

State of Virginia, Rockingham County - To wit -

In the County Court of the said County -

The Jurors of the Commonwealth of Virginia, in and for the body of the County of Rockingham, and now attending the said Court - Upon their oath present - that Jacob Shipp on the 7th day of December in the year 1888, in the said County, in and upon the body of one John Hottinger feloniously, wilfully, deliberately, premeditatedly, and of his malice aforethought - an assault - did make; and that the said Jacob Shipp, a certain gun then and there loaded with gunpowder and leaden shot, which said gun, he the said Jacob Shipp in his hands then and there had and held, then and there feloniously, wilfully, deliberately, premeditatedly, and of his malice aforethought - did discharge and shoot off, to, against, and upon him the said John Hottinger; And that the said Jacob Shipp, with the leaden shot - aforesaid, out of the said gun by the said Jacob Shipp discharged and shot off, as aforesaid, then and there feloniously, wilfully, deliberately, premeditatedly, and of his malice aforethought did strike, penetrate, and wound him the said John Hottinger, in and upon the left side of the belly of him the said John Hottinger, thereby giving to him, the said John Hottinger, then & there with the leaden shot - aforesaid, so as aforesaid discharged and shot out of the gun aforesaid, by the said Jacob Shipp, in and upon the left side of the belly of him the said John Hottinger, one mortal wound; of which said mortal wound he the said John Hottinger on the said 7th day of December in the year 1888 in the County aforesaid, did languish, and languishing did live; on which same 7th day of December aforesaid in the year aforesaid, in the County aforesaid he the said John Hottinger of the said mortal wound died: And so the Jurors aforesaid, upon their oath aforesaid, do say, that he the said Jacob Shipp on the said 7th day of December in the year

aforesaid, in the County aforesaid, in manner and form
and by the means aforesaid, him the said John Hottinger, felon-
ously, wilfully, deliberately, premeditatedly, and of his malice afore-
thought - did kill and murder, against the peace and dignity of
the Commonwealth of Virginia.

This Indictment is found on the testimony of Dr. J. E. Lincoln,
D. R. Martz, William Hogle, C. M. Martz, John Deamers, Isaac Eaton,
John W. Clator & Geo W. Rineal, witnesses sworn in Court and
sent before the Grand Jury to give evidence.

We the jury find the Prisoner at the Bar
Guilty of Murder in the Second degree
and therefore fix the penalty at
Eighteen Years in the Penitentiary
Eli Madsen Foreman

Commonwealth -

vs } Indictment

Jacob Schiff

For Murder

A true bill

B. M. Rice
Foreman

1889 Feb 1st Arraigned
& pleaded Not guilty

We the jury find the Prisoner Jacob Schiff
not guilty of Murder in the first degree as
charged in the indictment but guilty of
Murder in the second degree in manner and
form as charged in the indictment and
ascertain the term of his confinement in the
penitentiary at Eighteen Years.
Eli Madsen Foreman

Concord N. J. H. Shipp

Harry Derror - lies in Friday's Gap
Miss Lacy Taylor " 1/2 mile of Oakwood
Mrs Mary Rhodes " 2 1/2 " " "
George Russel Harrisonburg
John Komtz 1/2 mile of Oakwood
Miss Mag Templeman { near Oakwood
Wife of James Templeman {
William Eaton " "
Mary Black at Mrs. H. H. H. H.
~~Sarah Shickel~~
Benjamin Shickel near Oakwood
William Campbell " Lusk Legion
Ashby McWilliam " " "

To J. S. Meeker

Sum in these charges
for Shipp J. S.

