

jury, that the direction of the learned Chief Justice to the jury on the question of conspiracy or common design was not one of which the prisoner could complain, that the verdict of the jury was a proper one, and that there was no mistrial.

The law is that "if several persons form a common intention to prosecute any unlawful purpose, and to assist each other therein, each of them is a party to every offence committed by any one of them in the prosecution of such common purpose, the commission of which offence was or ought to have been known to be a probable consequence of the prosecution of such common purpose:" Criminal Code, sec. 61 (2).

And culpable homicide is murder in the following case: "If the offender, for any unlawful object, does an act which he knows or ought to have known to be likely to cause death, and thereby kills any person, though he may have desired that his object should be effected without hurting any one:" Criminal Code, sec. 227 (d).

Culpable homicide is also murder in the following case, whether the offender means or not death to ensue, or knows or not that death is likely to ensue: If he means to inflict grievous bodily injury for the purpose of facilitating his escape from lawful custody, and death ensues from such injury: Criminal Code, sec. 228 (a), and sub-sec. 2.

The evidence shewed that immediately upon the parcel containing the revolvers being thrown into the cab, the prisoner and Rutledge, at all events, and perhaps Jones, armed themselves with these revolvers and formed the common intention of, by the use thereof, prosecuting the unlawful purpose of escaping from lawful custody and of assisting each other therein, and that the shooting by one of them by Boyd was an offence committed by one of them in the prosecution of such common purpose, and that the commission thereof was or ought to have been known to be a probable consequence of the prosecution of such common purpose; each of them was therefore a party to such offence, and the offence, being murder in the actual perpetrator thereof, was murder in the prisoner, even if he were not the actual perpetrator thereof, and he was properly found guilty by the jury of the offence, the evidence, in my opinion, fully warranting their verdict.

There was nothing, in my opinion, in the charge of the learned Chief Justice, nor in his subsequent instructions to the jury, both of which must be read together, of which the prisoner could properly complain.

The jury in coming into Court and their foreman saying, "On the first count we disagree," and on being asked by