John and he let him go then. Ferguson never got the axe in his hands.

Joseph B. Ferguson: Is a brother to the defendant. We were in the woods, he said, putting a log on the wagon and John staggered and fell and complained of his head. He saw the Tom Berry affair in the yard, and he was the one that John requested to hand him the axe to kill that nigger. He testified to other attacks and to John's drinking heavily at various times. Heard him say he was going to kill himself, and he went in the house and got his pistol.

Thomas F. Ferguson, also a brother of the defendant, testified to the same facts as did Joseph B. Ferguson.

Mrs. Mary Kennedy, a sister of John Ferguson's mother, testified that when he was at her house he talked, looked and acted strangely. The remainder of her

testimony was the same as on the former trial.

Mrs. W. H. Brooks: Is the mother of John C. Ferguson's wife. She was not examined on the former trial. She noticed he was drinking for six months before the shooting. She never saw him put the bottle to his mouth, but she knew he was drinking. On Wednesday before the homicide he was drinking bad. Was at his house often, from the empty bottles and jugs and the way he acted, she knew he was drinking. Her daughter and the baby went home with him Tuesday and the next morning he brought them back to her house.

John Frith: Lived with Ferguson about a month before the killing took place. On Wednesday morning Ferguson looked like he was affected. John had been drinking heavy. He sometimes bought whiskey for John.

DR. F. F. GARY:

Heard the examination of Dr. Waddell. The doctrine laid down by Dr. Waddell agreed with his experience and knowledge of such matters.

Marion Fair, colored: Saw Ferguson very drunk on one occasion.

Mrs. Carrie Richey testified as to the mental condition of her stepfather, who was an uncle of Ferguson. This testimony was the same as on the former trial.

Burt Ellis, colored: Worked with Ferguson last year, and the reason he left him four months before Christmas was because Ferguson was drinking so bad and besides he had tried to shoot him. Every time he came to town he would drink.

Richard Jackson, colored: Saw Ferguson the day before he killed Benedict. Knew he had been drinking then, because he smelt it on him.

John Chestnut: Had seen Ferguson take drinks, and several times he sent to town for whiskey by him. Thinks he drank a good deal last year.

James Smith: Met Ferguson in the road in 1881. He went to put his hand on his horse's neck, but missed and fell. He was on horseback and so was Ferguson. Ferguson was not drunk. Saw no reason for his falling off. Denies that he told J. F. Livingston that nothing was the matter with Ferguson, but that he was drunk.

DAVID E. HADDON:

Clerk in a barroom here last year. Ferguson drank there frequently, and he took big drinks and a good many of them. When he would come in from home in the morning he would take two barroom glasses at a time. This was in November and December, 1884, and January and February, 1885. Saw him on the morning of the homicide. He did not attract my attention. Looked like he had been drinking before he came there.

R. D. HADDON:

Last year before Christmas Ferguson would come to the bar two or three times a week and buy from a pint to a half gallon. Drank more in the fall than during the rest of the year.

Press Chestnut: Knows that Ferguson drank a good deal last year. Sometimes looked like he would drink nearly half a pint at a drink. He is my brother-in-law.

Thomas C. Christian Helps his father in the barroom. Saw Ferguson in the barroom in the fall once or twice a week.

R. L. Williams: Saw Ferguson on day of killing. Witness called him a drunk man on that. He had seen him when he did not think he had quite as much whiskey in him as at other times.

The defence closed here and the State put up in reply

The State In Reply.

DR. T. J. MABRY,

who testified that he had practiced forty or forty-five years. Practiced in the family of A. J. Ferguson for fifteen years, and has known John C. Ferguson all this time and longer. Has never treated Ferguson for epilepsy, or any disease of that kind. The symptoms of epilepsy are falling down, spasms, convulsions, which last from a few minutes to an hour. In petit mal the limbs are not still. There are general convulsions, of the whole body. It is said that persons have premonitory symptoms. Sometimes there are pains in the head. Can't say that the patient would be aware of it. The effect of epilepsy is to destroy the mind. It tends to lunacy. The books say it tends to violence, but he has never seen it. He recognizes no form of epilepsy without unconsciousness. A person suffering from petit mal is unconscious. Continued epilepsy would create an idiotic expression; but he has seen cases where there was no perceptible difference. When a person has had petit mal from the age of one year old up to manhood it would make a difference. Petit mal causes a cessation of occupation for a little while. Has seen Ferguson in an irrational state caused by whiskey. This was only one time.

