COURT OF KING'S BENCH.

GRAND JURY ROOM, 24th March, 1809.

The Grand Jury beg leave to thank the Court for the very luminous charge delivered to them by his Honor the Chief Justice, at the opening of the present Sessions, and, heartily concurring in opinion as to the propriety of diminishing the number of Taverns and the urgent necessary of using greater circumspection in the selection of persons to whom Licences shall hereafter be granted, pray that they may be favored with a copy of the charge, and permission to make it public; considering that a knowledge generally differninated of such being the unanimous sentiments of the Court and of the Grand Jury, cannot but have a beneficial effect, and may ultimately produce a sufficient remedy for an evil so generally felt and complained of.

(Signed) CLAUDE DENECHAU, Foreman.

CHARGE.

The calendar of this Sellion, offers to your confideration, the cases of thirteen prisoners charged with capital offences. Of these cases, the majority are larcenies committed under circumstances which do not appear to call for notice at this time. But, as the remainder are two accusations of murder, and one for a selonious shooting, we shall sate our concurrent opinion upon the Law which relates to them, leaving to you the application of that law, according to the facts of each case, as you may find them.

" Every Homicide which is not by law justified, excused or alleviated to Manslanghter, is murder. If it be done by the command or permission of law, it is justified. If it be occasioned by accident the consequence of some lawful act, or committed in what is called Chance Medley for felfdefence, it is excused. If it be occasioned by some involuntary accident the effect of an act unlawful in itself, or, if the act from which death enfues (though a voluntary act) be entirely, the natural effect of a sudden transport of passion, excited by violent provocation, it is alleviated to manflaughter. Duty therefore and obedience to the Law, absolute necessity, or pure accident from a faultless cause, are the only principles upon which homicide can be justified or excused-The temporary phrenty of sudden passion, proeceding from the infirmity of our nature, the only principle upon which murder can be extenuated and alleviated to manslaughter: except in the case of accidental death ensuing from an involuntary act-fuch act being the effect of a cause unlawful in itself.

Where an act of homicide is to be justified by the command of law, it must be shown that the facts of the case placed the defendant within the very letter of that command, and, consequently, that the infliction of death, was in him no crime, but an act of positive duty;—the instances of a criminal executed after conviction, according to the Judgment pronounced against him, and of public enemies destroyed in the field of battle, are sufficient elucidations of this axiom,

Where an act of homicide is to be justified by the permission of law, it must be shown that the act which was the cause of death was produced by an unavoidable and real necellity, and (what is equally effential) that the party killing was reduced to that necessity without fault of any kind on his part. It is required that the necessity should be unavoidable, because it may be sought after, and that it should be real, because malice may be coloured with the pretence of necessity; and in either case the party killing takes occasion under the appearance of necessity to execute an act of deliberate revenge. Therefore, if one who has committed a felony will not suffer himself to be arrested, but stands on his guard, or flies, to that he cannot be possibly apprehended alive, by those who pursue him, they who so pursue are by Law permitted, to have recourse to any means of force which may be required to take him, whether they be private persons, or public officers, and whether they have, or have not, a warrant from a Magistrate, and, if in the profecution of the means adopted, the felon happens to be killed, the homicide is justified by the permission of law; because the recourse to force was unavoidable, from real necessity, and permitted by law, for the advancement of justice; but on the contrary, if he may be taken without severity, there exills no necessity for a recourse to force; and, if such a recourse be then had, and he is killed, the homicide cannot be jullified, but will be manilaughter or murder according to circumstances. In like manner, where a man attempts to commit a known felony against the person, the habitation, or the property of another, and endeavours to effect his purpose, by force, the party so assailed, (that is assailed by force) is permitted by law to repel fuch force, by force on his part; and if the death of the affailant happen to enfue, he may justify it by the permission of law: for it is in such case obvious that his recourse to force arose from an unavoidable and real necessity, without fault on his part. But if no force is used on the part of the affailant, there exists no necessity for a recourse to force on the fide of the party assailed; and therefore, if such a recourse be had, and the affailant is killed, the homicide cannot be jultified, and will be manflaughter or murder according to circumstances. So also if one pretends to have a right and title to any property in the possession of another, and takes it from him, not as a felon but as a trespasser, though the latter may justify the mere beating of the trespasser, yet, if he beat him so that he dies, the homicide cannot be justified; for an unavoidable and real necessity for the beating could not exist, as the law furnishes an adequate remedy for the trespass; and the crime therefore, will again be manslaughter or murder, according to circumstances.

