

CHAPTER XXXII.

The Instructions to the Jury—What Murder Is—Free Speech and its Abuse—The Theory of Conspiracy—Value of Circumstantial Evidence—Meaning of a "Reasonable Doubt"—What a Jury May Decide—Waiting for the Verdict—"Guilty of Murder"—The Death Penalty Adjudged—Neebe's Good Luck—Motion for a New Trial—Affidavits about the Jury—The Motion Overruled.

ON the conclusion of State's Attorney Grinnell's review of the arguments made by the defense, Judge Gary proceeded to charge the jury. The hour was after the noon recess of Thursday, August 19, and the presentation and reading of the instructions consumed a goodly portion of the afternoon. When the court had finished the jury retired, and the fate of eight men was in their hands.

The instructions given were as follows on behalf of the people:

"The court instructs the jury, in the language of the statute, that murder is the unlawful killing of a human being in the peace of the people, with malice aforethought, either expressed or implied. An unlawful killing may be perpetrated by poisoning, striking, starving, drowning, stabbing, shooting, or by any other of the various forms or means by which human nature may be overcome, and death thereby occasioned.

"Express malice is that deliberate intention unlawfully to take away the life of a fellow-creature which is manifested by external circumstances capable of proof. Malice shall be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart.

"The court instructs the jury that whoever is guilty of murder shall suffer the penalty of death or imprisonment in the penitentiary for his natural life, or for a term not less than fourteen years. If the accused or any of them are found guilty by the jury, the jury shall fix the punishment by their verdict.

"The court instructs the jury that, while it is provided by the Constitution of the State of Illinois that every person may freely speak, write and publish on all subjects, he is, by the Constitution, held responsible under the laws for the abuse of liberty so given. Freedom of speech is limited by the laws of the land, to the extent, among other limitations, that no man is allowed to advise the committing of any crime against the person or property of another; and the statute provides: An accessory is he who stands by and aids, abets and assists, or who, not being present, aiding, abetting or assisting, hath advised, encouraged, aided or abetted the perpetration of the crime. He who thus aids, abets, assists, advises or encourages, shall be considered as principal, and punished accordingly.

"Every such accessory, when the crime is committed within or without this State by his aid or procurement in this State, may be indicted and convicted at the same time as the principal, or before or after his conviction, whether the principal is convicted or amenable to justice or not, and punished as principal.

"The court further instructs the jury, as a matter of law, that if they believe from the evidence in this case, beyond a reasonable doubt, that the defendants, or any of them, conspired and agreed together, or with others, to overthrow the law by force, or to unlawfully resist the officers of the law, and if they further believe from the evidence, beyond a reasonable doubt, that, in pursuance of such conspiracy and in furtherance of the common object, a bomb was thrown by a member of such conspiracy at the time, and that Mathias J. Degan was killed, then such of the defendants that the jury believe from the evidence, beyond a reasonable doubt, to have been parties to such conspiracy, are guilty of murder, whether present at the killing or not, and whether the identity of the person throwing the bomb be established or not.

"If the jury believe from the evidence, beyond a reasonable doubt, that there was in existence in this county and State a conspiracy to overthrow the existing order of society, and to bring about social revolution by force, or to destroy the legal authorities of this city, county or State by force, and that the defendants, or any of them, were parties to such conspiracy, and that Degan was killed in the manner described in the indictment, that he was killed by a bomb, and that the bomb was thrown by a party to the conspiracy, and in furtherance of the objects of the conspiracy, then any of the defendants who were members of such conspiracy at that time are in this case guilty of murder, and that, too, although the jury may further believe from the evidence that the time and place for the bringing about of such revolution, or the destruction of such authorities, had not been definitely agreed upon by the conspirators, but was left to them and the exigencies of time, or to the judgment of any of the co-conspirators."

"If these defendants, or any two or more of them, conspired together with or not with any other person or persons to excite the people or classes of the people of this city to sedition, tumult and riot, to use deadly weapons against and take the lives of other persons, as a means to carry their designs and purposes into effect, and in pursuance of such conspiracy, and in furtherance of its objects, any of the persons so conspiring publicly, by print or speech, advised or encouraged the commission of murder without designating time, place or occasion at which it should be done, and in pursuance of, and induced by such advice or encouragement, murder was committed, then all of such conspirators are guilty of such murder, whether the person who perpetrated such murder can be identified or not. If such murder was committed in pursuance of such advice or encouragement, and was induced thereby, it does not matter what change, if any, in the order or condition of society, or what, if any, advantage to themselves or others the conspirators proposed as the result of their conspiracy, nor does it matter whether such advice and encouragement had been frequent and long continued or not, except in determining whether the perpetrator was or was not acting in pursuance of such advice or encouragement, and was or was not induced thereby to commit the murder. If there was such conspiracy as in this instruction is recited, such advice or encouragement was given, and murder committed in pursuance of and induced thereby, then all such conspirators are guilty of murder. Nor does it matter, if there was such a conspiracy, how impracticable or impossible of success its end and aims were, nor how foolish or ill-arranged were the plans for its execution, except as bearing upon the question whether there was or was not such conspiracy.

