

the case made by the prosecution, and to shadow forth the grounds of the defense.

The defense will be embraced under two general heads:

I. I shall consider first (on the supposition that Worrell is to be treated as a responsible being—a rational creature, having control over his action—a man, amenable to his Maker and to government) whether the State has proved the charges against him as they are set forth in the indictment. We have in Missouri two kinds of murder—one takes life, the other only liberty. Has the proof affected the prisoner with the killing of Gordon? Has the circumstantial evidence excluded every hypothesis but his guilt? May all that has been proved be true—and yet Worrell not kill the deceased? If so, the circumstantial evidence is insufficient for conviction. There is no positive evidence in the cause—all is circumstantial. No human being, from the proof, knows the circumstances under which Gordon came to his death. We have to reach conclusions from circumstances only, and they are insufficient to establish the fact that Worrell killed Gordon. Every fact proved may be true—and yet Worrell may not have killed him. This is the legal text of insufficiency. It is an indispensable legal quality of circumstantial evidence, that the supposition of the guilt it seeks to establish is the only thing that can explain the facts proved. It is not my purpose now to analyze the testimony offered; but in spite of what has been said by way of estoppel of the defense, by my friend, Mr. Coalter (who comes into this tribunal as the employed agent and representative of the friends of the deceased), to him, to the worthy officer of the law, Mr. Gale—to my other excellent friend, Mr. Bay, whose position is not defined, whether adjunct representative of the friends of the deceased, railroad attorney or patriotic volunteer—to all this array, I present propositions of law and fact, touching their case which may demand their joint attention. In the beginning you were told, by Mr. Coalter, that the killing of Gordon by the defendant would not be denied. This was before the proof. Now after the State has exhausted its evi-