"Where an act of homicide is to be excused by law upon the principle of accident, it must be shown that it was
involuntary, and occasioned by an accident which proceeded from an act lawful in itself, and could not be foreseen
or prevented by human prudence; and such homicides are
thence usally called "homicides by misadventure."—If it
is to be excused, upon the principle of self defence, which
can only happen in case of sudden, mutual combat or affray,
voluntarily commenced by all parties concerned in it, it
must be shown that although it was voluntarily entered into

by the party killing, yet, that before the mortal troke was given, he had used his utmost endeavours to withdraw from it, had retreated as far as he could with safety, and then, urged by mere necessity, killed his adversary for the preservation of his own life: so that the distinguishing feature between homicides, in self defence, which are justified by permission of law, and homicides in self defence, which are excused by law, is this :- In the former the party killing is free from every imputation of fault whatever, and the entire.act which is the cause of death is permitted by law .-In the latter the party killing is originally to blame for having entered voluntarily into the combat or affray; but having afterwards endeavoured to withdraw from it, having retreated as far as he could confistent with his safety, and ultimately killed his opponent for self preservation, he is by law excused ;-And it is upon this account that excusable homicides, of this description, are usually called " homicides, upon chance medley in self defence", to dillinguish them from those in defence of person and property, which are juffified.

flaughter, (the Act upon which death enfued being involuntary,) it must be shown that such Act was the effect of mere accident, and that although such accident proceeded from an unlawful Act, yet that it was not the consequence of any act selonious in itself, or of any act done in the profecution of any selonious intent, or of any design which in

rits consequences tended to bloodshed.

"Where the crime of murder is to be alleviated to manflaughter, (the Act upon which death enfued being voluntary), it must be shown that the act of death was not premeditated, but was the sudden effect of Grong and icresislable passion produced by some violent provocation-The provocation must be mat the law admits to be such-The passion which is excited, must be natural, that is, such as is natural to human infirmity under the provocation given-The act of death, must be such as the passion excited naturally, and according to what the necessary course of human action would impel: and it must be committed in the actual moment of passion, before the mind has time to cool. If any of these circumstances are wanting; if the provocation is not what the law admits to be fuch ;-if the passion be beyond the provocation should naturally and ordinarily produce;if the act of death be beyond the pallion; that is, beyond what the passion should naturally and ordinarily produce; and if it be not committed in the very moment of pathon; that is before the pathon either has or ought to have passed away, the crime is not manslaughter; on the contrary, if it be not upon other principles justified or excused, it is murder; the crime which cannot be bleached.

"Gentlemen,-You will too foon be called upon to apply these principles to the several cases of homicide which you will have before you .- In your inquiries therefore; when you have certain evidence that the person who is said to be killed is really dead, a fast which in every inflance ought to be incontrovertably proved, you will confider whether any act of the person accused was either the cause or the occasion of the death; and, if you are satisfied upon this head, you will next confider whether the act be jullified or excused, and if you find that it be neither justified nor excused, the crime will amount to felony, and you will have but one remaining confideration; viz. whether you shall indist for murder, or for manslaughter; and in weighing the act of death in this view, your chief inquiries will be, whether it was voluntary or involuntary .- If involuntary, whether it was the effect of accident, and to what extent the cause of that accident was unlawful .- If voluntary, whether there was any and what provocation; whether the act of death was violent, or moderate, temperate or cruel; whether it was done in a sudden burst of passion, or with a weapon, or, in a manner unlikely to deliroy; or coolly, or with a weapon, or in a manner whose probable effect would be destruction; remembering, that it is a popular but a fatal error, to suppose that an actual intention to kill, is effential to the crime of murder; an error, too generally received for the safety of society. It is not such an intention, but malice which constitutes the essential ingredient; and malice may be express or implied; it is express, if a premediated defign to kill has existed; implied, (without such an intention and

upon facts in this, as in all other cases, being most unquelti-

the statute commonly called the black act, a felony of death;

and in this offence, though it be not necessary that any evil

consequence should ensue, yet the shooting must be with a

gun or other instrument so loaded, as to create the danger of

being killed, or maimed to the party aimed at; and it must

be levelled at him .- Malice also being an essential ingredi-

ent, in order to bring the case within the statute, it must be

fuch a shooting at another, as if death had ensued, the homi-

cide would have been murder .- We refer you therefore to

what we have already flated respecting homicides, the whole

"Gentlemen,-It might perhaps be sufficient if our ad-

drefs to you was confined to the remarks which we have

made; but as prevention of crimes is the great object of all

criminal Jurisprudence, we feel ourselves bound to notice

" Such are now the wants of mankind, that in every coun-

an evil which apparently threatens their increase.

