CHAPTER XXXIV.

In the Supreme Court — A *Supersedeas* Secured — Justice Magruder Delivers the Opinion — A Comprehensive Statement of the Case — How Degan was Murdered — Who Killed Him? — The Law of Accessory — The Meaning of the Statute — Were the Defendants Accessories? — The Questions at Issue — The Characteristics of the Bomb — Fastening the Guilt on Lingg — The Purposes of the Conspiracy — How they were Proved — A Damning Array of Evidence — Examining the Instructions — No Error Found in the Trial Court's Work — The Objection to the Jury — The Juror Sandford — Judge Gary Sustained — Mr. Justice Mulkey's Remarks — The Law Vindicated.

ALTHOUGH doomed to die, the prisoners did not despair. Their counsel led them to believe that the State Supreme Court would certainly grant them a rehearing, and the first step to get their case before that court was to secure a stay of the execution of the sentence. For this purpose Hon. Leonard Swett was called into the case to assist Capt. Black, and the two gentlemen accordingly went before Chief Justice Scott, and on the 25th of November, 1886, secured the desired *supersedeas*. In March, 1887, the appeal came before the Supreme Court of Illinois, and arguments were heard in the case until the 18th of the same month, when the matter was taken under advisement. Several months elapsed before a decision was handed down, but meanwhile all the prisoners expressed the utmost confidence in a reversal of the judgment of the Criminal Court. Their counsel were alike confident of a rehearing, and sympathizers joined in the hopes indulged in by the men behind the bars and their representatives before the bar.

On Wednesday, September 14, 1887, however, the Supreme Court rendered its decision, sustaining the findings of the lower court in every particular. It was given by the full bench, and there was not a dissenting opinion. Justice Benjamin D. Magruder delivered the opinion. After stating various rulings bearing on murder, conspiracy, accessory before the fact and other legal points involved in the case, and citing numerous extracts from the organs of the Anarchists and Herr Most's book, he reviewed the authorities given by the counsel to sustain their respective sides, and then delivered the opinion of the court, as follows:

"This case comes before us by writ of error to the Criminal Court of Cook County. The writ has been made a *supersedeas*.

"Plaintiffs in error were tried in the summer of 1886 for the murder of Mathias J. Degan, on May 4, 1886, in the city of Chicago, Cook County, Illinois. On August 20, 1886, the jury returned a verdict finding the defendants August Spies, Michael Schwab, Samuel Fielden, Albert R. Parsons, Adolph Fischer, George Engel and Louis Lingg guilty of murder, and fixing death as the penalty. By the same verdict they also found

Oscar W. Neebe guilty of murder and fixed the penalty at imprisonment in the penitentiary for fifteen years.

"About the 1st day of May, 1886, the workingmen of Chicago and of other industrial centers in the United States were greatly excited upon the subject of inducing their employers to reduce the time during which they should be required to labor on each day to eight hours. In the midst of the excitement growing out of this eight-hour movement, as it was called, a meeting was held on the evening of May 4, 1886, at the Haymarket, on Randolph Street, in the West Division of the city of Chicago. This meeting was addressed by the defendants Spies, Parsons and Fielden. While the latter was making the closing speech, and at some point of time between ten and half-past ten o'clock in the evening, several companies of policemen, numbering one hundred and eighty men, marched into the crowd from their station on Desplaines Street, and ordered the meeting to disperse. As soon as the order was given, some one threw among the policemen a dynamite bomb, which struck Degan, one of the police officers, and killed him. As a result of the throwing of the bomb and of the firing of pistol shots, which immediately succeeded the throwing of the bomb, six policemen besides Degan were killed, and sixty more were seriously wounded."

JUDGE BENJAMIN D. MAGRUDER.
From a Photograph

The court then went into the law of accessory, confirming the interpretation and ruling of the trial court, that all distinction between principals and accessories is by the Illinois statute abolished. The issue thus became: Were the defendants accessories to the murder of Degan?

To find the answers to these questions the court went into an exhaustive review of all the evidence in the case, covering the same ground which has been gone over in the previous chapters of this book.

First the bomb with which the murder had been done was considered. It had been proven to be round; to have a projecting fuse; to be of composite manufacture; to contain tin and lead, with traces of antimony, iron and zinc; to have upon it a small iron nut. All these characteristics were found in the bombs which Louis Lingg manufactured, and for these and

other reasons the court held that the jury was warranted in believing that the bomb which killed Degan had been made by Lingg.