Abram Glick airtue on behalf of all
the plaintiffs against Dunson
and Kogler's Estate 14 sept himself
being duly sworn deposes & says

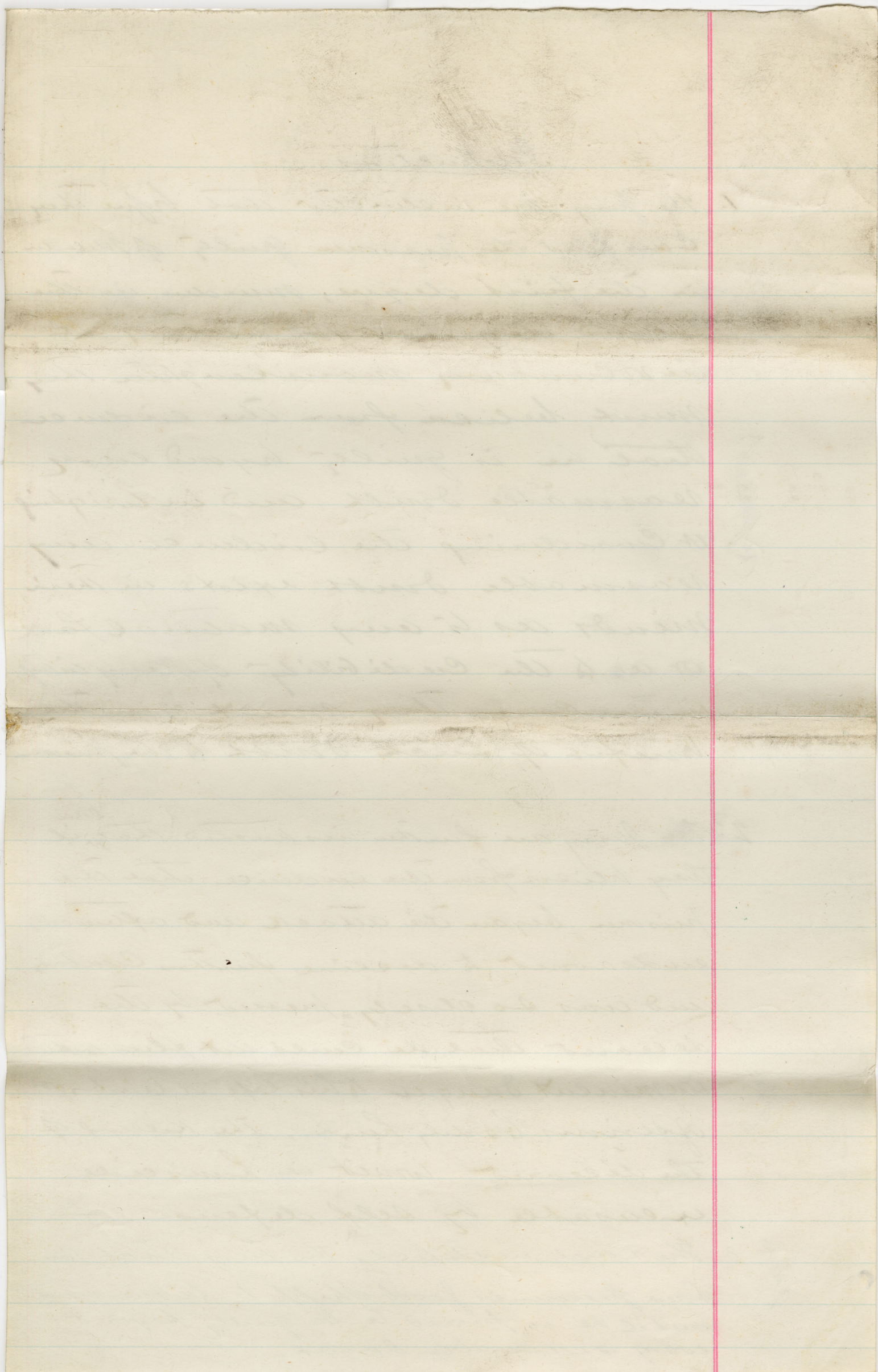
Mem - 6

Instructions

1. The jury are instructed that before they can find the prisoner guilty of murder in the first degree, murder in the second degree or Voluntary or involuntary manslaughter they must believe from the evidence that he is guilty beyond every reasonable doubt and in weighing or considering the evidence if any reasonable doubt exists in their minds as to any material fact or as to the credibility of any witness in the case they must give the benefit of such doubt to the prisoner.

