

years. We all read lately of Huntington in New York, a wealthy nabob, who had for years been practicing forgery. He set up insanity as his defense. Who is to judge of this but the jury? Judge Coalter only stated to you what is true, that you are the judges, whether the defendant is insane or not. The defendant is charged with the murder of Basil H. Gordon. To this is presented a double defense:

1. The killing of Gordon by defendant is denied.
2. He is an irresponsible being and therefore incapable of crime.

I must recapitulate the testimony. Though I know you have paid attention, my duty is to recall it briefly to your minds. If Worrell and Bruff were present, aiding and abetting in the murder, both of them were principals under our statute. Whether the one or the other did the act, only creates in the law a distinction without a difference. It is immaterial which shot the pistol. Although the indictment charges two counts, if either be true, you must find the prisoner guilty—unless you find that at that time he was insane. The indictment charges the murder, and that Worrell committed the act wilfully, deliberately, premeditatedly and with malice aforethought. The argument of defendant's counsel, I think, to be an effort only to grade the degree of crime, and if possible to reduce the same to murder in the second degree. This murder is charged as having been committed wilfully, deliberately, premeditatedly, and of malice aforethought. The legal explanations of these terms have been explained by the counsel who opened the case. In defining the meaning of the word "wilful," etc., if the act was done in order to perpetrate a felony; it is, in such case, unnecessary to prove express malice. Then I say, from the evidence, there was a robbery committed in this case. Strong circumstances tend to show this. Then, premeditation will be presumed in this case by the act of the robbery. Malice is of two kinds, express and implied. Maj. Wright seems to think some fact to show express malice must be proved. I assume it as proved here by the killing.

We admit it is necessary to prove wilfulness, deliberateness