The purposes of the conspiracy were next inquired into, and the articles in the *Alarm*, the platform of the Internationale and similar incendiary and dangerous language from many sources are quoted in full in the opinion. The organization of the Anarchists was also inquired into, and the divisions into groups, the make-up of the Lehr and Wehr Verein and like matters stated. The court declared this to be an "illegal conspiracy."

The damning array of evidence against the assassins was brought together relentlessly and completely. The speeches of the defendants were sifted, their teachings examined, and there could be left in no mind a doubt that these men had advised murder and arson, and that they were guilty technically as well as morally. The opinion of the court was a masterly presentation of the facts, and the conclusions drawn from them settled once for all both the law and the equity of this celebrated case. It was evident that there was law enough in America to protect society.

That the Haymarket murders were the legitimate and expected result of the teachings of the ring-leaders of the conspiracy was conclusively shown with a ruthless logic that left no hope for pardon, nor for interference with the law's stern course.

Lingg's case, and the case of Spies, of Engel, of Fischer, of Parsons, of Neebe, of Fielden were taken up separately, examined with a care that might be described as almost microscopic, and in each case there was no flaw in the record — no reason why these men should not pay the penalty for their crime.

The concluding part of the opinion is so important from a legal standpoint, and at the same time of such general interest, that I will quote it entire:

"If the defendants, as a means of bringing about the social revolution and as a part of the larger conspiracy to effect such revolution, also conspired to excite classes of workingmen in Chicago into sedition, tumult and riot and to the use of deadly weapons and the taking of human life, and, for the purpose of producing such tumult, riot, use of weapons and taking of life, advised and encouraged such classes by newspaper articles and speeches to murder the authorities of the city, and a murder of a policeman resulted from such advice and encouragement, then defendants are responsible therefor.

"It is a familiar doctrine of the law, in criminal cases, that, if a reasonable doubt of the guilt of the prisoner is entertained, the jury have no discretion, but must acquit. The twelfth and thirteenth instructions for the prosecution are objected to as not correctly stating to the jury the meaning of 'reasonable doubt.' The twelfth instruction is an exact copy, *verbatim et liberatim*, of the sixth instruction in *Miller et. al.* vs. *The People*, 39 Ill. 457, which we approved in that case, and which since that case we have indorsed as correct in at least three cases, to-wit: *May* vs. *The People*, 60

Ill. 119, *Connaghan* vs. *The People*, 88 id. 460, and *Dunn* vs. *The People*, 109 id. 635.

"The portion of the thirteenth instruction which plaintiffs in error complain of is that which is contained in the following words: 'You are not at liberty to disbelieve as jurors if from the evidence you believe as men.' This expression has been sanctioned by the Supreme Court of Pennsylvania as having been properly used in an instruction given to the jury by a trial judge, and we are inclined to follow the ruling there laid down. That court said in *Nevling* vs. *Commonwealth*, 98 Pa. St. 322: 'The learned judge then proceeded to say that the doubt must be a reasonable one, and that jurymen could not doubt as jurymen what they believed as men. In all this there was no error. It is the familiar language found in the text-books and decisions which treat of the subject.'

"By the twelfth and thirteenth instructions, considered in connection with the eleventh instruction for the State, and also in connection with the definitions of reasonable doubt as embodied in the instructions given for the defense, we think the law upon this subject was correctly presented to the jury.

"The statute of this State provides that 'juries in all criminal cases shall be judges of the law and fact.' Instruction number thirteen and a half, given for the prosecution, is objected to as improperly limiting and qualifying this provision of the statute. It tells the jury, that '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 that '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,' etc.

"The language of instruction number thirteen and a half is an exact copy, *verbatim et literatim*, of the language used by this court in *Schnier* vs. *The People*, 23 Ill. 17. The views expressed in *Schnier* vs. *The People* have been approved of and indorsed in *Fisher* vs. *The People*, 23 Ill. 283, *Mullinix* vs. *The People*, 76 id. 211, and *Davison* vs. *The People*, 90 id. 221. The question is settled, and we see no reason to retreat from our position upon this subject.

"It is also claimed that the court erred in refusing to give certain instructions asked by the defendants. The refusal of refused instructions numbered 3, 8, 9, 11 and 18 is especially insisted upon as error.