. A wilful and malicious shooting at another is, under

onably the proper province of the Bench.

being applicable to this class of felonies:

try, a certain number of houses for the sale of firong liques are required; but where the proportion exceeds the necessa. ry wants of the people, they become an evil of serious magnitude. In such case, the possessors of such houses cannot all live upon the profits arising from the supply of such necessary wants and must therefore have recourse to other means. Fictitious and imaginary wants, if not excited, must at least be encouraged; improper gratifications, and even excess, must be tacitly permitted, if not openly countenanced, to gain a livelihood; and, as the profits arifing from the supply of the necessary wants of the public are divided among the whole number of fuch possessors, and there is, consequently, a deficiency of gain as to each, which must be made up; to retain custom, to make it up, a general uniformity of misconduct thus far, must prevail. From these causes, where the number is too great, all public houses become haunts for the idle and dissolute, in which much of what they polless from time to time is exchanged for indulgencies alike ruinous to health and industry; in which, time and the earnings of labour, to the ruin of their families, are wasted; a talle for luxury and extravagance acquired, leading to guilt for their support; morals imperceptibly corrupted; the miseries of the poor too certainly increased, and (what is most alarming) the rising generation initiated in the same course, and too surely confirmed in it, by example.

The evil however does not stop here; among the great number of publicans, there will be some of worthless, profit-gate and even criminal characters; men alike free from the retiraints of teligion and morality; disposed not to permit, but to promote Drunkenness, Gambling, and every species of vice that can encrease their trade—It is through the medium of such men, that crimes are increased, in an eminent degree: in their houses, (to use the words of an old Statute) live the men who sleep by day and wake by night."—Prostitutes, thieves and robbers, there find an asylum a certain market for stolen goods, and not only a resuge from the pursuits of justice for crimes already committed, but a place of ease and safety from all interruption; in which new plans of attack and depardation upon the public, from petry pilfering to mid-night murder, are discussed and matured.

"This, gentlemen, is not the actual state of things with us; but to this, we must come; if the number of our houses for the sale of inebriating liquors by retail in small quantities, be too great for our population, and be not restrained.

In the metropolis of Great-Britain, the number of such houses, is as one to thirty; and it is the opinion of a very late and excellent writer upon the police of that great Emporium, that a diminution of their number, and proper regulations for those that remain, must, (as he expresses it) be the ground work of any rational plan of reform." In this city which we inhabit, the number of such houses is as one to ten, and in an adjoining country parish (Point Levy) there are no less than twenty—These are facts which re-

Jam

quire no comment.

"It is to the Magistrates of the district, in whom by law, is velted the uncontrouled right of granting licences to whom they fee fit, and to those who give certificates to applicants for licences, that we must principally look for the prevention of those evils which we have depicted-The number of public houses and dram shops, cannot, perhaps, be immediately diminished; but it ought not be augmented, and if proper opportunities thould offer, it ought to be reduced. Infinite attention also should be bestowed in the selection of persons fit to be entrusted with licences; the fear of diminishing the Revenues of the Province, tendernels for the applicant or his family; the folicitation of individuals, or the defire of ferving a favorite or a dependent, should have no weight in granting a certificate, or a licence; the allowance of either should be exempt from the operation of any bias or influence whatever; the individual applicant, and his interests, should be secondary objects of consideration; and the injury which may be done to the welfare of the community, by an improper exercise of discretion, in either inflance, should be constantly kept in view. If the Magiltrate, or he that has figned a certificate, should find himself deceived in the character of the person recommended or licenced, it is his bounden duty, in justice to for ciety, to prevent at least the renewal of the licence, whatever be the importunities by which he may be urged to the contrary; and we think it right to remind you, that in this respect, there is remedy in your hands; for, by the common law, the keepers of taverns and ale-houses, who permit frequent disorders in them, or harbour persons of bad repute, may be indicted as for a common nuisance; and where conviction follows, a deprivation of licence, must of course be the necessary consequence.

"Gentiemen,—These observations are committed to your serious consideration, in the sull conviction that whatever is designed for the prevention of crimes, and to protect the morals of his Majesly's subjects, will at all times receive from you, (as well in your public as in your private capacities) the attention which is merited by so great an object may calculated in itself to promote the security and prosperity of the district in general, and more parti-

cularly of this increaling capital."

TO BE SOLD,

AND POSSESSION GIVEN IMMEDIATELY,

THAT excellent Stand at Carleton, well known by the

name of CARLETON FERRY-HOUSE, with

its appurtenances.

ALSO.—A STORE and WHARF, and a Cooper's SHOP near to it, together with a Fish-Vat, 100 Fish Hogsheads, a Scow, five Boats, the half of a Scine, fix Salmon Nets, and sundry other articles necessary in the Fishing Business. For particulars apply to the Subscriber on the premises.

CALEB WETMORE.

Carleton, 20th August, 1808.

For Sale by the Subscriber,

A good FARM of about 500 Acres at the upper part of what is commonly called the VILLAGE, on Hammond River, at the distance of only 18 miles from the City.

CALEB WETMORE.

Carleson, 5th November, 1808.