- .. esilto may of qu fnew A fob mey bib fer eneds mort of
  - on him sellie we awast move bit sellies and go going worth p anywhere A I did; I went to Heater having a house.
- of the those there I can there I age to your to your to your
  - Q Widt you jest my office did you meet anybody about the doors of the bank building -- with your brother?
- A I essen back down to the office and my best recollection is that you and sex and myself walked down to the payenest of the bank, and there were standing or near by, understand, a little below officer biller and officer lovel. I can't say pentitively whether I made the remark or Mr. Hawmer made the remark, but one or the other made the remark, or the suppose you are looking for more and one of the officers, then I do not know whether I maye the right.
  - MR. LEE: That is unnecessary. He was arrested at that time?

    A Yea, air, he was taken in there. I suppose you ould it
    "sreeted." and later was taken before the Mayor.
    - .The .self A fingin that that for the steel of

MR. SIPR: You spoke of the bank building,

WITHESS: Yes, sir.

- A Very land lengt at the entrance.
- of it was at which entrance? A it was at the entrance, or it might have been down as far as Frazier's place, I am not positive.

  It was right about in that place that we got in conversation with the officers.
  - Q Mr. Hirsch, something has been said about your brother Mox mistreating your sister, Mrs. Isaacs's child; state if you ever observed his conduct towards the little child, and describe it in your own way, and where you have seen him and the child together?

A Well, I may say that I have seen him have the child, and the child has been at various times brought down to the stable not only by father but by myself, and Mox has taken it on various times. At one time I remember of his putting it on the pony, and several times ridding it around in the stable in the pony-wagon, and such things as that.

Q That is all. A (Volunteering) I think I omitted something in going down to the stable in the buggy. I do not know whether I have a right to tell it or not.

MR. HARRIS: Something Mox said to you? A Something that Mox showed me.

- Q Did you observe his lips? A He was crying and every now and then he had his handkerchief this way (indicating) I reckon towards his lip, and I asked him what was the matter.
- Q State what you saw, what you observed, as to the condition of his mouth? A I can state that?
- Q Yes, sir. A He had, it looked like a bruise on his gum here. This lower lip had one little scratch in it on this side and a large one on this side, as if from a blow against his teeth.

## CROSS-EXAMINATION BY MR. CONRAD:

- IQ It was a quarter to ten, if I understand you, that you first saw Mox after Mr. Isaacs was killed, and the place was down on Water Street near Charley Conrad's bar? A As near as I can come at it. It was about 20 minutes or quarter of ten.
- XQ I think you said it was twenty minutes of ten when you were on the Square, and I was thinking it was about five minutes later when you came from the Square? A I don't suppose it took me a minute.
- XQ What time of the night was it the officers arrested him there on the street? A When they arrested him, somewhere in the

- A Well, I may say that I have seen him have the child, and the child has been at various times brought down to the stable not only by father but by myself, and Mox has taken it on various times, at one time I remember of his putting it on the pory, and several times righting it around in the stable in the pory-wagon, and such things as that.
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Inter when you came from the Square? A I don't suppose it took

me a minute.

In what time of the night was it the officers arrested him the there on the street? A when they arrested him, somewhere in the

neighborhood of eleven o'clock, probably a few minutes after, or a few minutes before.

XQ Between eleven and twelve? A Not able to state that positively.

XQ There were not very many people out on the street at that hour of the night were there? A Well, I seen some. I can't recall now who it was, but I believe it was Mr. Loewner.

xQ Who was this that went from Main Street down to the stable with Mox, from the colonial building -- this youngman you called across the street?

A Jim Nutter.

XQ When you went to Doctor Davis's office was Mox along with you? A No, sir.

XQ You came up to Dr. Davis's office to ascertain Mr. Isaacs's condition? A Certainly; yes, sir.

XQ You reported to Mox when you got back that Doctor Davis said Isaacs was in a very serious condition? A I did not report that.

XQ You did not report that? A I did not report any such report as that.

XQ Doctor Davis did not advise you that he was in a very serious condition? A He did not. I do not know what his meaning was. He did not put it in those words.

A I called over the 'phone and talked to him over the 'phone upstairs. I told him who was down there and asked him how bad he thought Mr. Isaacs was hurt? he told me he could not find any fractures to night, but he wasn't able to state under twenty-four hours what the development were.

XQ You were not on good terms with Mr. Isaacs yourself, were you? A The best in the world. Never had a word with him in my life.

XQ On the night he was killed, after you got down to the to Web McGlaughlin had hit Isaacs, you then said

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neighborhood of eleven o'clock, probably a few minutes after, or a few minutes before.

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it was a good thing for him, he ought to have been hit, he was always butting in, didn't you? A I did not, positively.

XQ You did not, positively? A I positively did not make that reply. I can tell you what I said to Webb McLaughlin.

MR. LEE: I think it is proper to let the witness state what he did say.

MR. CONRAD: I am asking these questions now. They can bring that out on cross-examination if it is proper.

XQ You saw Web McGlaughlin there at the stable? A No, sir, I didn't see him at the stable.

XQ You saw him on Water Street? A Yes, sir, I saw him around the corner.

XQ Whether at the corner or at the stable, or what not, you say you did not say to him, after Mox had told McGlaughlin that he had hit Isaacs, that he ought to have been hit that he was always butting in? A I positively did not say that. I can give you my remark about that if you want it.

MR. LEE: Just state what you did say.

Objection; sustained; exception for accused.

MEMO: Recess taken until 1:45 P. M. AFTERNOON- SESSION, Oct. 7, 1909.

MAXIMILIAN HIRSCH, examined in his own behalf, by Mr. Lee:

- Q Mr. Hirsch, you are the defendant in this case, are you not?
- A Yes, sir.
- Q How old are you, Mr. Hirsch? A I will not be positive, either thirty-three or thirty-four.
  - Q In what county were you born, Mr. Hirsch? A Rockingham.
  - Q Have you lived here all of your life? A Yes, sir.
- Q You were born and reared here and your whole life has been spent in Rockingham County and the town of Harrisonburg among our people? A Yes, sir.

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o You were born and reared here and your whole life has been spent in Hookingham county and the town of Harrisonburg among our people: A Yes, sir.

