

erring reason of a juror, as he is passing from the known to the unknown. And when you attempt to place yourself in the position of my supposed spectator of the scene, and from your seats here undertake to see the transaction by the eye of reason, with the utmost respect for each, I must say that the chances are a thousand to one that you will blunder at every step.

On the supposition that Worrell is responsible for his acts the circumstantial evidence proves certainly a larceny—larceny by him; but it does not prove that he killed Gordon, nor that he knew he was to be killed and agreed to assist in the killing. It makes it probable that one or the other is true; it raises a strong probability of that; it makes it more probable that it is true, than that it is not. In a word (if he be responsible), the evidence makes it much more probable that he is guilty, than that he is innocent of the crime of murder. But that is the very reason why you must acquit him.¹¹

I come to the question of insanity. If by taking a leap in the dark you have come to the conclusion that the defendant either killed or assisted in the killing of Gordon; if against the mandate of the fourth rule you have to a moral certainty excluded every possible solution of the evidence but that supposition which is essential to any verdict of guilty; if you have gone one step further, and found as a fact the express malice which only can make capital murder, I ask you to con-

¹¹ NOTE OF THE REPORTER.—Here *Mr. Wright* entered upon the inquiry, "If you will say (following the example of all who have erred on reasoning upon circumstantial evidence) murder was committed, what is the degree of that murder?" His argument involved a review of the facts of *Bower's case*, *Jackson's case*, and other cases of murder proved. Only, by circumstantial evidence, with an application of each to the law of Missouri, first declared in the dissenting opinion in the case of *Bower*, and since adopted by all the judges of the Supreme Court, in the cases of *Dunn* and *Jennings*, and the proposition advanced, was that a killing under unknown circumstances made only murder in the second degree. He enforced many decisions, laid down in his opening speech, and applied the doctrine to the evidence in the cause. The conclusion he reached from an analysis of the testimony tried by the legal tests, was murder, not capital. We do not give even a synopsis of his argument on this branch of the defense.