"Instruction No. 3 was properly refused because it told the jury that those of the defendants who were not present at the Haymarket, counseling, aiding or abetting the throwing of the bomb, should be acquitted. Under our statute and the decision of this court in *Brennan* vs. *The People*, 15 Ill. 517, the defendants were guilty if they advised and encouraged the murder to be committed, although they may not have been present.

"Instruction No. 8 was wrong for a number of reasons, but it is sufficient to refer to one: it assumes that 'a conspiracy to bring about a change of government . . . by peaceful means if possible, but, if necessary, to resort to force for that purpose,' is not unlawful. The fact that the conspirators may not have intended to resort to force, unless, in their judgment, they should deem it necessary to do so, would not make their conspiracy any the less unlawful.

"All that was material in instructions 9, 11 and 18 was embodied in the instructions which were given for the defendants.

"The defendants also complain that the court refused to give an instruc-

tion for them which contained the following statement: 'It can not be material in this case that defendants, or some of them, are or may be Socialists, Communists or Anarchists,' etc.

"If there was a conspiracy, it was material to show its purposes and objects, with a view to determining whether and in what respects it was unlawful. Anarchy is the absence of government; it is a state of society where there is no law or supreme power. If the conspiracy had for its object the destruction of the law and the government, and of the police and militia as representatives of law and government, it had for its object the bringing about of practical Anarchy. Whether or not the defendants were Anarchists, may have been a proper circumstance to be considered in connection with all the other circumstances in the case, with a view to showing what connection, if any, they had with the conspiracy and what were their purposes in joining it. Therefore, we can not say that it was error to refuse an instruction containing such a broad declaration as that announced in the above quotation.

"Defendants further complain because the instruction numbered 13, which was asked by them, was refused by the trial court. The refusal of this instruction was not error. It was proper enough, so far as it stated that if a person at the Haymarket 'without the knowledge, aid, counsel, procurement, encouragement or abetting of the defendants or any of them, then or theretofore given, . . . threw a bomb among the police, wherefrom resulted the murder or homicide charged in the indictment, then the defendants would not be liable for the results of such bomb,' etc. But the instruction is so ingeniously worded as to lead the jury to believe that the person who threw the bomb at the Haymarket was justified in doing so if the meeting there was lawfully convened and peaceably conducted and if the order to disperse was unauthorized and illegal. Counsel inject into the instruction the hypothesis that the bomb may have been thrown by an outside party 'in pursuance of his view of the right of self-defense.' A mere order to disperse can not be an excuse for throwing a dynamite bomb into a body of policemen. If the bomb-thrower had been illegally and improperly attacked by the police, while quietly attending a peaceable meeting, and had thrown the bomb to defend himself against such attack, another question would be presented. The vice of the instruction lies in the insidious intimation embodied in it, that when a body of policemen, even if in excess of their authority, give a verbal order to an assemblage to disperse, a member of that assemblage will be excusable for throwing a bomb, on the ground of self-defense and because of the supposed invasion of his rights.

"The instruction given by the court of its own motion, and which has already been referred to, is also claimed to be erroneous. So far as it speaks of murder and advice to commit murder in general terms, it is sufficiently limited and qualified when read in connection with all the other instructions, to which it specifically calls attention. It does not supersede and stand as a substitute for the other instructions, given for both sides. It does not so purport upon its face. On the contrary, the jury are directed to 'carefully scrutinize' such other instructions, and are told that their apparent inconsistencies will disappear under such scrutiny. In the last sentence they are requested to disregard any unguarded expressions that may have crept into the instructions, 'which seem to assume the existence of any facts,' and look only to the evidence, etc. Why caution the jury to disregard certain expressions of a particular kind in the other instructions,

if the latter were to be entirely superseded? We do not think that the instruction given by the trial judge *sua motu* is obnoxious to the objections urged against it.

"Defendants also object to the instruction as to the form of the verdict as being erroneous. It is claimed that the jury were obliged, under this instruction, to find the defendants either guilty or not guilty of murder, whereas the jury were entitled to find that the offense was a lower grade of homicide than murder, if the evidence so warranted. This position is fully answered by our decisions in the cases of *Dunn* vs. *The People*, 109 Ill. 646, and *Dacey* vs. *The People*, 116 id. 555. If counsel desired to have the jury differently instructed as to the form of the verdict, they should have prepared an instruction, indicating such form as they deemed to be correct, and should have asked the trial court to give it. They did not do so, and are in no position to complain here.