- Q At what age, Mr. Hirsch, did you begin work? A I guess, to the best of my recollection, something like eight or nine years.
  - Q You were one, I believe, of a very large family of children?
  - A Yes, sir.
  - Q A family of some ten children, I believe? A Yes, sir.
  - Q You assisted in making a living for yourself and family?
  - A Yes, sir.
- Q What has been the condition of your health, Mr. Hirsch, for the last ten or twelve years? A I have been a very sick man all along there.
- Q Have you ever sustained any physical injury in your limbs or bones -- broken bones? A Yes, sir.
- Q Tell the Jury, if you please, sir, when you received this first injury and where it was, I mean, upon what part of your person? A As near as I can recollect, something about twelve or fifteen years ago; I can't just recollect the year; I was getting on a horse out here about the stone spring. It is where the pike crosses the railroad -- the Staunton pike -- where the Valley railroad crosses the pike, this way a little piece. I went to get on the horse with my unbrella in my hand, and I fell off and broke both bones in this arm (indicating right arm).
- Q That was something near 12 or 15 years ago when you broke both of the bones in your right arm? A Yes, sir.
- Q Tell the Jury whether that arm was weakened and has remained weakened by that injury? A I have not been able to do any hard work with it at all since.
- Q You have not been able to do any hard work with that arm since? A No, sir.
- Q Does that arm now at that point show the injury? A I think anybody could tell it by the large lump right through there, (indicating).
  - Q There is agnot there, isn't there? A Yes, sir there is

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  - Q There is agnot there, isn't there? A Yes, sir, there is

knat there larger than ought to be.

- Q And that was twelve or fifteen years ago that your right arm was broken as you have described? A Yes, sir, as near as I can recollect.
- Q Did you receive, either before or after that time, any injury to your other arm? A Yes, sir.
- Q When was that? A As near as I can recall it has been between three and five years ago.. Something like that.
- Q Where was that injury, upon what part of your arm? A Well, sir, if you notice you could see a knot sticking up there. It was broke there. I think it was splintered right here.
- Q The left arm was splintered above the wrist and you broke at the bone at the wrist, the point you have just indicated to the Jury? A Yes, sir. You can see it right here.
- Q What has been the effect of that injury upon the strength of that arm, Mr. Hirsch? A I have not been able to use that arm to any advantage at all.
- Q I would like for you to tell the Jury what has been the character of the work which you have been doing, say, for the last eight or ten years? A I hav'n't done no work at all helped to buy horses and buy some cattle.
- Q I would like for you to tell the jury what sort of business you have been conducting? A Well, sir, I have been dealing in horses and cattle.
  - Q You have been dealing in horses and cattle? A Yes, sir.
- Q How long since you began to do that sort of work? A It has been about -- I guess along about sixteen years, as near as I can recollect.
- Q My friend, Mr. Conrad, in his opening statement, says you were a stalwart man, that your work was handling heavy baggage, and you were a drayman and had been engaged in that sort of work; how long has it been since you have done any work of that character?

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Q My friend, Mr. donrad, in his opening statement, says you were a staiwart man, that your work was handling heavy baggage, and you were a drayman and had been engaged in that sort of work; how long has it been since you have done any work of that character?

A I guess, to the best of my recollection -- I can't just recall exactly the number of years, but anyhow sixteen or seventeen years.

- Q It has been sixteen or seventeen years since you have done any of that sort of work? A To the best of my recollection.
- Q As well as you recollect. I understand you cannot give the exact year, of course? A Yes, sir.
- Q Did you say 16 or 17 years, or 6 or 7 years? A I said about 16 or 17 years.
- Q Well, within the last six or seven years have you done any work of that character, the lifting of heavy material or grain?
- A No, sir; no, sir, I hav'n't been able to lift anything at all to amount to anything from that time.
- Q Your business for a good number of years has been almost wholly confined to horse dealing and cattle buying? A Yes, sir.
- Q That necessitated your horseback riding a good deal and that sort of thing? A Yes, sir, principally.
- Q When did you first know Mr. Lou Isaacs? A I knew him when they were married.
- Q Had you ever met him before he married your sister? A I think I did.
- Q How long before? I do not mean in days or weeks. A Some-thing like six months before.
  - Q Where did you meet him, here? A Yes, sir.
  - Q Sir? A Met him right here.
  - Q Met him here when he was visiting your sister, I presume?
  - A Yes, sir.
- Q Where was Mr. Isaacs from; was he a resident of this county; or was he from some other place? A No, sir; I think his home was in Baltimore.

- A I guess, to the best of my recollection -- I can't just recoll exactly the musier of years, but anyhow sixteen or seventeen
- on it has been mixtuen or neventeen years winds you have done any of that out of any recollection.
  - ovin Jonnes now handarehan I .Jaciloset may as flow eA p
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    - Tip , sey A
- Q Where was Mr. Issacs from was he a resident of thin county, or was he from some other place? A No, sir; I think his nome was in Baltimore.

- Q It has been stated, Mr. Hirsch, that you were opposed to your sister's marrying Mr. Isaacs, is that true? A Yes, sir.
- Q Without going into detail, for I do not suppose you would have a right to do that, just state generally why you were opposed to your sister marrying Mr. Isaacs? A Well, sir, I learned that he was a man that --

MR. CONRAD: I object to that, sir.

THE COURT: The question is, Whay he was opposed to the marriage?

MR. LEE: They have brought that into evidence for the Commonwealth as tending to show bad feeling on the part of this youngman, the defendant.

Now, I take it, that a brother who loves his sister and has her interest at heart, may, under certain conditions and with certain information, very properly be opposed to her marriage to a given person. To let it go to the Jury that he was opposed to his sister marrying this youngman Isaacs, without permitting him to give, not in detail but generally, the reason for his objection, would be unfair to him and to the Jury for they want to understand the reason for his opposition.

MR. LEE: I will put the question in this form

Q Will you please be kind enough to state to the Jury whether your opposition to your sister marrying Mr. Isaacs -- I want you to tell the Jury whether or not your opposition to his marriage was based upon any ill-feeling, or any unkind feeling, which you had towards Mr. Isaacs, or was based upon your love and affection for your sister or upon your desire for her to make what you would consider a good and proper marriage? A No, sir. I never had any ill-feeling towards him.

Q Had anything occurred before that, that would have caused ill-feeling towards him by you? A No, sir.

Q Than, as I understand you, you were simply opposed to the

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of than, as I understand you, you were simply opposed to the

marriage because of the interest in your sister and because of the information which you had received, and which had led you to that honest conclusion, as her brother? A Yes, sir.

Q Now, I would like you to tell the Jury how soon, if at all, after Mr. Isaacs married your sister, you and he became friends?

A On the night that they came home from the marriage, if I must say it, we took a drink together and made up and it was all right.

- Q Then, while you did oppose this marriage before it took place, as soon as it was consummated and your sister had taken him for her husband, you and he shook hands and made friends and took a drink together? A Yes, sir.
- Q If I understand you, immediately after the wedding you became friends; now, how long did you remain friends? A We remained friends, to the best of my recollection, until last August a year.
- Q You remained on friendly terms until last August a year ago, that would be August 1908? A Yes, sir.
- Q Well, at that time did you and he have some difference about anything? A Yes, sir, we had some little difference. I guess we had a little difference.
  - Q Sir? A Yes, sir, we had a little difference.
- Q If I understand, in August 1908 a difference arose between you and him? A Yes, sir.
  - Q Was that difference ever made up? A That difference?
  - Q Yes, sir. A No, sir.
- Q Then, after August 1908 did you and he have anything to do with each other? A No, sir.
- Q Nothing. So that everything that existed between you in the way of difference grew out of that one occurrence? A Yes, sir.
  - Q I would be glad if you would tell the Jury briefly, but

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Q Mothing. So that everything that existed between you in the way of difference gree out of that one occurrence? A Yes, sir. Q I would be glad if you would tell the Jury briefly, but fully if you choose, what occurred between you and Mr. Isaacs in August 1908, which caused the difference of which you have spoken?

