

it occurred. There is no proof establishing the fact that he knew of such design prior to the act, and participated in it. If he be a responsible being the evidence establishes the offense of larceny. The appropriation of the horse was subsequent to the death. If he counseled Bruff to fly after the deed, or aided him in his escape, feloniously, he might be held responsible as accessory after the fact—but he is not charged with that offense. To make him responsible for the murder one of two things must be made manifest beyond reasonable doubt. First, that Gordon fell by his hand; or, second, that he was killed by another, under an agreement by which he was to be present and aid in the accomplishment of the design; and that he was so present, and so aided, or was there ready to aid if need be, in the perpetration of the deed. It is indispensable to his guilt, as accessory at the fact, that he should have knowledge of the design to kill before the killing took place, and was present assenting to the act—that is, assenting that the act should take place. The learned counsel has not laid down the law to you on this point with his accustomed clearness. He slurred the legal proposition, and made presence alone, without previous knowledge of the design and concurrence in it, sufficient to render the prisoner guilty.

Presence alone is not crime; there must be knowledge of the crime about to be committed, and guilty concurrence in its perpetration. The Criminal Court of St. Louis once decided that presence at a riot raised a legal presumption that the party present was engaged in the riot, until he proved his innocence; but the Supreme Court stigmatized the doctrine by a single stroke of the pen—"This is not law"—and reversed the case.

The doctrine of the law on the subject of accessory guilt is clear, humane and reasonable; I wish you to understand it, as it is easy to confound it in the jargon of scientific words. The law proceeds on the immutable principle that a man is responsible, criminally, only for his own acts. But he may make himself responsible for the acts of another, by making that other his agent to act for him. If you sell your pork to