"The court, at the request of the defendants, did give the jury an instruction defining manslaughter in the words of the statute and specifying the punishment therefor as fixed by the statute. The court also gave the jury the following instruction: 'The jury are instructed that under an indictment for murder a party accused may be found guilty of manslaughter; and in this case, if from a full and careful consideration of all the evidence before you, you believe beyond a reasonable doubt that the defendants or any of them are guilty of manslaughter, you may so find by your verdict.'

"The next error assigned has reference to the impaneling of the jury. The counsel for plaintiffs in error have made an able and elaborate argument for the purpose of showing that the jury which tried this case was not an *impartial* jury in the sense in which the word 'impartial' is used in our Constitution. We do not deem a consideration of all the points presented as necessary to a determination of the case, and shall only notice those that seem to us to be material.

"Nine hundred and eighty-one men were called into the jury-box and sworn to answer questions. Each one of the eight defendants was entitled to a peremptory challenge of twenty jurors, making the whole number of peremptory challenges allowed to the defense one hundred and sixty. The State was entitled to the same number. Seven hundred and fifty-seven were excused upon challenge for cause. One hundred and sixty were challenged peremptorily by the defense and fifty-two by the State.

"Of the twelve jurors who tried the case, eleven were accepted by the defendants. They challenged one of these, whose name was Denker, for cause, but, after the court overruled the challenge, they proceeded to further question him and finally accepted him, although one hundred and forty-two of their peremptory challenges were at that time unused. They accepted the ten others, including the juror Adams, without objection. When Adams, the eleventh juror, was taken, they had forty-three peremptory challenges which they had not yet used.

"Therefore, as to eleven of the jurymen, the defendants are estopped from complaining. They virtually agreed to be tried by them, because they accepted them, when, by the exercise of their unused peremptory challenges, they could have compelled every one of them to stand aside.

"Counsel for the defense complain that the trial court overruled their challenges for cause of twenty-six talesmen, to whose examinations they specifically call our attention. As they afterwards peremptorily challenged the talesmen so referred to, no one of them sat upon the jury. Every one

of these twenty-six men had been peremptorily challenged before the eleventh juror was taken.

"After the eleventh juror was accepted, the forty-three peremptory challenges which then remained to the defendants were all used by them before the twelfth juror was taken.

"After the defendants had examined the twelfth juror, whose name was Sandford, they challenged him for cause. Their challenge was overruled and they excepted.

"The one hundred and sixty talesmen who were peremptorily challenged by defendants were first challenged for cause, and the challenges for cause were overruled by the trial court. It is claimed that, inasmuch as the defendants exhausted all their peremptory challenges before the panel was finally completed, the action of the court in regard to these particular jurors will be considered, and, if erroneous, such action is good ground of reversal. We think it must be made to appear that an objectionable juror was put upon the defendants after they had exhausted their peremptory challenges. 'Unless objection is shown to one or more of the jury who tried the case, the antecedent rulings of the court upon the competency or incompetency of jurors who have been challenged and stood aside will not be inquired into in this court.' *Holt* vs. *State*, 9 Texas Ct. App. 571.

"We cannot reverse this judgment for errors committed in the lower court in overruling challenges for cause to jurors, even though defendants exhausted their peremptory challenges, unless it is further shown that an objectionable juror was forced upon them and sat upon the case after they had exhausted their peremptory challenges. This doctrine is ably discussed in *Loggins* vs. *State*, 12 Texas Ct. App. 65. We think the reasoning in that case is sound and answers the objection here made.

"In addition to this reason, we have carefully considered the examinations of the several jurors challenged by the defendants peremptorily, and while we cannot approve all that was said by the trial judge in respect to some of them, we find no such error in the rulings of the court in overruling the challenges for cause as to any of them as would justify a reversal of the cause. The examinations, as they appear in the record, of the forty-three talesmen who were challenged peremptorily after the eleventh juror was accepted, show that many of the forty-three challenges were exercised arbitrarily and without any apparent cause. Such challenges were not compelled by any demonstrated unfitness of the jurors, but seem to have been used up for no other purpose than to force the selection of one juror after the forty-three challenges were exhausted.

"The only question, then, which we deem it material to consider, is: Did the trial court err in overruling the challenge for cause of Sandford, the twelfth juror? or, in other words, Was he a competent juror?

