

Howell &amp; Tenney

which the defense insisted established this theory, one of which was that McCann used two axes in killing his wife, or rather that he killed her with one ax and chopped her to pieces with another; that he seized them both to fight the men whom he believed were assaulting him. He made no attempt at flight, but remained near the body of his victim nearly all night. Neither did he make any attempt to conceal the body.

The defense of delirium tremens was held to be no defense until Chief-Justice Story laid down the law which settled that a man committing a crime, suffering under this disease, is not responsible for it.

The defense summoned to the trial some of the ablest physicians of the times, including Dr. Alden March, Dr. Thomas Hun, Dr. S. O. Vanderpoel, Dr. J. Swinburne and Dr. B. P. Staats.

It is said that Mr. Tremain never in the course of all his practice made a more powerful defense than on this trial. Mr. Harris, however, was equal to the occasion. His cross-examination and examination of the medical witnesses might easily have caused a stranger to believe him some eminent physician, experienced in treating cases of insanity, so ready was his understanding of that disease.

The medical testimony was of great value, and has been repeatedly used as precedent in similar cases, particularly that of Dr. Hun. It is doubtful whether the subject of delirium tremens was ever more admirably dissected or more ably explained than on this trial.

McCann was convicted and sentenced to be hanged.

The execution was fixed by the judges on January 23, 1857. A few days before the execution was to take place his counsel removed his case to the General Term, where the conviction of McCann was affirmed. From the judgment of the General Term his counsel brought error to the Court of Appeals, and after argument of Messrs. Peckham & Tremain on the part of the defense, and of Mr. Harris on the part of the People, a new trial was ordered.

The new trial commenced in November, 1857. Another long and exciting contest took place, resulting in the disagreement of the jury. In March, 1858, McCann was again placed at the bar for trial, and for the third time the public interest was aroused over this truly great case. This trial, like the second, resulted in a disagreement of the jury, there being eleven for conviction and one for acquittal. The jury deliberated nearly sixty-three hours, and during all this time the one juror stood alone against the pressure of his fellows.

To use the language of a leading journal of the day:

"The case was summed up for the defense by the Hon. N. W. Peckham in a most admirable manner. He was followed by Hon. Hamilton Harris on the part of the People. The intense earnestness and powerful eloquence of this gentleman gave him in this case, as in all others, great influence with the jury."

A proposition was finally made to have McCann plead guilty to manslaughter in the first degree,

which was accepted by Mr. Harris, and the prisoner was sentenced to State Prison for life. Thus ended a trial which is without precedent in the criminal trials of the State. The case is reported in 16 N. Y. Reports, 58, and is regarded as an important and leading one.

Among other important murder cases which Mr. Harris conducted were those of *The People vs. Phelps*, *The People vs. McCrossen*, *The People vs. Dunnigan* and *The People vs. Cummings*. In all these cases Mr. Harris was opposed by the ablest lawyers of the time. The success that attended him sufficiently attests his accomplishments as a prosecuting officer. The comments of the press upon the manner in which he conducted his arduous duties are gratifying testimonials.

One important criminal case in which Mr. Harris appeared against the prosecution was the case of *The People vs. Reimann*, indicted for complicity in the murder of Emil Hartung. Reimann was at first indicted as accessory before the murder, the principal being Mrs. Hartung, wife of the deceased, but he was subsequently indicted as principal for causing Hartung's death by administering to him arsenical poison. The case created great interest; indeed, there were features in it which invested it with dramatic interest.

Mr. Harris appeared for the defense; the prosecution was conducted by District Attorney Ira Shaffer, assisted by Samuel G. Courtney.

Mrs. Hartung had been convicted of the murder of her husband by poisoning, and was sentenced to be hanged. It was contended by the counsel for the People that Reimann was her guilty paramour. She was a handsome and attractive woman, with whom Reimann was passionately in love, and he aided in the taking off of her husband, to permit him to marry her. Much time was consumed in obtaining a jury, and more in taking the evidence. After the people rested, Mr. Harris made a motion for the discharge of Reimann on the ground that the evidence was insufficient to convict him. The motion was supported by an elaborate and cogent argument, to which Mr. Courtney replied with force and eloquence. The Hon. George Gould, who presided at the trial, after a learned and critical review of the whole evidence and the argument of the respective counsel, granted Mr. Harris' motion, and Reimann was discharged. But there were two more indictments against him; one for being accessory before the fact, the other for being accessory after the fact, and he was remanded to jail. A motion soon followed to admit him to bail; and another sharp legal contest ensued. He was finally discharged.

A history of the *causes celebres* in which Mr. Harris has been engaged has filled volumes, interesting to both practitioner and student. From 1816 down to 1876 there had been forty-three murder cases tried in the County of Albany, and Mr. Harris appeared as the leading counsel in no less than ten, either for the People or the defense.

Though he is not what might be termed a criminal lawyer, it has been his fortune, as we have seen, to be engaged in very many important crimi-