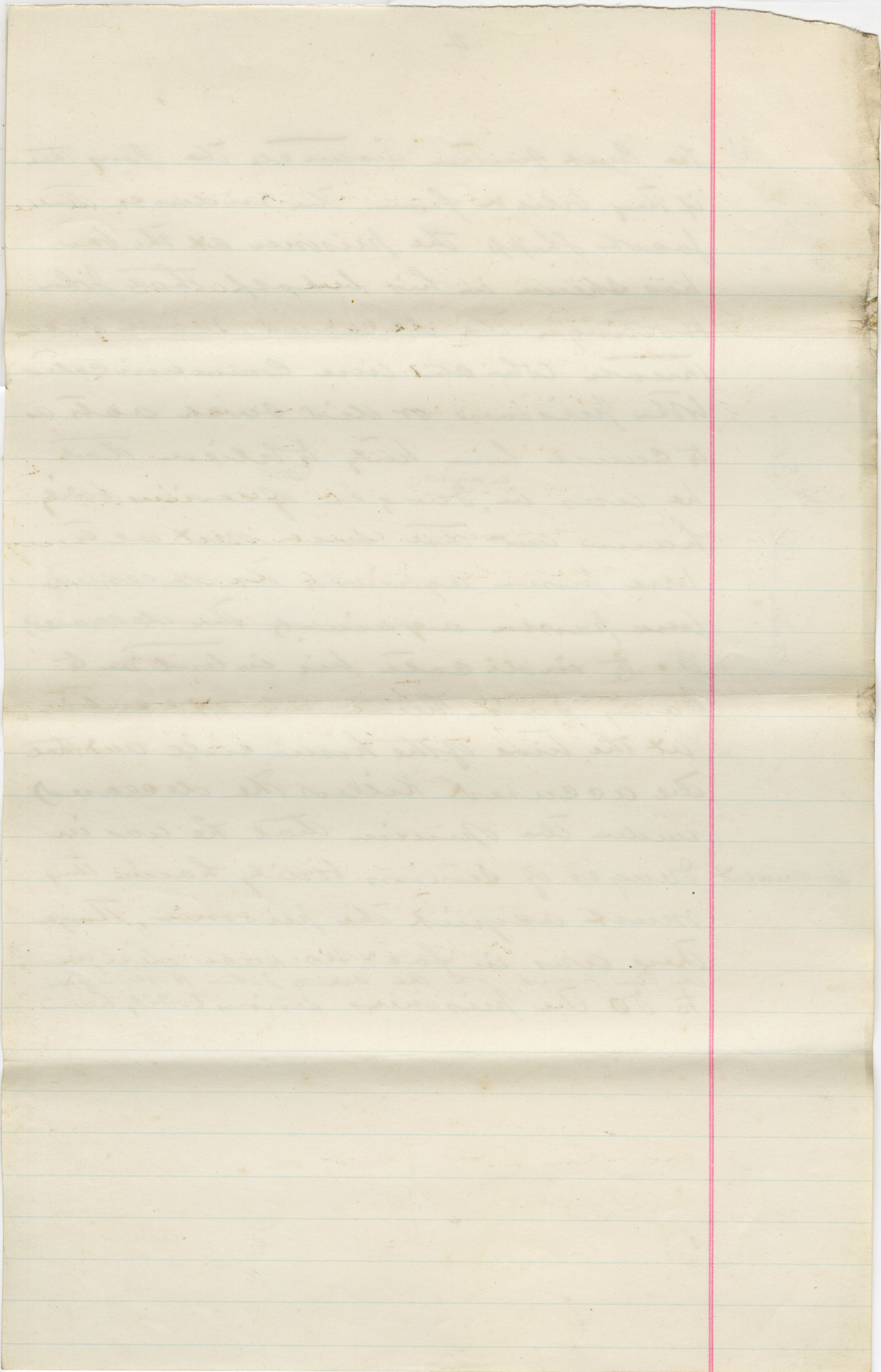
2. The jury are further instructed that ^{when} if they believe from the evidence that the prisoner began the attack and afterwards endeavored to decline further combat and was so closely pressed by the deceased that he could not flee without imminent danger to his life or limb or of serious bodily hurt, the killing of the deceased would be homicide excusable by self defense.

