

rell. The defense has taken a wide range, to which we have interposed no objection, beginning as far back as 1831. We have on the part of the State come up step by step, day to day, month to month, to the fatal January, 1856. Defendant's counsel tried to excite your sensibility on account of the remarks of Mr. Coalter upon the amiable character of Mr. Gordon. Would not the defense have promptly shown it, if Gordon had been a rash, impulsive and violent man? Would it not have been a strong point in the defense? We do not wish to create any excitement. We contend this is a case of murder in the first degree as charged in the indictment, and that it was committed by the prisoner, wilfully, deliberately, premeditatedly and of malice aforethought. Now, gentlemen of the jury, if you can find from the testimony that there is a want of the requisites of guilt in the first grade of murder, give the prisoner the full benefit of the same. But if the plea of insanity be relied upon, you must find whether he was laboring under it at the time he killed Gordon. All other temporary symptoms, else, are of no avail. Can you, from the testimony find that, when he killed Gordon, he was incapable of knowing right from wrong? If you do, acquit him. If not, was the killing wilful, premeditated, deliberate and of malice aforethought? To constitute deliberation, one minute of time is sufficient. I again state the definition of malice to enforce it clearly on your mind. Was the wound accidental? Was Gordon robbed by any others than the two men in his company? If you have a reasonable doubt of this you must acquit him; but that doubt must be as to the whole case. I know you feel your responsibility; and that you must give your verdict contrary to all sympathy and mere feeling. It is equally disagreeable, gentlemen, for me to prosecute in this case, as it is for you to decide on it. I doubt not you have made up your minds. You saw the manner and the intelligence of the witnesses, as they gave their testimony. You are then called on to find him guilty, if there be no reasonable doubt on your minds. If you believe before he killed Gordon he intended to rob him, you must say the State has proved all that constitutes express malice. I shall not detain