

and premeditation to make it murder in the first degree. This forms the legal definition of malice: the concurrence of these states of mind and intention. On hearing this, I suppose your minds are prepared to investigate an analysis of this case. If you find there was express malice, you must find the prisoner guilty of murder in the first degree. If express malice be not proved clearly to your minds, you must find in the second degree. Defendant's counsel read to you from Wharton to show that intoxication would reduce the grade of murder to the second degree. It cannot do so. When a murder is committed for an object, it does not evidence a very insane man. Intoxication then is no defense when it is shown that an object is manifest in the commission of the fatal deed. A sane man will kill with an object. It may be from prejudice, or for purposes of robbery or other criminal purpose. An insane person has no object. If whoever killed Gordon had an object in view, it only tends to show his sanity. Maj. Wright I admit to be most learned in medical jurisprudence. But doctors disagree. The two medical witnesses in this case are referred to. But the authors of all books on this yet unsettled and misunderstood subject are all theorists. Dr. Bassett in his profession seems never to have observed any particular effect of epilepsy on the mental faculties. Other physicians the reverse. Medical men never have agreed. This is peculiar to their profession. They do not possess any fixed unity of views. With them, their systems are all theories. Therefore, I caution you against such learning and such opinions, delivered here orally or from books. Defendant's counsel will bring in authors most favorable to his present purpose. There is something peculiar and astonishing in the conduct of this defense. We looked to hear testimony tending to show hereditary insanity—when none such was proved, the defense suddenly shifted to epilepsy. It is not for me here to discriminate as to the authors which will be quoted for the defense. I cannot anticipate them, and leave that therefore for the counsel who will conclude this on the part of the State. I then come to two results: First, a murder was committed; second, it was committed by Wor-