

gree, they are deduced as an implication of law, in the absence of such affirmative evidence (the killing being only proved) and to be declared by the Court. Mere presumptions of law arising from the absence of extenuating evidence, and where the circumstances attending the killing are not fully disclosed, are not allowed to supply the affirmative proof of the facts and circumstances indicating deliberate malice and premeditation required in murder in the first degree. The jury must be able to find as an affirmative fact, and from the evidence alone, that the killing of Mr. Gordon at that moment of time was deliberately and intentionally done by the prisoner before they can find him guilty of murder in the first degree. And if from all the evidence in the cause, and from the evidence alone, the jury cannot, in the exercise of their natural reason, find as an affirmative fact, that the prisoner did intentionally, deliberately and premeditatedly kill Mr. Gordon, as charged, then, in the absence of evidence of extenuation, such as violent passion upon sudden and sufficient provocation, the law adjudges such killing to be murder in the second degree only.

But as there is evidence in the cause conducing to show that more than one person may have been present at the supposed killing of Mr. Gordon, and the jury, in consequence of a possible doubt as to which of the parties may have inflicted the mortal wound, may be embarrassed, being ignorant of the law in such case, they are further advised and instructed, that where there is a common purpose to commit a criminal act, participated and concurred in by two or more persons, and one of them actually commits the act, the others being present, aiding and abetting him in its accomplishment, the law adjudges the act of the one who puts hands to and actually does the deed, to be equally the act of each and all so present, aiding and abetting in its perpetration. All are responsible for the acts of each, done in pursuance of and in furtherance of the common design, and are held to be equally the guilty instrument of its perpetration. Nor, indeed, is it necessary that they should be actually present at the commission of the principal act, if sufficiently near by to render