A Well, the difference was caused this way: on Sunday before the third Monday he came down into our stable on Water Street and took the horse and hooked up the buck-board of ours, a new buck-board, and he took it away; and I asked who gave him permission to take it, and one of them says, "Nobody gave him permission." And when he came back I asked him, "Lou," I says, "who gave you permission to take that buck-board away from here, I own it?" He spoke up and said, "What you got to do with it?" I says, "It belongs to us. I have the right to ask you." He says, "I have as much right to do with it as you have, "he says, "I married in the family." I says, "You hav'n't nothing to do with it at all." so he got mad at that and grabbed a piece of iron back there and made at me and I ran. A piece of iron, I think it was a piece of lever off a brake from a two-horse wagon.

- Q Did that end the trouble at that time? A I ran out the door. Do you want me to tell who stopped us or anything?
- Q No, I do not know that it is necessary, unless my friend on the other side wants it. I am trying to show briefly the nature of the occurrence. A I ran out in the street from the stable, and he followed me and would have hit me but was stopped. That was the last of the fight.
- Q Did you and he ever speak from that time on? A That time on?
  - Q Yes, sir. A I don't think we did; no, sir.
  - Q You do not think you did? A No, sir -- I know we never.
- Q Now, it has been stated that on several occasions you had made some threats, some ugly remarks about him, "if he came in your house you would kill him," or words to that effect. I want to

fully if you choose, what occurred between you and Mr. Issacs in Aurust 1908, which caused the difference of which you have mode of Aurust 1908, which caused the difference was equaed this way: on sanday before the water Aurust Montay he caus down into our stable on water street and two water horse and hocked up the buck-board of ours, a new buck-board, and he took it away: and I maked who gave him permission to beard, and he took it away: "Mobody gave-him permission to take it, and one of them nows, "Mobody gave-him permission." And when he cause blok I soked him, "Most," I says, "who gave you sare mission to take that buck-board away from here, I own it?" He spoke up and caid, "What you got to do with it?" I says, "I have as much right to do with it as you have, " he says, "I married in the family."

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- Q No. I do not know that it is necessary, unlocany intend on the other mide wants it. I am trying to show briefly the nature of the cocurrence. A I ran out in the street from the stable, and he followed me and would have hit me but was stopped. That was the last of the fight.
- ould test A two suit fest most keep tove of his soy bid 9 .
  - Tin , on ; bib ew mint think we did; no, nir.
  - Q You do not think you did? A No, sir -- I know we never.
- Q Now, it has been stated that on several occupions you had made some threats, some ugly remarks about him, wir he came in your house you would kill him, " or words to that effect. I want to

direct your attention to one of those occasions spoken of by a witness on the stand -- Mr. Spiro -- and I want you to tell the Jury whether or not one of those threats, or so-called threats, spoken of by the witness, grew out of anything that Mr. Isaacs had said or done to your wife as reported to you; I do not mean what you saw, but what may have been reported to you? A Yes, sir.

- Q Tell the jury what that was? A Well, me and my wife always came down the street on Saturday evening and she made her headquarters at Abel Miller's store over here and staid there until I got there and we went home together. I went up there one evening, my wife told me that Mr. Isaacs made an assault on her. I asked her what it was, and she said he had threatened to run his damn fist teeth and down her throat and jerk her tongue out. I said, "Well, If I had been there maybe I would have helped him; I would have hit him."
- Q It had been reported by your wife that he had been guilty of that sort of conduct towards her? A Yes, sir.
- Q And it angered you and you made that sort of remark? A Yes, sir.
- Q Mr. Hirsch, tell the jury whether or not at any time you ever bore about your person any weapon of any sort, kind or description? A No, sir, I never carried a revolver in my life.
- Q You have never carried any sort of weapon? A No, sir. Only thing I carried was a small pocket knife sometimes.
- Q Mr. Hirsch, some woman on the witness-stand, I have forgotten her name, it seems she was mursing for your sister mursing little Miriam, stated that on the afternoon of the tragedy, while she was sitting on the porch with this little child, which was crying, you rode by on horse-back and that she said "There comes your Uncle Mox," and that you said, "Don't tell that damn brat to call me 'Uncle' I have no use for it or any of the crowd; " tell the Jury whether you made any such statement as that? A well, sir, I was riding in from the farm on a horse and rode by the house

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- Q And it angered you and you made that sort of remark? A Yes,
  - ever bore about your person any weapon of any sort, hind or description? A No, sir, I never carried a revolver in my life.
    - Q You have never carried any sort of weapon? A No. air.
    - If the sease of the witness stand, I have forgotten nor name,— it seems she was nameing for your sister nameing
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      your Uncle Mox," and that you said, "Don't tell that damn brut to
      call me 'Uncle'— I have no use for it or any of the crowd;" tell
      the Jury whether you made any such statement as that? A Well,
      sir, I was riding in from the farm on a horse and rode by the house

and she told the child to say, "Hello, Mox." I waived my hand and said "Hello". I think I called it by name, and rode on by and never thought of anything, just rode on to the stable.

- Q How old is that little child? A Now?
- Q How old was the child then and now? A Best of my judgment I think it must be 16 or 17 months old. I don't know exactly.
- Q I want you to tell the Jury what your feelings have always been towards that little child and how you have treated that child?
  - A Well, sir, I loved it.
- Q Did you ever come in contact with the little one? A More than once.
  - Q Where? A In the stable.
  - Q In the stable? A Yes, sir.
- Q And the house in which this little one lives is quite near the stable? A Yes, sir; second house from the stable.
- Q Tell the Jury whether or not that little child was frequently at the stable? A Yes, sir. Down there at an average of, I guess, anyhow four to five times a week.
- Q Did other little children in the neighborhood come to the stable? A Yes, sir.
- Q Have you any ponies there? A Yes, sir, a black pony and a white.
  - Q You have a black pony and a white pony? A Yes, sir.
- Q Tell the jury whether you ever undertook to interest or amuse this little child by riding it on the back of any pony or in any pony-cart? A Every time it was there. The stable was bigger than this room, -- anyway as big.
- Q There was a big gangway in it? A Yes, sir. We would drive all around in a couple of minutes time while the pony was there, and sometimes I would take her riding, especially on Sunday.
  - Q Have you any child of your own? A Have I any?

and me told the child to say, "Hello, Mox." I maked my hand and said "Hello". I think I called it by name, and rode on by and never theurist of enything, junt rode on to the stania.