3. The court instructs the jury that the Law presumes Jacob Schiff to be innocent until he is proved to be guilty beyond every reasonable doubt.



Given with addition

4 The Court further instructs the Jury that if they believe from the evidence that Jacob Shipp the prisoner at the bar has shown in his behalf that John Hottinger the deceased made such threats which were communicated to the prisoner or did such acts as to cause him truly to believe that he was in ^{imminent} danger of serious bodily harm and that such acts were done against the deceased ~~was proven against the deceased~~ as to indicate his intention to carry said threats into execution at the time of the homicide and that the accused killed the deceased under the opinion that he was in imminent danger of serious bodily harm they must acquit the prisoner, though there was in fact no such design on the part of the said John Hottinger to do the prisoner serious bodily harm.



The jury are instructed -

1st That if the jury shall have any rational doubt as to any important fact necessary to ~~to~~ convict the accused of any offense whatever they are bound to give the accused the benefit of that doubt.

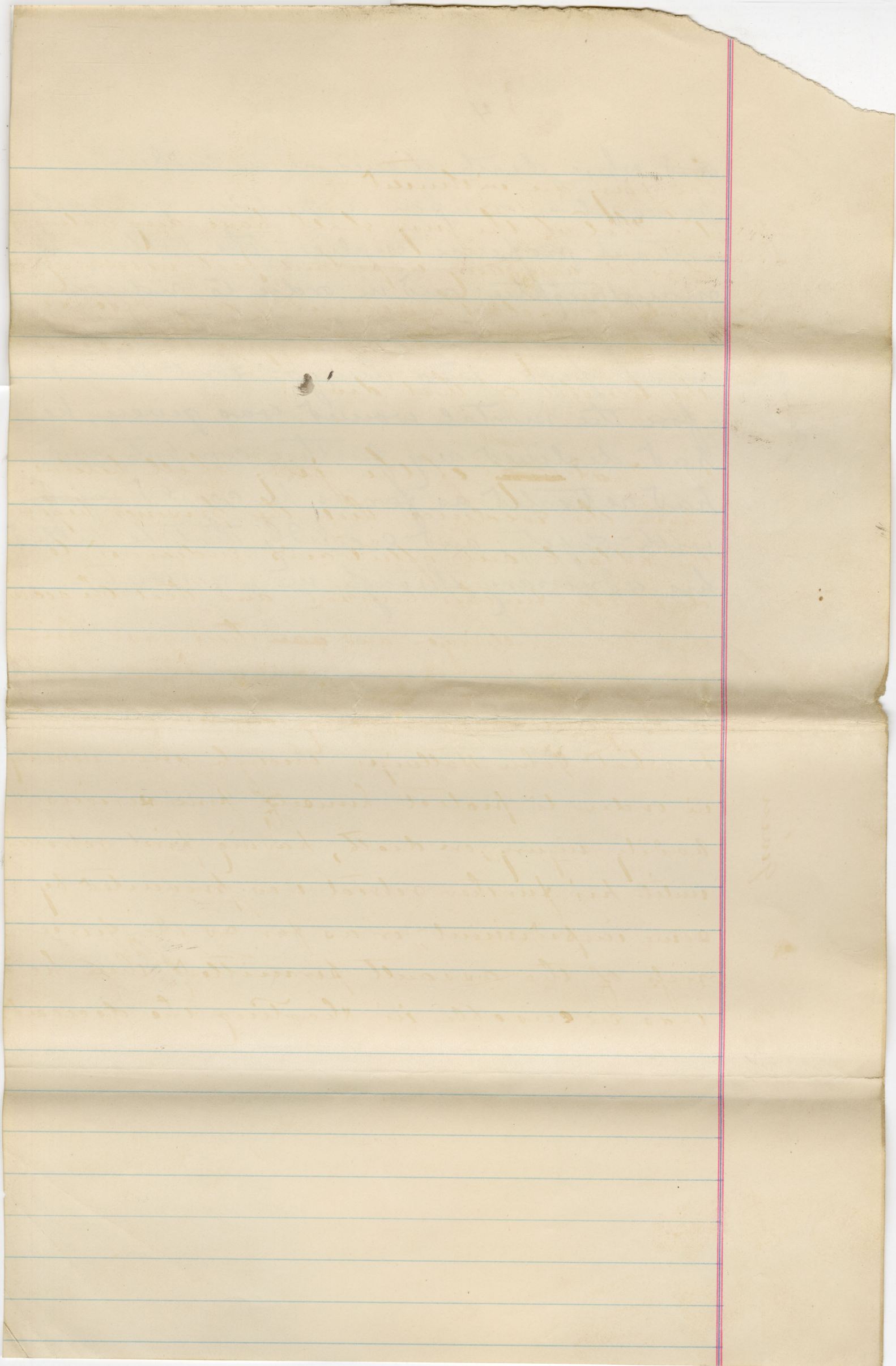
2. That ~~if~~ if the jury shall believe from the evidence that the prisoner began the attack and afterwards endeavored to decline further combat, and that the accused shot John Hollinger and ~~gave~~ thus gave him the wound which caused his death, whilst said Hollinger was advancing on him, and that he shot John Hollinger through mere necessity in order to protect himself from serious bodily injury, or death, having first retreated until his further retreat was prevented by some impediment; or as far as the force of the assault permitted, then he was excusable in shooting the deceased.

