

you know? Can you answer me? If you answer (as the prosecution has asserted by indictment and by speech) one of the two, Bruff or Worrell, killed him, the answer shows that the evidence is inconclusive; upon such answer you cannot convict either. You perceive the evidence must go another step further to enable you to think of condemnation. What is that step? The evidence must satisfy you beyond all reasonable doubt that Gordon was killed by one of the two, and that the other knew before the killing that the deed was to be done, and was present at the act with the intention to aid and assist the perpetrator in the execution of that act. Observe: There must have been knowledge beforehand; that is, before the act, that it was to be perpetrated. 2d. Presence at the act. 3d. An agreement to aid in the perpetration of that act, if aid should be necessary. I meet the law of the indictment fairly; I do not lessen the breadth of a hair its legal import; and now I ask you, can you find these facts from the circumstantial evidence in the cause? Where is the evidence of the previous knowledge? Where is the evidence of the previous agreement? Look at the test of the sufficiency of circumstantial evidence furnished by the fourth rule: "It is essential that the circumstances should to a moral certainty exclude every hypothesis but the one sought to be proved."

The hypothesis sought to be proved, is that Gordon was killed by either Bruff or Worrell, and that the one who did not kill him knew beforehand that the other was to kill him, and agreed to be present to aid and assist in the killing, and was so present. That is the hypothesis sought to be proved; that is the hypothesis which must be proved, proved by the State, affirmatively and beyond all reasonable doubt.

May not all that is proved in this cause be true, and yet this hypothesis be not true? If so, there is an end of the cause. The question for you is not whether the hypothesis is probably true, nor whether it is more probably true than other hypotheses. It is not whether this hypothesis is the best explanation of the circumstances, the most reasonable solution of them, the most plausible account of the homicide;