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- q Ild you ever come in contact with the little one? A More than once.
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  - of In the utgeler A Yes, wir.
- on a time of a series of the little one lives to cold the party and the stable.
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    - q You have a black pony and a white pony? A Yes, sir.
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    - Twis I swall A firme they to blide wie bey eval 9

- Q Yes, sir. A I did have one.
- Q You did have a little child of your own? A Yes, sir.
  A six-months child. It died.
- Q I see. It was dead when born. You have never had any living child? A No, sir.
- Q Mr. Hirsch, where had you been on the evening of the day of this trouble? A I had been to the synagogue.
  - Q Had you spent that day in town or had you been out of town?
  - A I had been out of town.
- Q Where had you been? A I had been out to the farm bossing a few hands, where they were cleaning out a pond.
- Q What time did you get in the city, I mean, sir, that evening? A After six o'clock. I did not leave the farm until after
  the whistle blew six.
- Q The whistle had blown, you mean at the tannery? A Some whistle.
  - Q It whistled for six o'clock when you left the farm?
  - A Yes, sir.
- Q How far is your farm from Harrisonburg? A I should judge a strong mile, maybe little over.
- Q Then, you got in here something after six o'clock? A Yes, sir.
- Q Where did you go when you came home? A Went to the stable and put the horse up there, -- told the man to put it away, I tied it to a post. I cleaned myself off a little bit, -- I had a little mud on my shoes, -- and came up to the house and ate supper and changed my clothes and went to church.
  - Q You went to church? A Yes, sir.
- Q Well, after you left church where did you go; who came from church with you? A Leon, Papa and me came from church.
- Q Where did you and your father and Leon separate? A As near as I can recollect, Papa went in John Sullivan's to get some

- eno oven bib I A . Tla ,asy p
- ale , may A few owny to bline elittle a want blb may 9
- Q I see. It was dued when born. You have never bed any live
  - of wis trouble? A I but been to the synagogue.
- A I find been mat of town.
  - 1. Where had you been? A I had been out to the farm been ing a few hands, where they were cleaning out a pond.
- q what time als o'clock. I did not leave the farm until after the whistle blow wir.
  - Q The whistle had blown, you mean at the terminy? A some
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  - Q well, after you left church where did you go; who came from church with you? A been, Papa and me came from church.
    - near so I can recollect, Papa went in John Sullivan's to get some

cigars.

- Q And where did you and Leon then go? A We walked on down to the stable.
  - Q Walked on down to the stable? A Yes, sir.
- Q Did you separate at the stable, or not? A Who do you mean?
  - Q You and Leon? A I think we did, if I aint mistaken.
  - Q What street is your stable on? A On Water Street.
- Q On Water Street, near the corner of German Street? A Yes, sir.
  - Q This was on July 29th, was it not? A I think it was.
- Q That pretty warm weather or not? A Yes, sir, it was very hot.
  - Q Did you have your coat on after you left church or not?
- A Yes, sir, I had it on, but I taken it off after I left the church.
- Q You took it off how soon after you left church? A As near as I recollect, I taken it off some place along down this or street, down near the corner, I disremember which it was.
- Q Was it while you were still with your father and Leon that you took your coat off? A I think so -- not sure.
- Q What did you do with it after taking it off? A Had it hung over my left arm.
- Q After you separated from your father and Leon where was it your purpose to go? A I made arrangement to go up to see my cousin who was going away the next morning.
- Q Where does she live? A She lived in Baltimore, but she was visiting on corner of West Market and High streets, on top of the hill.

Q She was going to leave town the next morning? A Yes, sir.

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- Q And where did you and hoon then go? A we walked on down to the stable.
  - Q Walked on down to the stable? A Yes, sir.
  - out of the stable, or not? A was do you
    - Q You and Leon? A I think we did, if I cint mistaken.
      - durants rejev no A two slowing move of freeze and,
- , say A finest served to corner of derman streets A Yes,
  - Q This was on July 20th, was it not? A I think it was.
  - q That pretty warm westher or not? A Yes, sir, it was very not.
  - Then we derive you netter no dece way out int during or not?
  - A Yes, sir, I had it on, but I taken it off after I left the church.
    - of You trok it off how soon after you left donn not need to the trace of the trace of the corner, I discussed without it want
  - Q Was it while you were still with your father and Leon that your took your cost off? A I think so not care.
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    Q She was going to leave town the next morning? A Yes, mir.

- Q Did she live here or here on a visit? A Visiting.
- Q Where does she live? A Baltimore.
- Q Your cousin from Baltimore had been on a visit here and you were going up there to tell her goo-bye? A Yes, sir.
- Q What would be the usual route for you to take from your stable to her house? A The usual way -- you mean the nearest way?
- Q Not necessarily the nearest way, but the usual way? A The way I always go, I went around German Street.
- Q You came up to German Street from the stable and then go North? A Yes, sir.
  - Q You would go up German Street and then you would turn -
  - A Up West Market Street.
- Q Was that the route you took that night as far as you traversed it? A Yes, sir.
- Q Well, when did you first meet and where did you first meet, as near as you can state, your sister and Mr. Isaacs that night when you were on your way to visit your cousin? A As I was walking leisurely down the street my sister stopped me and asked me if I —
- Q Where was that? A On German Street about where -- a couple of feet this side of where they live.
  - Q You mean South? A Yes, sir.
  - Q It happened a few feet south of the steps to her house?
  - A Yes, sir.
- Q Now, Mr. Hirsch, in your own way, simply tell the Jury what was said and what was done, -- what transpired when you met your sister and her husband at that time? A My sister asked me if I had said anything ugly about her baby. I said, no, I hadn't said a thing --

THE COURT: Talk louder.

WITNESS: I said, No, I hadn't said a thing.

Q Just go ahead, without being questioned by me, and tell the Jury what happened. A And Lou Isaacs said, "Yes, you did,"

- Q Did she live here or here on a visit? A visiting.
  - O Where does she liver . A Raltimore.

way I always go, I went ground demon Street,

- one some first o no need that excelling more nations on whalt name and you were going up than to toll her col-was A Year, pir.
- Q What would be the usual route for you to take from your stable to her house? A. The usual way -- you mean the negrest may? A whe Q Not necessarily the newest way, but the near our? A whe
  - og neds bas eldess ent mort series namen of queens boy p
  - ment blice now next the secret annual on og blice new
    - . Joorde toward thew QU A
  - -art now an tain no tagin that thou store and tail agw of verned it? A Yes, air.
- o well, whom did you first most and where did you first meet, as near as you can state, your sister and Mr. Ismage that night when you were on your way to visit your cousin? A As I was walking letawardy down the street my sister stopped me and nexed me if I ---
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THE COURT : THIS louder.

WITHESS: I said, No, I hadn't said a thing.

Q Just go ahead, without being questioned by mo, and toll the Jury what happened. A And Lou Isnace said, "Yes, you did,"

just that way. I said, "Go away, Lou, I don't want to have any with you open trouble," and threw my hand up that way -- my right hand. He was on the left hand; she was standing standing next to the house and I was standing next to the curb when I said "Go away, I don't want to have any trouble." It looked like he was terrible angry. He said "Yes, you did, you God damn son of a bitch and I am going to kill you, too." By that he made at me and kept at me with his fists, hitting me all the time all the way up.