given

If the jury believe from the evidence
 that previous to the time of killing
 there was a grudge on the part of
 the prisoner towards the deceased
 that the prisoner had previously
 declared his purpose to do the deed
 a serious personal hurt to the deceased
 inflicted with him, and that he killed
 the deceased because of and in pursuance
 of such declared purpose on the grudge
 aforesaid, then such killing was willful
 deliberate and premeditated and is
 murder in the first degree.

~~and~~ where death ensues on a sudden
 provocation or upon a sudden quarrel
 without premeditated malice, the killing is
 manslaughter; and in order to reduce
 the killing to self-defense the prisoner
 must prove two things: first - that he
 - before the mortal wound was given, he
 had declined any further combat, and
 had retreated as far as he could ~~safely~~
 with safety; and secondly that he killed
 his adversary through mere necessity -

given



5

The Court further instructs the Jury that
 though they shall believe from the evidence
 that the prisoner previous to the 7th day
 of December 1888 had been indulging
 in threats against the deceased John
 Hottinger, yet if they believe from
 the evidence that on the said 7th
 day of December 1888 a sudden
 affray occurred between the
 prisoner and the deceased and
 that the deceased first drew a knife
 on the prisoner and afterwards drew the
 iron piping on the prisoner and that the
 prisoner then under fear of imminent
 danger of serious bodily hurt fired
 the fatal shot they must find the
 prisoner not guilty

6.

The Court further instructs the Jury that
 although they shall believe from
 the evidence that previous to the
 time of killing there was an
 existing grudge on the part of the
 accused towards the deceased
 but that the shot which killed the deceased
 was given on a sudden affray and because
 of fresh provocation then the presumption
 is that the killing was because of the
 fresh provocation and to elevate the

offense to murder it devolves
upon the Commonwealth to show
beyond a reasonable doubt that the
killing was because of the old
grudge

7th

7³

referred

The Jury are further instructed
that the threats made by the deceased
prior to the day of killing and
communications to the prisoner are
to be considered by them in the
determination of the question
as to whether the ~~deceased~~ accused
has at the time of the killing a
reasonable ground to apprehend
that the deceased intended to
do the prisoner serious bodily harm

If you find him not-guilty you will say so and no more; If you find him guilty of murder in the first degree you will say so and no more - If you find him not-guilty of murder in the first degree but-guilty of murder in the second degree you will say so and then ascertain the term of his confinement in the penitentiary so that such term be not less than five nor more than eighteen years -