DR. J. W. WIDEMAN:

Has been practicing for twelve years. There is no epilepsy without unconsciousness. It may last for a moment only or for some time. If a person had anything in his hand at the time the fit came on he would either grasp it tighter and hold it in the same position or drop it. A person would not know what was going on during the attack. A person in one of these fits cannot conceive or perform. The rest of his testimony was about the same as that given on the previous trial and he corroborated the position as taken by Dr. T. J. Mabry.

Dr. J. L. Pressley: Has practiced thirty-four years. Among other symptoms, he stated that there was a distressed and unnatural cry when a person was attacked with epilepsy. The witness gave in substance the same testimony as Drs. Mabry and Wideman.

DR. L. T. HILL

stated that the loss of consciousness is a necessary symptom of epilepsy. The person suffering from epilepsy would not be aware of what had happened during the fit. He corroborated the other doctors examined by the State.

James P. Miller, merchant: Has known Ferguson ten years. He traded at his store. He managed his business like any other man and was a close buyer. Never saw anything wrong with him. Never heard anything about the epilepsy till the trial.

W. T. McDougal: Has known Ferguson for a number of years. He never heard anything about the epilepsy till the first trial. He bought like other people.

H. H. Hill: Has known Ferguson eight or ten years. Never heard of this epilepsy till the first trial. He bought like other people.

James Chalmers, Jr.: Has known Ferguson six years. Went to school with him. Never saw anything strange about him. Was a fair scholar. Saw him only once under the influence of whiskey.

Robert M. Hill: Has known Ferguson for years. Has dealt with him. He bought with good judgment and managed like any one else. Never heard of epilepsy until after the shooting. Never saw him drunk.

T. L. Douglass: Never saw anything strange in his conduct. Heard of epilepsy at the first case.

J. L. Perrin, S. G. Thompson and W. R. Smith testified that they had known Ferguson for some time, but knew nothing strange about him.

The testimony here closed, and Court adjourned until Friday morning, arranging in the meantime that each side should have four hours in which to make their argument to the jury.

The Arguments.

Speech of Gen. E. W. Moise.

The State has established all the facts which are necessary to make good the charge as laid in the indictment. This is not denied by the prisoner or his counsel. But as a matter of defence it is claimed that the prisoner was not sane at the time of the homicide, and that he was in an unsound condition of mind, supposed to exist at the time when the killing was consummated. With a view to establish this condition, it is attempted to show that the prisoner from an early age was liable to occasional attacks of some character of sickness which the defence claims are in the nature of epileptic seizures or mild attacks of that form of epilepsy which is known as petit mal. The defence has failed to make legal proof of this disease, no matter how mild in its nature at any time. The most it has accomplished in that line has been the production of evidence going to show that in the early stage of the prisoner's life, from one to five years of age, the prisoner had been subject to certain spells of some character of sickness very temporary in its nature and of so mild a type that medical skill had never been invoked with a view to suppress it. In these infantile spells the patient has been liable to be exhibited pallor and loss of consciousness for some brief period, but there is no evidence clearly establishing the supposition that such attacks were of epilepsy in any form. The pallor which is relied upon, is not regarded by the authority which the defence place its most utmost confidence in as an infallible sign of epilepsy in any form. See 241, nor was there any other conclusive evidence that these spells, as they are spoken of here, were epileptic in their nature.