- Q Did he strike you when he made at you? A Yes, sir.
- Q Where did he strike you? A struck me some place along here. (indicating.)
  - Q In the mouth? A Yes, sir. It bled a little.
  - Q What else did he do after striking you on the mouth?
  - A He kept on striking.
- Q What did you do? A I kept backing back up the hill, up the pavement.
- Q Did you see Mrs. Arthur Hirsch? A I did not see Mrs. Arthur Hirsch, while this trouble was going on.
- Q Did not see her? A Did not see her until I got up there. She ran between us when we were almost in front of her house where there was a pile of refuse lumber.
- Q She says you struck her, tell the Jury whether you did strike her? A No, sir. When he came at me he knocked her down.
- Q Now, it has been stated that you threw a rock or a piece of plank that struck the house there -- A I don't say I did not, and I don't say I did. I may have done it.
  - Q You may have done it? A Yes, sir.
- Q Did you undertake to throw anything or to do anything until you were struck in the face? A No, sir, I never thought of any thing.
  - Q can you tell the Jury when you picked up that piece of plank?
    A No, sir.

That that may. I said, "Go away, Lou, I don't want to have any which you open trouble," and throw my hand up that way — my right hand. He mas on the left hand; she was standing next to the curb atonding next to the house and I was standing next to the curb when I maid "Go away, I don't want to have any tromble." It looked than I mad the tearlible angry. He said "Yen, you did, you dod domn son of a bitch and I am going to kill you, too." By that he made at me and kept at me with his fints, hitting me all the time all

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- Q You may have done it? A Yes, sir.

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- Q Bid you undertake to throw anything or to do snything until you were struck in the face? A No, sir, I never thought of any tains.
- 9 dan you tall the Jury when you plaked up that place of plank?
- A No. sir.

- Q Did you have any plank in your hand at the time you were struck? A What do you mean.
- Q Did you have any plank in your hand at the time you were struck in the face by Mr. Isaacs? A Had nothing but my coat on my arm.
  - Q You had your coat on your arm and nothing in your hand?
  - A No, sir.
- Q When Mr. Isaacs made at you were you in the neighborhood of this pile of lumber? A You mean first?
  - Q Yes, sir. A No, sir, I was down next to his place.
  - Q Next to his place? A Yes, sir.
- Q How soon did you get upon the lumber pile? A He drove me back up there.
- Q Did you, or not, go over the lumber pile or through the edge of it? A Yes, sir; he hit me and I think knocked me over it.
- Q You did, finally, in some way get that piece of plank in your hand, did you? A Yes, sir.
- Q The difficulty, I understand, began on the sidewalk, on the east side? Yes, sir; on the righthand side going North.
  - Q On the righthand side of the street going North?
  - A Yes, sir.
- Q At the time you struck Mr. Isaacs with the plank -- compose yourself Mr. Hirsch. It is a severe ordeal, I know. At the time when you finally struck this blow which killed Mr. Isaacs were you close to the side of the sidewalk in front of his house or on the opposite side.
  - Q I was over on the side next to Mr. Myers's.
  - Q Over on the side of Mr. Myers?
  - A Yes, sir.

- Q. Did you have any plank in your hand at the time you were atmosts. A What do you mean.
- Q Did you have any plank in your hand at the time you nere attract in the face by in. Inspect A Had nothing but my onst on my arm.
  - Tou had your orat on your arm and nothing in your hand?
    - A Mos off.
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  - , sould sid of from new I was on A . The mey D
    - The to his place? A Yes, sir.
- Q Hew soon did you get upon the humber pile? A lie drove na buck up there.
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  - .s's man over on the aide next to Mr. Monre's.
    - Q Over on the side of Mr. Myers?
      - A Yes, sir.

- Q You went with the Jury and all of us to the scene of the tragody the other day, did you not? A Sin? I.
  - Q You were with me the other day, the Jury and all of me, down to the place of the difficulty? A Yen, sir.
  - Q Did you see where the supposed body of the dead may was loogted? A You, sir, I think I did.
  - of Was that where it was A Yes, sir, to the best of no knowledge it was.
    - Q As mear as you can come to it that is where you were?
- Q Mr. Hirsen, tell the Jury whether or not you followed Mr. Longon over to that point or whether he followed you over there?
- A He followed me all the ver there. I was becalled all the way from him.
  - Q Why did you strike him with the plank, Mr. Hirach? A secure I was in danger -- arraid he was going to kill me.
- Q when you struck him with the plank did you have any intention of doing him great bodily harm or of killing him? A No, wir, never had the least bit of idea.
  - of the deputy eneriff was on the witness-stand to-day and stated that on the might of this trouble he had spent part of the night of that along the the total that most in your room and that about it o'clock in the morning when you woke up he had a convergation with you in which you told him that you ware on your way home from church and that you were cool and not the least bit excited; he says that he construed that to mean that you were not the least bit excited while you were in the fight; tell the Jury, if you please, sir, what you did mean?

A I meant that I was not the least excited. I meant that.

MR. SIPE: What? I dennet hear. Repeat

Loop us Jour saw I that them I :EEMHTIW when I walked down there towards them

- Q Did you mean to have him infer that you were perfectly cool while this fight was going on, that you were not the least bit excited? A No, sir, I was very excited.
- Q When you left the stable, going to see your cousin, and walked north on German Street, tell the Jury whether or not you had any idea of having any trouble with any one? A No, sir, I never thought of having any trouble at all. Never dreamt of never dreamt of ever even coming in contact with either one of them; never thought of such a thing.
- Q Mr. Hirsch, after this blow had been stricken and Mr. Isaacs had fallen, tell the Jury whether you saw your father was ministering to him? A Say that over again, please, sir.
- Q After this man had fallen from the blow struck, did you see your father go to him? A No, sir.
  - Q You did not see him go to him? A No, sir.
- Q Did you see your father there with him before you left the spot? A I think I did.
- Q Did you see your father about there before the blow was struck? A You mean while he was after me?
  - Q Yes. A No, sir, I never saw him.
- Q You did not see your father there at all -- (A No, sir.) -- until after the blow was struck? A No, sir.
- Q Now, a good deal has been said about where you went after the occurrence took place; tell the Jury whether or not you made any effort of any sort to run away or escape? A I never had the least bit of idea. I had plenty of chances to get away if I wanted to.
- Q And you were on Main Street at the time the officers took charge of you? A Yes, sir.
- Q About what time of the night was that? A I suppose, best of my judgment -- I never had no watch with me -- I think it was between eleven and twelve to the best of my judgment.

Q Did you mean to have him infer that you were perfectly cool while this fight was going on, that you were not the least bit orcited? A No, sir, I was your excited.