If you find him not-guilty of murder either in the first or second degree, but guilty of voluntary manslaughter you will say so, and then ascertain the term of his confinement in the penitentiary so that such term be not less than one nor more than five years - If you find him not guilty of any of the felonies aforesaid but guilty of involuntary manslaughter you will say so, and then ascertain the term of his confinement in the County Jail and the amount of his fine, both or either, so that such fine be not less than five dollars -

Commonwealth

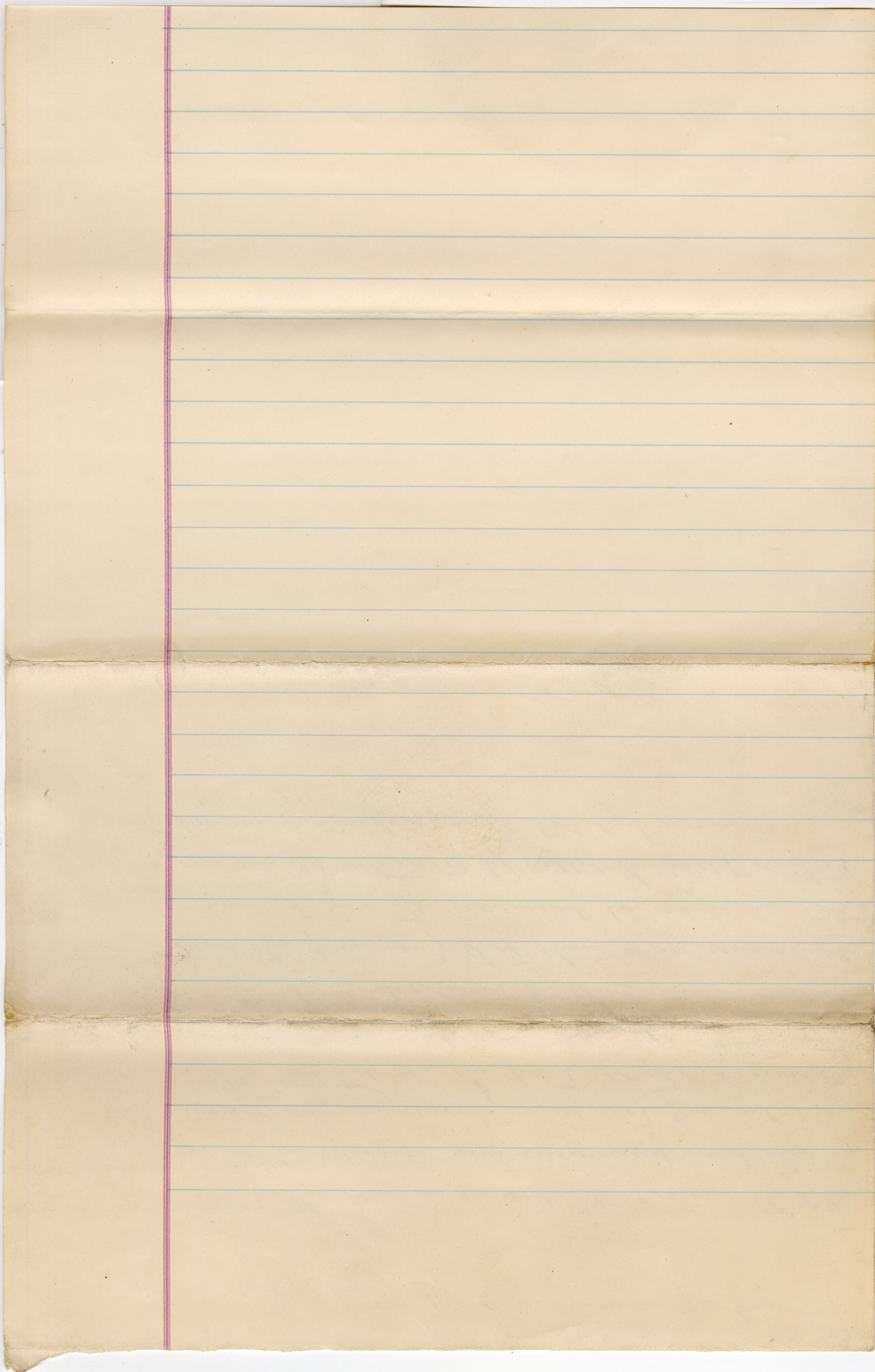
vs } For Murder

Jacob Slupp

Charge to the Jury

addition to 4 instruction for prisoners

But the danger in order to excuse the killing must be serious and imminent and the excuse of necessity will not prevail even after retreat on the part of the accused unless the jury believe from all the evidence (both that introduced by the commonwealth and the prisoner) that there was reasonable ground for the accused to apprehend that he would otherwise be killed himself, or that he would suffer great bodily harm.



IN THE NAME OF THE COMMONWEALTH OF VIRGINIA.

TO THE SHERIFF OF ROCKINGHAM COUNTY--GREETING:

You are hereby commanded to summon *M. J. Southern*

to appear before the Judge of the County Court of Rockingham County, at the Court-House,
on the day of the *fourteenth* Court next, being the day of

..... 188 , to testify and the truth to say on behalf of *Jacob Shipf*

in a certain matter of controversy in our said Court, depending and undetermined between
The Commonwealth Plaintiff,

and *Jacob Shipf* Defendant.

And this *he* shall in no wise omit, under the penalty of £100. And have then and there
this Writ. Witness, JOSEPH S. MESSERLEY, Clerk of our said Court, at the Court
House, the *28th* day of *March*, 1889, and in the 11th year of the
Commonwealth.

J. S. Messerley Clerk.

Executed March 28/89 upon Mr
Scothern in person.

A. N. Black ^{deputy}
for W H Lam S R C

Jacob Shipp