"The court instructs the jury that a conspiracy may be established by circumstantial evidence the same as any other fact, and that such evidence is legal and competent for that purpose. So also whether an act which was committed was done by a member of the conspiracy, may be established by circumstantial evidence, whether the identity of the individual who committed the act be established or not; and also whether an act done was in pursuance of the common design may be ascertained by the same class of evidence, and if the jury believe from the evidence in this case beyond a reasonable doubt that the defendants or any of them conspired and agreed together or with others to overthrow the law by force, or destroy the legal authorities of this city, county or State by force, and that in furtherance of the common design, and by a member of such conspiracy, Mathias J. Degan was killed, then these defendants, if any, whom the jury believe from the evidence, beyond a reasonable doubt, were parties to such conspiracy, are guilty of the murder of Mathias J. Degan, whether the identity of the individual doing the killing be established or not, or whether such defendants were present at the time of the killing or not.

"The jury are instructed, as a matter of law, that all who take part in the conspiracy after it is formed, and while it is in execution, and all who with knowledge of the facts concur in the plan originally formed, and aid in executing them, are fellow-conspirators. Their concurrence without proof of an agreement to concur is conclusive against them. They commit the offense when they become parties to the transaction or further the original plan with knowledge of the conspiracy.

"The court instructs the jury, as a matter of law, that circumstantial evidence is just as legal and just as effective as any other evidence, provided the circumstances are of such a character and force as to satisfy the minds of the jury of the defendants' guilt beyond a reasonable doubt.

"The court instructs the jury that what is meant by circumstantial evidence in criminal cases is the proof of such facts and circumstances connected with or surrounding the commission of the crime charged as tend to show the guilt or innocence of the party charged. And if those facts and circumstances are sufficient to satisfy the jury of the guilt of the defendants beyond a reasonable doubt, then such evidence is sufficient to authorize the jury in finding the defendants guilty.

"The law exacts the conviction wherever there is sufficient legal evidence to show the defendants' guilt beyond a reasonable doubt, and circumstantial evidence is legal evidence.

"The court instructs the jury, as a matter of law, that when the defendants August Spies, Michael Schwab, Albert R. Parsons and Samuel Fielden testified as witnesses in this case, each became the same as any other witness, and the credibility of each is to be attested by and subjected to the same tests as are legally applied to any other witness; and in determining the degree of credibility that shall be accorded to the testimony of any one of said above-named defendants, the jury have a right to take into consideration the fact that he is interested in the result of this prosecution, as well as his demeanor and conduct upon the witness-stand during the trial, and the jury are also to take into consideration the fact, if such is the fact, that he has been contradicted by other witnesses. And the court further instructs the jury that if, after considering all the evidence in this case, they find that any one of said defendants August Spies, Michael Schwab, Albert R. Parsons and Samuel Fielden has willfully and corruptly testified

falsely to any fact material to the issue in this case, they have the right to entirely disregard his testimony, except in so far as his testimony is corroborated by other credible evidence.

"The rule of law which clothes every person accused of crime with the presumption of innocence, and imposes upon the State the burden of establishing his guilt beyond a reasonable doubt, is not intended to aid any one who is in fact guilty of crime to escape, but is a humane provision of law, intended, so far as human agencies can, to guard against the danger of any innocent person being unjustly punished.

"The court instructs the jury, as a matter of law, that in considering the case the jury are not to go beyond the evidence to hunt up doubts, nor must they entertain such doubts as are merely chimerical or conjectural. A doubt, to justify an acquittal, must be reasonable, and it must arise from a candid and impartial investigation of all the evidence in the case, and unless it is such that, were the same kind of doubt interposed in the graver transactions of life, it would cause a reasonable and prudent man to hesitate and pause, it is insufficient to authorize a verdict of not guilty. If, after considering all the evidence, you can say you have an abiding conviction of the truth of the charge, you are satisfied beyond a reasonable doubt.

