

persons confederate and engage in a common design, the act of one is the act of all." If a blow is given, the blow of one is the blow of all. This law has been recognized by our Supreme Court on several occasions, and recently in the case of *State v. Jennings*, reported in 18 Mo. 435.

*January 31.*

*Mr. Bay.* At the adjournment of the court last evening, gentlemen of the jury, I had closed my remarks with respect to the first proposition contended for by the counsel for the defense. I will now call your attention to the second ground of defense, which is, "That if the evidence does establish the fact that the prisoner killed Gordon, it also shows that he did it in an attempt to commit a felony, and as he is not so charged in the indictment, he cannot be convicted of murder in the first degree."

The law upon which this indictment was framed will be found in the first section of article 2 of our statute relating to crimes and punishments and is as follows: Sec. 1. Every murder which shall be committed by means of poison, or by lying in wait, or by any other kind of wilful, deliberate and premeditated killing, or which shall be committed in the perpetration or attempt to perpetrate any arson, rape, robbery, burglary or other felony, shall be deemed murder in the first degree."

The counsel certainly did not pay us a very high compliment when he remarked in his opening speech, "that the State would contend that this was a murder committed in the perpetration of a felony." Such an idea never entered my head, and I am certain it was not contemplated by my colleagues, and if the counsel is really serious in his construction of the law, he is entitled to the credit of having discovered a rule of interpretation that has hitherto entirely escaped the observation of the courts of the country. The statute intended to place three classes of homicide in the first degree: 1st. Murder committed by means of poison or by lying in wait. 2nd. Every other kind of wilful, deliberate and premeditated killing. 3rd. Every murder which shall be committed in the perpetration or attempt to perpetrate