105

ads. } Spa

The Commonwealth

M. J. Scothern

Per the Court

IN THE NAME OF THE COMMONWEALTH OF VIRGINIA.

TO THE SHERIFF OF ROCKINGHAM COUNTY--GREETING:

You are hereby commanded to summon

D. R. Martz

to appear before the Judge of the County Court of Rockingham County, at the Court-House,
on the _____ day of the *fourth* Court next, being the _____ day of
_____ 18____, to show cause if any *he* can, why *he* should
not be fined and attached for *his* contempt to us offered, in failing to attend the said
Court at this *March* Term last, as a witness on behalf of *The*

Commonwealth @ Jacob Ship

And have then and there this Writ. Witness, *J. S. Meperley* Clerk
of our said Court, at the Court House, the *26* day of *March* 1889,
and in the 11th year of the Commonwealth.

J. S. Meperley CLERK.

Commonwealth,
1771
Rule against
Writings
Jacob Shipp.

D. R. Maltz.

Northampton.

Presented March 20th 1859 to the
Library of the City of New York
in person
J. B. J. Schermerhorn Esq.
of N. Y. from Socy.

IN THE NAME OF THE COMMONWEALTH OF VIRGINIA.

Page
TO THE SHERIFF OF ROCKINGHAM COUNTY--GREETING:

You are hereby commanded to summon

John Kowitz

to appear before the Judge of the County Court of Rockingham County, at the Court-House,
on the 7th day of the March Court next, being the 25th day of
March 1887, to show cause if any he can, why he should
not be fined and attached for his contempt to us offered, in failing to attend the said
Court at the March Term last, as a witness on behalf of Jacob
Shipp ads The Commonwealth

And have then and there this Writ. Witness, J. S. Meperley Clerk
of our said Court, at the Court House, the 20th day of March 1887,
and in the 113th year of the Commonwealth.

J. S. Meperley

CLERK.

Executed March 22, 1889 by delivering
a copy of the within to John A. County in person.

R. P. Bennett,
Sgt. for v. L. Smith, 1889.

Page County.
Jacob Shepp.
ad.) Rule
J. A. Smith
The Commonwealth.

To 7 Day March let.
being March 25, 1889.