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4 Mr. Hirsch, after this blow had been stricken and Mr. Isamos had fallen, tell the Jury whether you say your father was ministering to him? A say that over again, please, sir. 4 After this man had fallen from the blow struck, did you.

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apoby A i think I did.

6 Bid you see your father about thoro bafore the blor was

Q Yos. A No, Sir, I never saw him.

Q You did not see your father there at all! -- (A No, sir. )-

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Q About what time of the might was that? A I suppose, nest of my judgment -- I never had no watch with me -- I think it wan between eleven and twelve to the best of my judgment.

- Q You were on the main street of the City in company with Mr.

  Hammer and your brother Leon, I believe, when that occurred? A Yes,

  sir.
- Q Mr. Hirsch, two witnesses, whose names I do not recall My memory for names is not very good speaking on the witness stand, said that shortly after this trouble took place they saw you down about the tannery there, somewhere about the alley by the tannery where the scales are, and asked you about it and you said that your brother—in—law had jumped on you and you had knocked hell out of him as any other man would have done; did you know at that time your brother—in—law was fatally hurt? A No, sir.
  - Q Did you know at that time that he was dangerously hurt?
  - A No, sir.
- Q What did you think his condition was when you made that remark? A I thought probably he had got a blow that maybe knocked the breath out of him.
  - Q And that was all? A Yes, sir.

# CROSS-EXAMINATION BY MR. CONRAD:

- XQ You say that when you told Mr. Crousehorn that you were just as cool as at the moment you were talking to him that you referred to your feelings at the time you met Isaacs. I believe?
  - A I said when I first met them.
- XQ That your remark to Mr. Crousehorn about your being perfectly cool referred to your feelings or your condition when you first met them? A Yes, sir.
- XQ Why was there any reason or occasion for you to tell Mr. Crousehorn you were cool at that particular moment or not excited at that moment? A Because I was walking down the street cool and I never thought of anything.
- XQ Why was there any occasion for you to explain to him that you were not excited? A Because I wasn't.

Q You were on the main street of the City in company with Mr. Manager and your brother boon, I believe, when that occurred? A Yes, sir.

- O Mr. Mireon, two witnesses, whose names I do not recall -- My momenty for names is not very good -- speaking on the witness stand, said that shortly after this trouble took pince they saw you down about the farmery there, nomeanare about it and you said that your miners the scale are, and seket you about it and you said that your brother-in-law had jumped on you and you had knooked hell out of him an any other man would have done; did you know at that time your brother-in-law was fatally murth A No, edr.
- Q Bid you know at that time that he was dangerously hart?
- A MO, BIT.
- where the state of thought probably he had got a blow that maybe knocked the breath out of him.
- Q And that was all? A Yes, sir.

# CHOSS-EXAMINATION BY HE, COMPANY

My You may that when you told Mr. Grousehorn that you wure just as gool as at the moment you were talking to him that you referred to your feelings at the time you met Isaaca, I believe?

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You were not excited? A Because I Wasn't.

I wasn't mad with them or anything when I went down towards him, that I had no idea of ever coming in contact at all with him.

XQ But the language you used wasn't that you were not mad when you met them but that you were not excited? A I wasn't excited a bit when I met them down there; yes, sir.

XQ Well, did you say that you struck Mr. Isaacs because you thought you were in danger of being killed? A Yes, I was afraid of him. He made that remark, that he was going to kill me.

XQ Right in front of your father's house, that hour in the evening, people all around there -- A (Interrupting) No, sir, I don't think there were anybody around there.

XQ You had observed that your sisters and two gentlemen were sitting on the porch; they were there when you passed your home; hadn't you? A Yes, sir, they were there.

XQ And they were not more than twenty-five feet, if that much, from where you hit Mr. Isaacs? A I don't know just exactly how far it is across over there.

XQ It was just out diagonally across from the porch, right out in the road? A Down this way in the road.

XQ So there were two men within twenty-five feet of where you were? A No, sir, I don't think they could have seen me for the grape vines.

XQ Whether they could see you or not they were within easy calling distance if he had gotten on top of you? A I was so excited I did not think about it.

XQ And he had had an equal opportunity to pick up a board or plank or block as he came over the lumber pile as you did, didn't he?

A I don't know whether he did or not, he had enough muscle and bodily strength without it.

ine ---

XQ You say you were defending yourself and that he was strik-

Id setone the difficulty commenced? A I wanted him to know I warm't mid with them or crything when I went down towards him, that I had no idea of ever coming in contect at all with him.

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Xq You say you were defending yourself and that he was stulk-

ing you all the time and yet you had time to pick up a rock and throw it and to pick up a board, too, didn't you? A I didn't say I -- I didn't say whether I picked it up -- I don't know whether I picked it up.

XQ If he was pursuing you from the very moment he first struck at you until the moment you hit him and knocked him down, you must have picked up the rock and board between those times somewhere, mustn't you? You much have picked them up -- A Between the pile of lumber and out in the road somewhere.

XQ You threw the rock before you left the lumber pile?

A I do not know.

XQ You don't remember? A I don't know. I didn't say I did.

XQ The fact is you threw the rock before Lou Isaacs hit you, didn't you? A No; no, sir.

XQ Did you pick the rock and the board up at the same time, or did you stop and pick the rock up at one time and pick the board up at another time? A I said I may have thrown a stick or rock but I don't recollect where I picked it up at, that is what I said, gir.

XQ You don't know whether you stooped down twice or once?

A I know I wasn't off the pavement from the time he got after me until we got up in the lumber pile.

XQ At the time he got after you with this poker, -- not poker but with the rod of iron -- you got away from him and didn't get hurt, didn't you? A Yes, sir, I ran away from him.

XQ Couldn't you just as easily have run away from him, without being hurt, when he had no iron or stick in his hand? A How is that?

XQ Couldn't you just as easily run away from him, in that street, when he had no rod of iron or anything in his hand at all?

A I was getting away from him as fast as I could, sir.

ing you sil the time and yet you had time to pick up a rook and throw it and to pick up a board, too, didn't you? A I didn't ney I -- I didn't say whether Ipicked it up -- I don't know whether I picked it up.

At it he was personing you from the very mement he first struck at you until the mement you hit him and knocked him down, you mint have picked up the rook and beard between those times somethere, mistable you? You much have picked these up -- A Between the pile of lumber and out in the room screenings.

Mo You threw the rook before you left, the lumber pile?

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No You don't remember? A I don't know. I didn't may I did.

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A I was gotting away from him as fact as I could, sir.

XQ Well, the only scar that was left on your person from the licks he gave you was the place here on your mouth, was it? A Two places, here and here, (indicating).

XQ Two places there on your mouth, one on the lower and the other on the upper lip? A Yes, sir.

XQ And both on the righthand side on your face? A Both these are on my face. He hit me over the breast and every where going up the pavement.

- XQ You were not even knocked down by any of these? A Yes, sir.
- XQ You were knocked down? A Yes, sir.
- XQ You said nothing about that awhile ago? A I said he knocked me across the lumber pile, if I am not mistaken.