In order that the accused could succeed in establishing the defence interposed in this case it is necessary that he should prove affirmatively that the prisoner was not of sound mind, and this cannot be done by showing a certain condition of facts from which an hypothesis might be formed that he might have been of unsound mind at such time; nor even that he might reasonably be supposed to have been affected by disease at the time existing. The burden of proof is upon them to show that he probably was, but in point of fact, that he really was imbecile or of unsound mind at the particular time when the offense was committed.

The next step in the chain which the defence has sought to argue in this case is that during the school days of the prisoner he had been seen on one or two occasions to exhibit symptoms which might have indicated disease of some character, or fainting spells, at least, but in no case has it been shown or even attempted to be shown that any medical man had been called in to examine him, or that he had been seen or had had any time been known as epileptic in any form. So that it is not proven by any competent testimony that the prisoner at the bar ever was an epileptic at any period of his life, but on the contrary it appears that his parents are now living and neither of them at any time had been diseased. That he himself is before the Court and does not present the appearance of one who has suffered therefrom. His father's family physician has been examined, and he states that he never heard until this trial that the prisoner was affected, in that manner. It is said however that the father had been suffered somewhat in his youth from a similar disease but it is well recognized doctrine that disease does not descend from sister to brother. Nor is there the slightest proof that the sister ever had an attack of epilepsy in any shape, or had ever been treated therefor. It is alleged that she had been given verumtamen in solution, but it has not been shown that this medicine is peculiarly adapted to epileptic cases. On the contrary it appears that the evidence that is used in that large class of ailments which are known as diseases of the nerves.

It is said he threatened to commit suicide when reproached with his selfish intolerance, and of neglect of duty to those dependent on him. His father says that on that night he remained in the same room with him. He says the boy was restless. Could not sleep, and to use his own words, appeared to be plump crazy. Well, if it be true that he had been so deranged, that he was getting so bad, his condition of mind, we should have been excited—too much so for sleep, and if to this he added the reproaches of a conscience awakened then to a sense of the folly and sin of the course he was pursuing, his demeanor might naturally have been such as to have given the father's heart. If he had put a knife into his mouth to stick away his tongue, he might well be regarded as irrational, even if that father to find his son in his dire extremity may have painted this scene in a light rendered sombre by his woes, the recording angel would with a fair obliterate all the traces of that father's sin, even if he had yielded to temptation, and sought to shield his first-born by an exhibition of the same kind. It seems that the father did not wish him to come to Abbeville on the following day, made arrangements whereby his wife could attend a wedding at his father's whilst he, the prisoner, could remain at his father's house, away from the temptations of the town, but the young man was not so easily satisfied. He carried out his arrangement. The thirst of disaffection was upon him. He came to town, left his wife and child at her father's and at once began to inflame himself with poisoned alcohol. Having by this means drowned all convictions of conscience he sets to work deliberately to carry out the purpose entertained in his heart of slaying the man with whom he had quarrelled a few days before.

What carried him to the place of business of the accused? What did he go there for? Why carry a loaded pistol? Why seek that pistol and remove it from one pocket to another? Why was he there? Why was he particularly in the vicinity of the accused? If he were done in a state of somnambulism, or when the mental powers were suspended, so

