

gomery killed Attucks; and Langford swears Killroy killed Gray, but none of the witnesses undertake to say, that either of the other prisoners in particular killed either of the other three persons, or that all of them did it. On the contrary, it seems that one of the six did not fire, and that another of them fired at a boy as he was running down the street, but missed him (if he had killed him, as the evidence stands, it would have been murder), but the witnesses are not agreed as to the person who fired at the boy, or as to him who did not fire at all. It is highly probable, from the places where the five persons killed fell, and their wounds, that they were killed by the discharge of five several guns only. If you are upon the evidence satisfied of that, and also that Montgomery killed Attucks, and Killroy, Gray, it will thence follow that the other three were killed, not by the other six persons, but by three of them only; and therefore they cannot all be found guilty of it. And as the evidence does not show which three killed the three, nor that either of the six in particular killed either of the three, you cannot find either of the six guilty of killing them or either of them. If you are satisfied, upon the evidence given you, that Montgomery killed Attucks, you will proceed to inquire whether it was justifiable, excusable, or felonious homicide, and if the latter, whether it was maliciously done or not. As he is charged with murder, if the fact of killing be proved, all the circumstances of necessity or infirmity are to be satisfactorily proved by him, unless they arise out of the evidence produced against him, for the law presumeth the fact to have been founded in malice until the contrary appears.

You will, therefore, carefully consider and weigh the whole of the evidence given you respecting the attack made upon the party of soldiers in general, and upon Montgomery in particular. In doing it, you will observe the rules I have before mentioned, and not forget the part that some of the witnesses took in this unhappy affair, and if, upon the whole, it appears to you that Montgomery was attacked in such a violent manner that his life was in immediate danger, or that he had suffi-