"The court further instructs the jury, as a matter of law, that the doubt which the juror is allowed to retain on his own mind, and under the influence of which he should frame a verdict of not guilty, must always be a reasonable one. A doubt produced by undue sensibility in the mind of any juror, in view of the consequences of his verdict, is not a reasonable doubt, and a juror is not allowed to create sources or materials of doubt by resorting to trivial and fanciful suppositions and remote conjectures as to possible states of fact differing from that established by the evidence. You are not at liberty to disbelieve as jurors if from the evidence you believe as men; your oath imposes on you no obligation to doubt where no doubt would exist if no oath had been administered.

"The court instructs the jury that they are the judges of the law as well as the facts in this case, and if they can say, upon their oaths, that they know the law better than the court itself, they have the right to do so; but before assuming so solemn a responsibility, they should be assured that they are not acting from caprice or prejudice, that they are not controlled by their will or their wishes, but from a deep and confident conviction that the court is wrong and that they are right. Before saying this, upon their oaths, it is their duty to reflect whether, from their study and experience, they are better qualified to judge of the law than the court. If, under all the circumstances, they are prepared to say that the court is wrong in its exposition of the law, the statute has given them that right.

"In this case the jury may, as in their judgment the evidence warrants, find any or all of the defendants guilty or not, or all of them not guilty; and if, in their judgment, the evidence warrants, they may, in case they find the defendants, or any of them, guilty, fix the same penalty for all the defendants found guilty, or different penalties for the different defendants found guilty.

"In case they find the defendants, or any of them, guilty of murder, they should fix the penalty either at death or at imprisonment in the penitentiary for life, or at imprisonment in the penitentiary for a term of any number of years, not less than fourteen."

The instructions given on behalf of defendants were as follows :

"The jury in a criminal case are the judges of the law and the evidence, and have to act according to their best judgment of such law and the facts.

"The jury have a right to disregard the instructions of the court, provided they can say upon their oaths that they believe they know the law better than the court.

"The law presumes the defendants innocent of the charge in the indictment until the jury are satisfied by the evidence, beyond all reasonable doubt, of the guilt of the defendants.

"If a reasonable doubt of any facts, necessary to convict the accused, is raised in the minds of the jury by the evidence itself, or by the ingenuity of counsel upon any hypothesis reasonably consistent with the evidence, that doubt is decisive in favor of the prisoners' acquittal. A verdict of not guilty simply means that the guilt of the accused has not been demonstrated in the precise, specific and narrow forms prescribed by the law.

"No jury should convict anybody of crime upon mere suspicion, however strong, or because there is a preponderance of all the evidence against him, but the jury must be convinced of the defendant's guilt, beyond all reasonable doubt, before they can lawfully convict.

"The law does not require the defendants to prove themselves innocent, but the burden of proof that they are guilty beyond all reasonable doubt is upon the prosecution.

"The indictment is of itself a mere accusation and no proof of the guilt of the defendants.

"The presumption of the innocence of the defendants is not a mere form, but an essential, substantial part of the law of the land, and it is the duty of the jury to give the defendants the full benefit of this presumption in this case.

"It is incumbent upon the prosecution to prove beyond all reasonable doubt every material allegation in the indictment, and unless that has been done, the jury should find the defendants not guilty.

"The burden is upon the prosecution to prove by credible evidence, beyond all reasonable doubt, that the defendants are guilty as charged in the indictment of the murder of Mathias J. Degan ; it is the duty of the jury to acquit any of the defendants as to whom there is a failure of such proof. The jury are not at liberty to adopt any unreasonable theories or suppositions in considering the evidence in order to justify a verdict of conviction.

"A reasonable doubt is that state of mind in which the jury, after considering all the evidence, cannot say they feel an abiding faith, amounting to a moral certainty, from the evidence in the case, that the defendants are guilty as charged in the indictment.

"The rules of evidence as to the amount of evidence in this case are different from those in a civil case ; a mere preponderance of evidence would not warrant a verdict of guilty.

"Mere probability of the defendants' guilt is not sufficient to warrant a conviction.

"Your personal opinions as to facts not proved cannot be the basis of your verdict, but you must form your verdict from the evidence, and that

alone, unaided and uninfluenced by any opinions or presumptions not founded upon the evidence.

"The jury are the sole judges of the credibility of witnesses, and in passing thereon may consider their prejudices, motives or feelings of revenge, if any such have appeared, and if the jury believe from the evidence that any witness has knowingly or willfully testified falsely as to any material fact, they may disregard his entire testimony, unless it is corroborated by other credible evidence.