that he was unconscious of what he was doing, how does it happen that after firing the fatal shot, he realized that what he had done was wrong and needed excuse? How was it that he could frame excuses three in number, either one of which would have been a defence to him if true? How was it that he changed them as a possibility of maintaining them appeared? How was it that he was known to be epileptic, and these facts were known to his family why was it not then announced to the horror-stricken people of Abbeville that such was his condition? Why were not physicians called to examine him then and? How was it that his unnatural appearance did not manifest itself to the Marshal and attendant with whom he conversed? How was it that he could so well remember the necessity for giving security for his appearance and offer bail? Why was it that those symptoms did not manifest themselves when he was being taken to jail? What were those words which he spoke to his victim before taking his life? No one but he could tell, and he has chosen to stand mute. It would seem from what has been said that the defence has failed to establish the facts upon which their theory rests, and were this all against which the prosecution had to contend it would seem that there would be no doubt as to the verdict, but there is silence more eloquent than speech, and there are voices which are heard though they speak not. Benedict is dead, and the prisoner lives. Human sympathy naturally tends to the living against the dead. The strict law would have the prisoner, his young wife and younger child, appear in this jury for their sympathy, and it is given in no measured degree. All of us must feel for them, and if this were the place, and this were the time for the exhibition of such feelings, none would commend it more than me. The unfortunate case of these people does not arise from the position which the prisoner now holds at the bar. Their trouble cannot be relieved by anything that you can do. It is not the jeopardy of the prisoner which afflicts their hearts or his. It is his guilt. That consciousness of the great wrong which he has committed hangs over his soul and theirs. If there is a blot upon the escutcheon of South Carolina this day, it is, that lawless men pervades over the land. If there is a blemish on her fair fame, it is that the laws of the land are not fearlessly enforced by the judiciary. We do not ask you to find an innocent guilty for any such reasons as these, but we do ask that you do that which your conscience demand. We ask you to say on your oaths whether the prisoner is guilty of the charge or not guilty, and blinding yourselves to all outward considerations, we call upon you now to write such a verdict in this case as will make the law hereafter what it should be, a terror to all evil-doers, and not vengeance that we seek. The State asks you to give the blood of any of her children. It is the example which is needed. Unless you do your duty here, next week may have its tale of woe to record in your county. If you turn this prisoner loose you give him a carte blanche to slay whom he chooses. Your verdict will have established a fact that he is not responsible to the law. Yet you will give him perfect freedom to walk your streets, to carry deadly weapons, to take any life or destroy any property without the fear of consequences. Are you prepared to do this? If the future should show that the prisoner will write that liberty in your land was sold to license and freedom, driven from her adopted home by the uncurbed passions of your rising generation.

Speech of L. W. Smith, Esq.

After addressing himself to the Court as to the law applicable to the defendant's case, Mr. Smith spoke to the jury in substance as follows:

Gentlemen of the Jury: Notwithstanding the great difference I feel in raising my feeble voice in a case of such magnitude and importance, still I am glad to be here, not glad to stand before you as should by a seeming rash act have involved his family and himself in so much trouble and woe, but glad to do my little part in aiding the defense of one so oppressed and so deserted, in a case which not only involves his life, but the lives and liberties of all his. His cause is my cause, and yours, and mine, yours involves nothing less than the happiness of every citizen of this grand old County. Not only gentlemen do you pass upon the solemn issue, whether John C. Ferguson is guilty of murder, but your deliberations have a still higher and nobler aim, you are to prove to the people of this county after all that has been said in this case, that the law can receive a fair and impartial hearing at the hands of a jury of its countrymen and peers? Can you listen alone to the evidence heard upon that stand and apply the law as expounded by his Honor, or do the solemn facts laid here by the witnesses, come to your ears under the heightening of a mistaken taken public zeal? Is John Ferguson to be convicted as matter of public expedience, or is he to enjoy the great and noble protection the law allows, and receive from you an unbiased and impartial verdict? If such then is should see it that he has allowed all the benefits and privileges the law in its great wisdom allows.

This gentlemen, you no doubt have resolved to do when taking the oath as a juror, but no matter how pure and just your intentions you may be unwittingly led astray.

An honorable homicide has been committed. We are all the gentlemen may say on this point; it may have few equals in the annals of crime, but if you allow any other considerations to enter your minds than the facts in this case, you will be committing a more horrible, more cruel and more deliberate wrong than any you can do. For the same, you may not know it, but the same, the same, still there is another tribunal where the same are id, before which you must appear, and God grant you may acquit yourselves well.

(Mr. Smith here commented on the numerous array of attorneys for the State as unprecedented, and inquired into the reason of the indignation. After exhorting the jury to brace themselves and to do their duty in defence of the State's counsels and the power of the press, he continued):

All we ask is for you to give us an impartial hearing. As God is my witness we are sincere in our defense, and while the defense of unsoundness of mind is always viewed with a suspicious eye, and we have no alternative but to listen to it, and the more of this case should admonish you to be patient, that you may hear.