"The following is the material portion of his examination:

"Have you an opinion as to whether or not there was an offense committed at the Haymarket meeting by the throwing of a bomb? A. Yes. Q. Now, from all that you have read and all that you have heard, have you an opinion as to the guilt or innocence of any of the eight defendants of the throwing of that bomb? A. Yes. Q. You have an opinion upon that question also? A. I have. . . . Q. Now, if you should be selected as a juror in this case to try and determine it, do you believe that you could exercise legally the duties of a juror, that you could listen to the testimony and all of the testimony and the charge of the court, and after deliberation return a verdict which would be right and fair as between the defendants and the People of the State of Illinois? A. Yes, sir. Q. You believe that you could do that? A. Yes, sir. Q. You could fairly and impartially listen to the testi-

mony that is introduced here? A. Yes. Q. And the charge of the court, and render an impartial verdict, you believe? A. Yes. Q. Have you any knowledge of the principles contended for by Socialists, Communists and Anarchists? A. Nothing except what I read in the papers. Q. Just general reading? A. Yes. Q. You are not a Socialist, I presume, or a Communist? A. No, sir. Q. Have you a prejudice against them from what you have read in the papers? A. Decided. Q. Do you believe that that would influence your verdict in this case or would you try the real issue which is here as to whether the defendants were guilty of the murder of Mr. Degan or not, or would you try the question of Socialism and Anarchism, which really has nothing to do with the case? A. Well, as I know so little about it in reality at present, it is a pretty hard question to answer. Q. You would undertake, you would attempt of course to try the case upon the evidence introduced here, upon the issue which is presented here? A. Yes, sir. . . . Q. Well, then, so far as that is concerned, I do not care very much what your opinion may be now, for your opinion now is made up of random conversations and from newspaper reading, as I understand? A. Yes. Q. That is nothing reliable. You do not regard that as being in the nature of sworn testimony at all, do you? A. No. Q. Now, when the testimony is introduced here and the witnesses are examined, you see them and look into their countenances, judge who are worthy of belief and who are not worthy of belief, don't you think then you would be able to determine the question? A. Yes. Q. Regardless of any impression that you might have or any opinion? A. Yes. Q. Have you any opposition to the organization by laboring men of associations or societies or unions so far as they have reference to their own advancement and protection and are not in violation of law? A. No, sir. Q. Do you know any of the members of the police force of the city of Chicago? A. Not one by name. Q. You are not acquainted with any one that was either injured or killed, I suppose, at the Haymarket meeting? A. No. . . . Q. If you should be selected as a juror in this case, do you believe that, regardless of all prejudice or opinion which you now have, you could listen to the legitimate testimony introduced in court, and upon that, and that alone, render and return a fair and impartial, unprejudiced and unbiased verdict? A. Yes.

The foregoing examination was by the defense. The following was by the State:

"Q. Upon what is your opinion founded — upon newspaper reports? A. Well, it is founded on the general theory and what I read in the newspapers. Q. And what you read in the papers? A. Yes, sir Q. Have you ever talked with any one that was present at the Haymarket at the time the bomb was thrown? A. No, sir. Have you ever talked with any one who professed of his own knowledge to know anything about the connection of the defendants with the throwing of that bomb? A. No. Q. Have you ever said to any one whether or not you believed the statement of facts in the newspapers to be true? A. I have never expressed it exactly in that way, but still I have no reason to think they were false. Q. Well, the question is not what your opinion of that was. The question simply is — it is a question made necessary by our statute, perhaps. A. Well, I don't recall whether I have or not. Q. So far as you know then, you never have? A. No, sir. Q. Do you believe that, if taken as a juror, you can try this case fairly and impartially and render an impartial verdict upon the law and the evidence? A. Yes.

"It is objected that Sandford had formed such an opinion as disqualified him from sitting upon the jury.

"It is apparent from the foregoing examination that the opinion of the juror was based upon rumor or newspaper statements, and that he had expressed no opinion as to the truth of such rumors or statements. He stated upon oath that he believed he could fairly and impartially render a verdict in the case in accordance with the law and the evidence. That the trial court was satisfied of the truth of his statement would appear from the fact that the challenge for cause was overruled.