"If one single fact is proved by a preponderance of the evidence which is inconsistent with the guilt of a defendant, this is sufficient to raise a reasonable doubt as to his guilt and entitles him to an acquittal. In order to justify the inference of legal guilt from circumstantial evidence, the existence of the inculpatory facts must be absolutely incompatible with the innocence of the accused upon any rational theory.

"The witnesses Gottfried Waller and Wilhelm Seliger are accomplices, and while a person accused of crime may be convicted upon the uncorroborated testimony of an accomplice, still the jury should weigh it with great care and caution, and convict upon it only if they are satisfied beyond any reasonable doubt of its truth.

"If you believe from the evidence that the witnesses Gottfried Waller and Wilhelm Seliger were induced to become witnesses by any promise of immunity from punishment, or by any hope held out to them, that it would go easier with them in case they disclosed who their confederates were, or in case they implicated some one else in the crime, then you should take such facts into consideration in determining the weight to be given to their testimony.

"Same instruction in regard to the testimony of any other witnesses for the prosecution.

"The testimony of an accomplice should be subjected to critical examination in the light of all the other evidence.

"A person charged with crime may testify in his own behalf, but his neglect to do so shall not create any presumption against him.

"The jury should endeavor to reconcile the testimony of the defendants' witnesses with the belief that all of them endeavored to tell the truth, and you should attribute any contradictions or differences in their testimony to mistake or misrecollection rather than to a willful intention to swear falsely, if you can reasonably do so under the evidence.

"The jury should fairly and impartially consider the testimony of the defendants, together with all the other evidence.

"If the verbal admission of a defendant is offered in evidence, the whole of the admission must be taken together, and those parts which are in favor of the defendant are entitled to as much consideration as any other parts, unless disproved, or apparently improbable or untrue, when considered with all the other evidence.

"It would be improper for the jury to regard any statements of the prosecuting attorneys, not based upon the evidence, as entitled to any weight.

"If all the facts and circumstances relied on by the People to secure a conviction can be reasonably accounted for upon any theory consistent with the innocence of the defendants, or any of them, then you should acquit such of them as to whom the facts proven can thus be accounted for.

"It is not enough to warrant the conviction of a person charged with crime that he contemplated the commission of such crime. If any rea-

sonable hypothesis exists that such crime may have been committed by another in no way connected with the defendants, the accused should be acquitted.

"If the evidence leaves a reasonable doubt of the guilt of the defendants, as charged in the indictment, the jury should acquit, although the evidence may show conduct of no less turpitude than the crime charged.

"The allusions and references of the prosecuting attorneys to the supposed dangerous character of any views entertained or principles contended for by the accused should in no way influence you in determining this case.

"Individuals and communities have the legal right to arm themselves for the defense and protection of their persons and property, and a proposition by any person, publicly proclaimed, to arm for such protection and defense, is not an offense against the laws of this State.

"If the defendants, or some of them, agreed together, or with others, in the event of the workingmen or strikers being attacked, that they (defendants) would assist the strikers to resist such an attack, this would not constitute conspiracy if the anticipated attack was unjustified and illegal, and such contemplated resistance simply the opposing of force wrongfully and illegally exercised, by force sufficient to repel said assault.

"The burden is not cast upon the defendants of proving that the person who threw the bomb was not acting under their advice, teaching or procurement. Unless the evidence proves beyond all reasonable doubt that either some of the defendants threw said bomb, or that the person who threw it acted under the advice and procurement of defendants or some of them, the defendants should be acquitted. Such advice may not necessarily be special as to the bomb, but general, so as to include it.

"It is not proper for the jury to guess that the person who threw the bomb was instigated to do the act by the procurement of defendants or any of them. There must be a direct connection established, by credible evidence, between the advice and consummation of the crime, beyond all reasonable doubt.

"The bomb might have been thrown by some one unfamiliar with, and unprompted by, the teachings of the defendants or any of them. Before defendants can be held liable therefor, the evidence must satisfy you beyond all reasonable doubt that the person throwing said bomb was acting as the result of the teaching or encouragement of defendants or some of them.

"Before a person charged as accessory to a crime can be convicted, the evidence must prove beyond a reasonable doubt that the crime was committed by some person acting under the advice, aid, encouragement, abetting or procurement of the defendant whose conviction as accessory is sought. Though you may believe from the evidence that a party in fact advised the commission in certain contingencies of acts amounting to crime, yet, if the act complained of was in fact committed by some third party of his own mere volition, hatred, malice or ill-will, and not materially influenced, either directly or indirectly, by such advice of the party charged, or any party for whose advice the defendants are responsible, the party charged would not in such case be responsible.