We do not contend that John Ferguson ever was or is even now a lunatic or insane being, but that at the time of the homicide his mind was so diseased, that he was in a state of violent in his destructive, habitual, and continued and habitual drinking, that his reason was dethroned and John was unconscious and therefore irresponsible of the crime he was committing. Epilepsy and alcoholism are either sufficient to dethrone the reason and render mind unman. How long do you suppose one's mind can last if both these loathsome diseases operate at once?

(The speaker then entered into a discussion of epilepsy—its divisions, symptoms, predisposing causes, &c.).

The only source of accurate information we have is from the medical books on this subject. No doctor ever practiced on the stand, with his practice confined to an area of ten miles square in some country district, will pretend to have had the experience and practice of one of the many authors we present to you this morning through their works. Our doctors, for whose intelligence I have the highest regard, may do very well in cases of ordinary sickness, but when it comes to nervous diseases—a branch of the medical science upon which, Dr. Waddell says, notwithstanding the great strides which have lately been made, the medical profession is only on the threshold of truth and certainty—for my part give me the opinion and practice of a man of extensive practice in the State, and judge for yourself, how could you be so ignorant as to give as their experience cases like John's, when there is no such thing as epilepsy in mild type, and John is not subject to the disease in any shape or form.

(Mr. Smith then reviewed at length the evidence of this case, and continued):

Now, gentlemen, you are to decide what

that he was unconscious of what he was doing, how does it happen that after firing the fatal shot, he realized that what he had done was wrong and needed excuse? How was it that he could frame excuses three in number, either one of which would have been a defence to him if true? How was it that he changed them as a possibility of maintaining them appeared? How was it that he was known to be epileptic, and these facts were known to his family why was it not then announced to the horror-stricken people of Abbeville that such was his condition? Why were not physicians called to examine him then and? How was it that his unnatural appearance did not manifest itself to the Marshal and attendant with whom he conversed? How was it that he could so well remember the necessity for giving security for his appearance and offer bail? Why was it that those symptoms did not manifest themselves when he was being taken to jail? What were those words which he spoke to his victim before taking his life? No one but he could tell, and he has chosen to stand mute. It would seem from what has been said that the defence has failed to establish the facts upon which their theory rests, and were this all against which the prosecution had to contend it would seem that there would be no doubt as to the verdict, but there is silence more eloquent than speech, and there are voices which are heard though they speak not. Benedict is dead, and the prisoner lives. Human sympathy naturally tends to the living against the dead. The strict law would have the prisoner, his young wife and younger child, appear in this jury for their sympathy, and it is given in no measured degree. All of us must feel for them, and if this were the place, and this were the time for the exhibition of such feelings, none would commend it more than me. The unfortunate case of these people does not arise from the position which the prisoner now holds at the bar. Their trouble cannot be relieved by anything that you can do. It is not the jeopardy of the prisoner which afflicts their hearts or his. It is his guilt. That consciousness of the great wrong which he has committed hangs over his soul and theirs. If there is a blot upon the escutcheon of South Carolina this day, it is, that lawless men pervades over the land. If there is a blemish on her fair fame, it is that the laws of the land are not fearlessly enforced by the judiciary. We do not ask you to find an innocent guilty for any such reasons as these, but we do ask that you do that which your conscience demand. We ask you to say on your oaths whether the prisoner is guilty of the charge or not guilty, and blinding yourselves to all outward considerations, we call upon you now to write such a verdict in this case as will make the law hereafter what it should be, a terror to all evil-doers, and not vengeance that we seek. The State asks you to give the blood of any of her children. It is the example which is needed. Unless you do your duty here, next week may have its tale of woe to record in your county. If you turn this prisoner loose you give him a carte blanche to slay whom he chooses. Your verdict will have established a fact that he is not responsible to the law. Yet you will give him perfect freedom to walk your