

bosom friends, without the usual tests of truth which have been established, we might well pause and wonder whereunto this would grow.

Gentlemen, you are the exclusive judges of the facts, and the court is to be the judge of the law when the facts are found by you. Murder may be defined to be, the unlawful killing of a human being in the peace of the Republic, with malice prepense, or of forethought, by another human being who is of sound mind and discretion.

In this case, there is no pretence but that the defendant, at the time of the alleged killing of James Monroe, was of sound mind and discretion; so you are relieved of that part of the case. When you retire to your juryroom, you will first proceed to inquire from the evidence, whether or not James Monroe be dead. If you do not find him to be dead, that ends the case, and your verdict must be, not guilty. If you find him to be dead, you will proceed to inquire by what means he came to his death; if by violence, then inquire whether or not the defendant gave him the mortal wound. If you find he did not, that ends your inquiries, and he is entitled to a verdict of not guilty. If you find the defendant gave him the mortal wound, you will then inquire whether the killing was lawful or unlawful. In law every killing of one human being by another of sound mind, is unlawful, except such as the law excuses or justifies.

If a person when doing a lawful act, by accident kills another, it is excusable homicide. If a person kills another on a sudden attack in defense of himself, wife, child, parent, or servant, it is excusable homicide. If the proper officer executes the sentence of the law upon another, by taking his life pursuant to the judgment of a court legally rendered, it is justifiable homicide. If an officer of the law in the exercise of a particular legal duty, is forcibly resisted or prevented, and,

without malice, kills the one who resists, it is justifiable homicide. If a homicide be committed to prevent the forcible commission of an atrocious crime, such as murder, robbery, rape, &c., it is justifiable; but it is not so if done to punish the offender after the crime has been committed. If you find any of these in favor of the defendant, then your verdict must be, not guilty; but if none of these things exist, then the killing, if it has taken place, is unlawful: in that event, you will proceed to inquire, in regard to the malice prepense, or malice aforethought. Malice prepense, or malice aforethought, means premeditated malice, or malice thought of, before the killing occurred. It may be a meditation for a few moments only, or it may be of long standing; it may be owing to injury, real or imaginary, received from the deceased, by the accused. The law does not permit a person to take the redress of grievances into his own hands. Though the deceased may have seduced the defendant's wife, as he now alleges, still he had no right to take the remedy into his own hands. If, for seduction, the law inflicted the punishment of death, it would not justify nor excuse the injured party from guilt, if he inflicted death without a judgment of the law to that effect, nor even with such a judgment, unless he be the officer of the law appointed for that purpose. If, as it is contended by the defendant's attorney, he killed Monroe in the name of the Lord, it does not change the law of the case. A man may violate a law of the land, and be guilty, and yet, so far as he is concerned, do it in the name of the Lord. If, as it has been contended by the district attorney, the defendant, before he left the city, formed the design of killing Monroe; or if he so formed the design after he left, and before he met him; or if he formed it while in conversation with him, it was malice prepense or