"Therefore, the examination of the juror shows a state of facts which brings his case exactly within the scope and meaning of the third proviso of the 14th section of chapter 78, entitled 'Jurors,' of our Revised Statutes. That proviso is as follows: '*And provided further*, that, in the trial of any criminal cause, the fact that a person called as a juror has formed an opinion or impression, based upon rumor or upon newspaper statements

(about the truth of which he has expressed no opinion), shall not disqualify him to serve as a juror in such case, if he shall, upon oath, state that he believes he can fairly and impartially render a verdict therein in accordance with the law and the evidence, and the court shall be satisfied of the truth of such statement.'

"In *Wilson* vs. *The People*, 94 Ill. 299, one William Gray was examined touching his qualifications as a juror and said: 'I have read newspaper accounts of the commission of the crime with which the defendant is charged and have also conversed with several persons in regard to it since coming to Carthage and during my attendance upon this term of court; do not know whether they are witnesses in the case or not; do not know who the witnesses in the case are. From accounts I have read and from conversations I have had, I have formed an opinion in the case; would have an opinion now if the facts should turn out as I heard them, and I think it would take some evidence to remove that opinion; would be governed by the evidence in the case and can give the defendant a fair and impartial trial according to the law and the evidence.' Gray was challenged for cause and the challenge overruled by the trial court. We held that all objection to Gray's competency was clearly removed by the proviso above quoted. We also there said: 'The opinion formed seems not to have been decided, but one of a light and transient character which at no time would have disqualified the juror from serving.'

"The expressions of Sandford in the case at bar as to the opinion formed by him are not so strong as those used by Gray in the Wilson case in regard to his opinion. Sandford's impressions were not such as would refuse to yield to the testimony that might be offered, nor were they such as to close his mind to a fair consideration of the testimony. They were not 'strong and deep impressions,' such as are referred to by Chief Justice Marshall when he said upon the trial of Aaron Burr for treason: 'Those strong and deep impressions which will close the mind against the testimony which may be offered in opposition to them, which will combat that testimony and resist its force, do constitute a sufficient objection' to a juror. (1 Burr's Trial, 416.)

"Counsel for the defense seem to claim in their argument that the proviso above quoted is unconstitutional in that it violates section 9 of article 2 of the present Constitution of this State, which guarantees to the accused party in every criminal prosecution 'a speedy public trial by *an impartial jury* of the county or district in which the offense is alleged to have been committed.' We do not think that the proviso is unconstitutional for the reason stated. The rule which it lays down, when wisely applied, does not lead to the selection of partial jurors. On the contrary, it tends to secure intelligence in the jury-box and to exclude from it that dense ignorance which has often subjected the jury system to just criticism. A statute upon this subject, similar to ours and attacked as unconstitutional for the same reason here indicated, was held to be constitutional by the Court of Appeals in the State of New York in *Stokes* vs. *The People*, 53 N. Y. 171.

"The juror Sandford further stated that he had a prejudice against Socialists, Communists and Anarchists. This did not disqualify him from sitting as a juror. If the theories of the Anarchists should be carried into practical effect, they would involve the destruction of all law and government. Law and government cannot be abolished without revolution, bloodshed and murder. The Socialist or Communist, if he attempted to put into

practical operation his doctrine of a community of property, would destroy individual rights in property. Practically considered, the idea of taking a man's property from him without his consent, for the purpose of putting it into a common fund for the benefit of the community at large, involves the commission of theft and robbery. Therefore, the prejudice which the ordinary citizen, who looks at things from a practical standpoint, would have *against Anarchism and Communism, would be nothing more than a prejudice* against crime.

"In *Winnesheik Insurance Co.* vs. *Schueller*, 60 Ill. 465, we said: 'A man may have a prejudice against crime, against a mean action, against dishonesty, and still be a competent juror. This is proper, and such prejudice will never force a jury to prejudge an innocent and honest man.' In *Robinson et al.* vs. *Randall, supra*, we again said: 'The mere fact, therefore, that a juror may have a prejudice against crime does not disqualify him as a juror. A juror may be prejudiced against larceny, or burglary, or murder, and yet such fact would not in the least disqualify him from sitting upon a jury to try some person who might be charged with one of these crimes.'

"Sandford stated that he would 'attempt to try the case upon the evidence introduced here upon the issue which is presented here.' The issue presented was whether the defendants were guilty or not guilty of the murder of Mathias J. Degan. Any prejudice against Communism or Anarchism would not render a juror incapable of trying that issue fairly and impartially.

"We cannot see that the trial court erred in overruling the challenge for cause of the twelfth juror. This being so, it does not appear that the defendants were injured, or that their rights were in any way prejudiced by his selection as a juryman.