In the Name of the Commonwealth of Virginia,

TO THE SHERIFF OF ROCKINGHAM COUNTY--GREETING:

You are hereby commanded to summon

Harvey Derow Bridley Gap,
Miss Lacy Taylor $\frac{1}{2}$ mile of Oakwood, Miss Mary Rhodes,
 $2\frac{1}{2}$ miles of Oakwood, George Russell, Miss Mary Templeman
wife of James Templeman, William Eaton, Mary Black Cat Mrs.
John Buttigieg, Benjamin Hnecker, William Campbell, Ashby McWilliams,
John R. Smith,

to appear before the Judge of the County Court of Rockingham County, at the Court House on the

3rd. day of the March Court next, being the 20th day of March

18 89, to testify and the truth to say on behalf of Jacob Shipp

in a certain matter of controversy in our said Court, depending and undetermined between

The Commonwealth.

Plaintiff,

and

Jacob Shipp.

Defendant.

And this they shall in no wise omit, under the penalty of £100. And have then and there this

Writ. Witness, JOSEPH S. MESSERLEY, Clerk of our said Court, at the Court House, the

13th day of March, 18 89, and in the 11th year of the Commonwealth.

J. S. Messerley

Clerk.

Jacob Shipp
1811
Ad. Spal.
The Commonwealth.

To 3rd day of March 1811
being March 20 1889

Executed March 16 as A all the within
named parties in presence of Joseph John Smith
who was present at home of looking up of the same and
bearing my hand and signature of the same
J. H. Jan 1811

In the Name of the Commonwealth of Virginia,

TO THE SHERIFF OF ROCKINGHAM COUNTY—GREETING:

You are hereby commanded to summon *Henry Sayman James E. Templeman*
William S. Jennings B. F. Dromedant Isaac N. Brown
John B. Smith Joseph L. Templeman B. F. Strickler &
Mrs. Martha Sayman

to appear before the Judge of the County Court of Rockingham County, at the Court-House on the
3rd day of the *March* Court next, being the *20th* day of
March 188*9*, to testify and the truth to say in behalf of the Commonwealth against
Jacob Shipf.

who stands charged with and indicted for *felony*

And this *they* shall not omit under the penalty of £100. And have then and there this Writ.

Witness, JOSEPH S. MESSERLEY, Clerk of our said Court, at the Court-House, the *12th*
day of *March* 188*9*, and in the 113th year of the Commonwealth.

J. S. Messerley Clerk.

Executed March the 16th 1889 by
delivering a true copy of the within ~~and~~
of the within named parties in person
Wm. S. Leathers p.s. for
V. H. Sam. S.C.

Commonwealth.
@ } Spa.
189
Jacob. Shipp.

To the day of Mchth.
being March 20. 1889.

In the Name of the Commonwealth of Virginia,

TO THE SHERIFF OF ROCKINGHAM COUNTY—GREETING:

You are hereby commanded to summon *Dr. J. E. Lincoln. Dr. R. Martz.*
Wm. Eagle. C. M. Martz. John Daavers. Isaac
Eaton. John W. Belater. George W. Ruzel. Miles Cole
David E. Looker. J. S. Martz. Mary Black. Jane
B. Scottinger. Thomas Pitt (at Bazzles).

to appear before the Judge of the County Court of Rockingham County, at the Court-House on the
3rd day of the *March* Court next, being the *20th* day of
March 188*9*, to testify and the truth to say in behalf of the Commonwealth against
Jacob Shipp

who stands charged with and indicted for

And this *they* shall not omit under the penalty of £100. And have then and there this Writ.

Witness, JOSEPH S. MESSERLEY, Clerk of our said Court, at the Court-House, the *9th*
day of *March* 188*9*, and in the 113th year of the Commonwealth.

J. S. Messerley Clerk.

Executed March the 16th 1889 by delivering
a true copy of the within, to each of the within
named parties except M. J. Brothers D.S. for
Thomas who he not being at M. J. Brothers D.S. for
his usual place of abode, by law,
a copy of the within to Mr. Bayle a
member of the family over the term
years of Page & by delivery the purchase
thereof.

To 3rd. day of March A.
being March 20. 1889.

Commonwealth.

1814
of Spal.
Jacob Shupp.