

to be merely a question of fact. It is the duty of the Court to instruct the jury in all points relating to the law and evidence, and to determine what evidence is admissible; while it becomes the duty of the jury to make application of that evidence in accordance with the principles of truth and justice. The question is, therefore, one of complicated law and fact.

The prisoner at the bar, gentlemen, is charged with the wilful murder of Wm. Stiles. In order that you may understand the nature of the offense, it is necessary that you should understand that this crime is the highest known in this commonwealth. While there exist various species of homicide, you will perceive we are not called here to discuss at large the principles of homicide. Sometimes the fact of a homicide is beyond all reasonable doubt, but at others, difficult questions may arise, whether the act was justifiable or otherwise. In this case, however, the question is whether the defendant took the life of the victim or not. If so, it must have been a malicious homicide; therefore, if the charge is sustained at all, if the death of Stiles was occasioned by strangulation more or less violent, it must have been from a wilful and malicious design. Whatever else may have been the motive, there is no part of the defense which shows any justification. If this fact is proved, its character is beyond all doubt. It bears all the characteristics of malicious homicide. Whether the motive may have been the possession of the wife, or the property of the deceased, or whatever else, the law regards it as an unjustifiable homicide. Wherever there is premeditation, a preconceived design, a previous threat, or an expression of malice, the only presumption can be that the homicide is malicious. If this act, then, was committed as charged in the indictment, it was an act of homicide unjustifiable and malicious, and falls under the denomination of murder.

Gentlemen, has a homicide been committed? If the life of the deceased was taken or destroyed by the hand of another,