"On the motion for a new trial the defendants read three affidavits for the purpose of showing that, shortly after May 4, 1886, two of the jurors had given utterance to expressions showing prejudice against the defendants. The two jurors made counter-affidavits denying that they had used the expressions attributed to them.

"We do not think that the affidavits satisfactorily proved previously expressed opinions on the part of the two jurors referred to. It was a dangerous practice to allow verdicts to be set aside upon *ex parte* affidavits as to what jurors are claimed to have said before they were summoned to act as jurymen. The parties making such affidavits submit to no cross-examination, and the correctness of their statements is subjected to no test whatever. We adhere to the views which we have recently expressed upon this subject in the case of *Hughes* vs. *The People*, 116 Ill. 330.

"The defendants claim that, although they were entitled to one hundred and sixty peremptory challenges, yet the State was entitled to only twenty, and they charge it as error that the State was allowed to peremptorily challenge more than twenty talesmen. The statute says: 'The attorney prosecuting on behalf of the people shall be admitted to a peremptory challenge of the same number of jurors that the accused is entitled to.' (Rev. Stat. chap. 38, sec. 432.) We cannot conceive how language can be plainer than that here used. It explains itself and requires no further remark. The defendants also claim that the trial court erred in refusing a separate trial, from the other defendants, to the defendants Spies, Schwab, Fielden, Neebe and Parsons. Error cannot be assigned upon the refusal to

grant separate trials where several are jointly indicted. It was a matter of discretion with the court below. We so decided in *Maton et al.* vs. *The People*, 15 Ill. 536. We are unable to see any abuse of the discretion in this case.

"Defendants also take exceptions to the conduct of the special bailiff. The regular panel having been exhausted and the defendants having objected 'to the Sheriff summoning a sufficient number of persons to fill the panel' of jurors, the court appointed a special bailiff named Ryce to summon such persons under section 13, chapter 78, of the Revised Statutes. On the motion for new trial, defendants read the affidavit of one Stevens, in which Stevens swore that he had heard one Favor say that he, Favor, had heard Ryce say that he, Ryce, was summoning as jurors such men as the defense would be compelled to challenge peremptorily, etc. The defendants then made a motion, based upon this affidavit, that Favor be compelled to come into court and testify to what Ryce had said to him. The refusal of the court to grant the application is complained of as error.

"The statements in the affidavit were mere hearsay and were too indefinite and remote to base any motion upon. Moreover, if Ryce did make the remark in question to Favor, it does not appear that defendants were harmed by it. There is nothing to show that Ryce made any remarks of any kind, proper or improper, to the jurors whom he summoned. In addition to this, it is not shown that the defendants served Favor with a subpœna so as to lay a foundation for compelling his attendance.

"We think that the course pursued on the trial in regard to the manner of impaneling the jury was correct and in accordance with the plain meaning of section 21, chapter 78, of the Revised Statutes. That section says 'that the jury shall be passed upon and accepted in panels of four by the parties, commencing with the plaintiff.' The State is not called upon to tender the defendants a second panel before the defendants tender it back four.

"We can not see that the remarks of the State's Attorney in his argument to the jury were marked by any such improprieties as require a reversal of the judgment. *Wilson* vs. *The People*, *supra*, and *Garrity* vs. *The People*, 107 Ill. 162.

"In their lengthy argument counsel for the defense make some other points of minor importance, which are not here noticed. As to these, it is sufficient to say that we have considered them and do not regard them as well taken.

"The judgment of the Criminal Court of Cook County is affirmed."

After the reading of the decision, Justice Mulkey stated that it had been his intention, if health had permitted, to file a separate opinion. He said:

"While I concur in the conclusion reached, and also in the general view presented in the opinion filed, I do not wish to be understood as holding that the record is free from error, for I do not think it is. I am nevertheless of opinion that none of the errors complained of are of so serious a character as to require a reversal of the judgment.

"In view of the number of defendants on trial, the great length of time it was in progress, the vast amount of testimony offered and passed upon by the court, and the almost numberless rulings the court was required to

make, the wonder with me is, that the errors were not more numerous and more serious than they are.

"In short, after having carefully examined the record, and given all the questions arising upon it my very best thought, with an earnest and conscientious desire to faithfully discharge my whole duty, I am satisfied fully that the conclusion reached vindicates the law, does complete justice between the prisoners and the State, and that it is fully warranted by the law and the evidence."