

a firm of pork packers at Washington, and one of the firm only makes the contract with you, that contract binds every member of the firm, because each member has made every other member an agent to act for him. Thus the act of any one member becomes the act of all, and all are therefore responsible. That is partnership. And so there may be partnership in crime. If two men agree to commit murder, one to do the deed, and the other to stand by and help if need be, or to watch—if they agree in a common design, and assign the share of each in its execution, that is partnership, and that agreement makes each the agent to act for the other, so that the act of one is the act of both. But there must be an agreement to do the murder, and also presence at the murder, to make the accessory guilty of the murder. It is in such case only that the accessory becomes a principal.

I have told you that express malice must be found as a fact to make murder in the first degree under our law. We have no murder here which was not murder at the common law. We have not been guilty of the cruelty of making murder here of what was only manslaughter under the bloody and indiscriminate code of England, so that it becomes necessary for you to understand what did make murder at the common law.

I approach now a subject which touches every man in the land. The fate of the prisoner, however momentous to him, and to the parents who sit by him, sinks into subordination to the greater interest of society in the law of homicide. A false principle established in his case may involve a whole people.

By the common law of England, murder is defined to be "the unlawful killing of a human being, with malice aforethought, express or implied." The indispensable element of murder, at the common law, is malice aforethought. But malice was of two kinds, and either kind would make murder, and all murder took the life of the offender.

"Implied malice" is a constructive thing, a creature of the courts, not a fact proved in evidence, and found by the jurors, whose province it is to find facts; but an implied fact