XQ When you say he knocked you across the lumber pile, did he knock you flat across the lumber pile? A Knocked me over in a staggering way; yes, sir.

XQ About how high from the ground was this little pile? A It has been couple of months and I have forgotten, I imagine --

XQ These pictures (exhibiting pictures) correctly represent, do they, the condition of the trash? It was not really a lumber pile? A pile of refuse stuff, about a foot high.

XQ Some person said that it came out of where they had been repairing a room: it wasn't a pile of lumber in the sense of being a pile of plank, was it? A It was a pile of scrap lumber about a foot high, as well as I recollect.

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XQ You say that when you made this remark to those men about the tannery, about having knocked hell out of that brother-in-law of yours you thought that Isaacs had been just knocked down and the breath knocked out of him, or something of the kind? A Yes, sir.

XQ And though you thought you had only knocked the breath put of him you expressed it by saying you "knocked hell out of him"?

A I don't know whether I said that or not. I may and or I

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may not. I wont say "Yes" or "No". I was excited and nervous.

XQ Mr. Lee asked you whether you had any idea of trying to escape. He did not ask you how you happened to be over there at the other end of the tannery property, at that bark shed. You did go there? A Yes, sir, I walked over there.

XQ You did come up from there, as Mr. Loewner says, and asked him to send word back to you -- to get somebody to come down and tell you how Isaacs was getting along? A Yes, sir.

Rockingham and the adjoining counties? A Yes, sir. I never tried to get away at all. I never tried. I walked over there, crying all the time.

XQ You have travelled all over Rockingham county and adjoining counties, have you not? A Yes, sir.

XQ And you know that telephone lines run all over Rockingham and the adjoining counties, didn't you? A Yes, sir.

XQ Did you say that the only thing that you had against Isaacs was the fact that he had taken your buck-board and drove it on one occasion? A After we made up over the marriage; yes, sir.

XQ The only thing that happened after -- between the time of the marriage and the time that he was killed, that you could feel any ill-feeling toward him at all, was that he got the buck-board? A Never had any ill-feeling. I never spoke to him from the time of the buck-board on up.

XQ You never spoke to him? A No, sir.

XQ Did you have any reason to have any bad feeling against him at all after that, except from the buck-board incident? A No, sir.

XQ Except from the buck-board? A No, sir.

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IQ Except from the buck-board? A No, air.

XQ You did not? A Only when he made that threat towards my wife.

XQ Then you did have something besides the buck-board. You say you got mad about that, did you? A Yes, sir.

XQ It had been reported to you by your wife, you say, that he said he was going to push his fist down her throat or knock her teeth down her throat, or something like that? A Something to that effect.

XQ How long ago was that? A Sometime last winter, -- I can't recollect.

XQ Sometime last winter? A To the best of my knowledge -I don't know, exactly.

XQ When that was reported to you by your wife you made the remark that you would have done what? A I would have hit him; I would have done something to him.

XQ Well, you had not been on good terms with your sister, either, during all of this time? Did you stop speaking to her because Lou had taken the buck-board?

Objection; question unanswered.

XQ I will ask you this: did you tell your sister, if you ever caught her spending any of your money for Isaacs you would make short work of both of them? A No, siree, I positively did not.

XQ You did not tell her anything like that? A No, siree.

XQ So she is mistaken when she says you made any such remark as that to her? A No, sir, I never made any such remark as that to her.

XQ When was it you bought out your sister's interest in the firm of Hirsch Brothers or in your mother's estate?

Objection; overruled; exception for accused.

A Indeed, I don't know, sir. I never attended to any of that kind of business. My father and Leon attended that.

IQ You did not? A Only when he made that threat towards my wire.

No Then you did have something benides the back-bourd! You say you got mad about that, did you? A Yes, six.

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Objection; overmied; exception for accused.

A Indeed, I don't know, sir. I never attended to sim of

XQ Well, about how long ago? A Not so long ago.

XQ Well, about how long after the marriage of your sister and Mr. Isaacs?

Exception; overruled; exception for accused.

A Indeed, I cannot tell you. To the best of my judgment I don't think it was so awfully long. I don't know.

XQ How long have they been married? A I think about three years, isn't it? Between two and three years, I believe, but I wont say for sure about that.

XQ After you struck I saacs and knocked him down with this board (exhibiting board) what did you do then? A I walked down to the stable.

XQ You turned right away from where he was laying and walked down to the stable, did you? A After I got away a few feet --After I got away a few feet my father was there at him.

XQ You then went on away down to the stable? A Yes, sir, after I saw him there.

XQ You hav'n't helped any in the dray business at all in the last six or seven years? A No, sir, I don't think I have helped to lift a thing -- I might have gotten on the wagon and rode up the street; something like that.

XQ Your business has been at the stable and dealing in cattle and horses, you say? A Yes, sir.

XQ During that time you have gone around to surrounding counties here, and out through this county, buying horses? A No, sir, I went on the train mostly. Whenever x long trips were taken by conveyance my father and Leon went with them.

XQ What markets would you go to? A Staunton, Woodstock, Lexington.

XQ And you would bring those horses down to Harrisonburg on the pike? A I would hire a man to ride them, -- to bring them here; and brought them from Woodstock and Newmarket on the train.

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XQ You say you have been a sick man, or a very sick man, for the last eight or ten years, Mr. Hirsch? A Yes, sir.

MQ Have you spent as much as a week in bed at any time within the last two years? A I have spent three or four days at a time, yes, sir.

XQ You hav'n't been in bed as much as three or four days at any time in the last twelve months? A Yes, sir.

XQ Before this difficulty, I mean? A Yes, sir.

A In may, I was sick three or four days at my house on German Street. And I was sick down at my house three or four days at a time I think.

XQ You were sick once at home and once at your house?

A I was sick at my house in May.

XQ That was in May? A I was sick three or four days down at father's.

XQ You were sick three or four days each time? A May have been a day more or a day less. I can't recollect the days.

XQ Your physical condition now, how does that compare with your condition before you were put in jail? A How is that?

XQ How does your condition now, your weight and all, compare with your condition and weight on the day you were put in jail?

A I don't understand your question yet.

XQ I mean, is your weight and general appearance and condition as to your body, and everything, now, as compared with your condition the day you were put in jail? A No, sir. I weighed 105 pounds when I was put in jail, and some three or four years back I weighed a great deal more.

XQ Are you as well as when you were put in jail? A Now?

XQ Yes, sir. A Well, I am almost as well, I must say.

XQ Are you as strong and as stout now as when you were put in jail? A confinement would naturally make a man weaker.

XQ You say you have been a sick man, or a very sick man, for the last eight or ten years, Mr. Hirsch? A Yes, sir.

To Have you apant as mich as a wack in bed at any time within the last two years? A. I have opent three or four mays at a sine, year, sir.

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NO You, sir, A Woll, I am almost as well, I must say.

in jail? A Confinement would naturally make a man weaker.