"If you find that at a meeting held on the evening of May 3d at 54 West Lake Street, at which some of the defendants were present, it was agreed that in the event of a collision between the police, militia or firemen, and the

striking laborers, certain armed organizations, of which some of the defendants were members, should meet at certain places in Chicago, that a committee should attend public places and meetings where an attack by the police and others might be expected, and in the event of such attack report the same to said organizations to the end that such attack might be resisted and the police stations of the city destroyed, still, if the evidence does not prove, beyond all reasonable doubt, that the throwing of the bomb which killed Mathias J. Degan was the result of any act in furtherance of the common design herein stated, and if it may have been the unauthorized and individual act of some person acting upon his own responsibility and volition, then none of the defendants can be held responsible therefor on account of said West Lake Street meeting."

Upon the conclusion of the reading of the instructions in behalf of the defendants, which were read after the instructions on behalf of the people, the court of its own motion gave to the jury the following instruction :

"The statute requires that instructions by the court to the jury shall be in writing, and only relate to the law of the case.

"The practice under the statute is that the counsel prepare on each side a set of instructions and present them to the court, and, if approved, to be read by the court as the law of the case. It may happen, by reason of the great number presented and the hurry and confusion of passing on them in the midst of the trial, with a large audience to keep in order, that there may be some apparent inconsistency in them, but if they are carefully scrutinized such inconsistencies will probably disappear. In any event, however, the gist and pith of all is that if advice and encouragement to murder was given, if murder was done in pursuance of and materially induced by such advice and encouragement, then those who gave such advice and encouragement are guilty of the murder. Unless the evidence, either direct or circumstantial, or both, proves the guilt of one or more of the defendants upon this principle so fully that there is no reasonable doubt of it, your duty to them requires you to acquit them. If it does so prove, then your duty to the State requires you to convict whoever is so proved guilty. The case of each defendant should be considered with the same care and scrutiny as if he alone were on trial. If a conspiracy, having violence and murder as its object, is fully proved, then the acts and declarations of each conspirator in furtherance of the conspiracy are the acts and declarations of each one of the conspirators. But the declarations of any conspirator before or after the 4th of May which are merely narrative as to what had been or would be done, and not made to aid in carrying into effect the object of the conspiracy, are only evidence against the one who made them.

"What are the facts and what is the truth the jury must determine from the evidence, and from that alone. If there are any unguarded expressions in any of the instructions which seem to assume the existence of any facts, or to be any intimation as to what is proved, all such expressions must be disregarded, and the evidence only looked to to determine the facts."

The jury the next day reported to the court that they had agreed upon a verdict. The members were accordingly brought in, and the clerk of the court read the verdict as follows :

"We, the jury, find the defendants August Spies, Michael Schwab,

Samuel Fielden, Albert R. Parsons, Adolph Fischer, George Engel and Louis Lingg guilty of murder in manner and form as charged in the indictment and fix the penalty at death. We find the defendant Oscar W. Neebe guilty of murder in manner and form as charged in the indictment, and fix the penalty at imprisonment in the penitentiary for fifteen years."

This was a great surprise to the defendants, and their counsel at once entered a motion for a new trial. The hearing of the motion was postponed until the next term, and on the 1st of October arguments were submitted. The grounds upon which the motion was based were numerous. They first related to a refusal of some, and a modification of several other instructions at the hands of the court asked for by the defendants; a claim that jurors had been summoned by the officers with the avowed view to conviction; improper language by the State's Attorney in his closing argument; erroneous rulings of the court in regard to the competency of jurors, and the refusal of separate trials for the defendants. Other grounds touched on a statement made by one of the members of the jury, Mr. Adams, prior to the trial, with reference to the Haymarket massacre, showing prejudice against the defendants, backed by an affidavit as to what he said; an affidavit of one Mr. Love, that he met Gilmer on the night of May 4, shortly after eight o'clock, and went to a saloon with him, where they and another person drank beer and talked until 9:20 o'clock, and also a further reason that the defendants had discovered some new evidence, to back which an affidavit was submitted from John Philip Deluse, dated August 24, 1886, concerning a mysterious individual who had called at his saloon, in Indianapolis, Ind., in May, 1886.

The argument of counsel on each side, on the points raised, consumed several days, and finally, on the 7th of October, 1886, Judge Gary, in an elaborate and exhaustive opinion, overruled the motion.

The defendants then entered a motion in arrest of judgment, and this was also overruled.