XQ So, if any thing, you are not as stout as when you were put in jail? A I get a little weaker in my limbs; yes, sir.

XQ You have the same amount of weight, flesh? A I have never weighed lately since I was arrested.

XQ So far as you can see you have not fallen off any, or have you fallen off any? A I am unable to answer that question.

XQ There has not been enough for you to notice, if there has been any falling off? A I cannot answer at all. In there is a small space and no place to walk.

XQ You have had a doctor attending you and giving you medicine since you have been in jail? A Yes, sir, all along.

XQ Treating you for indigestion? A Yes, sir, and heart trouble.

Witness told to stand aside.

Here the defense rested.

THIS BEING ALL OF THE EVIDENCE introduced, or offered to be introduced, by the defendant, to maintain the issue upon his part, thereupon the Commonwealth, to further maintain the issue upon its part, introduced the following testimony, in rebuttal:

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pulls BEING ALL OF THE EVIDANCE introduced, or offered to be introduced, by the defendent, to maintain the issue upon his part, there is a commonwealth, to further maintain the issue upon its part, introduced the following testimony, in resultai:

WEB MCGLAUGHLIN, recalled and examined for the Commonwealth by Mr. Conrad:

Q Mr. McGlaughlin, after Mox Hirsch had said that he had hit Isaacs, state whether or not Leon Hirsch then said, he ought to have been hit, he is always butting in? A That is what he said, sir.

Q He made that statement? A Yes, sir.

witness told to stand aside.

MRS. BUREGUARD DOVEL, recalled by Mr. Conrad for Commonwealth:

Q Mrs. Dovel, after Mr. Isaacs had been hit, did you see Mr. Ludwig Hirsch, and from what direction did he appear to come?

A I did --

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MR. SIPE: I think that was all covered by the examination in chief, -- what she saw and who she saw. I think the examination will disclose that very question; I mean to say, its purport.

THE COURT: I think it is a proper question in rebuttal.

MR. SIPE: We save the point.

- Q Well, where did he appear to come from? A I saw him off coming around the corner of Water Street. Came from the direction of the stable.
  - Q Had any person been -- Did you hear any person call him?
  - A I did.
  - Q Immediately after Isaacs was knocked down? A I did.
- Q Could you see who it was? A I am sure it was his youngest daughter Julia. She ran out and hollared "Oh, Papa, Papa."
- - Q You had walked up -- A To the corners crossing.

Will McCLAUGHLIN, recalled and examined for the Commonwealth

of Mr. McCleughlin, after Nox Hirneh had said that he had hit leanes, state whether or not been Hirseh then said, he ought to have been hit, he is always butting in? A That is what he said, sir.

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bild I A Town bencom was some I main whethered D

Q dould you see who it was I A I am mure it was his youngest daughter Julia. She ran out and hellered "Un. Papa. Papa."

of How, at that time, where were you when he came around the crossing.

Oronorf A I had done gone up saxthatanamany, to the sarkan.

o You had walked up -- A To the darment erossing.

- Q That the crossing that comes across from the Hirsch house to Mrs. Myers'? A Yes, sir; I had started home.
- A You had started on that crossing? A Yes, sir, going across to Mrs. Myers.
- Q When he came up where did he go then? A Went to Mr. Isaacs, and he called for some one to bring him some water.

Witness told to stand aside.

## NELLIE LOGAN, examined for commonwealth by Mr. conrad:

- Q Nellie, you are Mr. George Logan's daughter? A Yes, sir.
- Q And how old are you? A Thirteen.
- Q Were you with Mrs. Dovel there on the corner of Water Street and German Street the night Mr. Isaacs was hit? A Yes, sir.
- Q Well, did you see Mr. Ludwig Hirsch at any point immediately after Mr. Isaacs was knocked down there? A Yes, sir.
- Q Where were you at the time you saw him? A we were near the corner of German and Water streets, at Mr. Hirsch's house.
- Q Near the corner of Water and German streets? A Near Mr. Hirsch's house.
- Q Where did Mr. Hirsch come from and where did he go? A He came from up Water Street and he went to Mr. Isaacs.
  - Q And he went to Mr. Isaacs? A Yes, sir.

#### Witnessxtaldxtaxstandxxxidex

CROSS-EXAMINATION BY MR. LEE:

- XQ Little Lady, did you see any part of the fight? A No, sir.
- XQ Where had you been? A We had been down North German Street apiece.
- XQ And in which direction were you going when you met Mr. Ludwig Hirsch? A Were going South.
  - XQ Who was with you? A Mrs. Dovel.

- That the crossing that comes seroes from the Hirsch house to
  - We will be the total on that morethan A Yes, sin, going seroos to Mrs. Myers,
  - Q when he came up where did he go then? A went to mr.

white Amer of blot ensually

WHALIS LOCAN, examined for Commonwealth by Mr. Commed:

- Q Wellie, you are Mr. George Logen's daughter? A Yes, Mr.
  - ,mostilet A Tuoy ore ble wod but 9
- Q Ware you with Mrs. Dovol there on the corner of Water street and Certain Street the night Mr. Issaes was hit? A Kee, eir.
- Q well, did you see Mr. Ludwig Mirech at any point immediatedy
  - Where were you at the time you saw him? A we were near the corner of Cerman and Water streets, at Hr. Hirsch's house.
  - THE THE A THE COURSE OF THE PARTY OF THE ACT OF THE ACT OF THE ACT OF THE PARTY OF
- Q Where did Mr. Hirsen come from and where did he go? A He came from up Water street and he went to Mr. Isanon.
  - of And he want to Mr. I senous A Yes, olr.

NAMES AND ASSOCIATED AND ASSOCIATED ASSOCIAT

CHOCH-BEARTHAVIOR DY MR. LEE:

- NO Little bady, did you see any part of the fight? A Ho.
  - No where had you been? A We had been down North Germann Street apleas.
  - AG And in which direction were you going when you met im.

My who was with your A Mrs. Boyel.

XQ Mrs. Dovel was with you all the way up to the corner?

A Yes, sir.

XQ Were you with Mrs. Dovel when she passed by the Hirsch house? A I was in front of her a piece.

XQ How far in front? A I expect three feet.

XQ You were three feet, but you were practically with her, you and she were walking along together? A Yes, sir.

XQ Were you with her when she stopped at the corner of Mr.

Hirsch's porch -- near the corner of the porch? A I did not see her stop.

- XQ You did not see her stop? A I walked on to the corner.
- XQ Did you hear any rock thrown there? A No, sir.
- XQ Didn't see anything of it at all? A No, sir.
- XQ And you were with Mrs. Dovel? A Yes, sir.

#### DIRECT EXAMINATION RESUMED BY MR. CONRAD:

THE COURT: Where was Mr. Ludwig Hirsch when you saw him?

WITHESS: He passed me at the corner.

THE COURT: At the corner?

WITNESS: Yes, sir.

Q What were you doing at the corner at that time?

Objection because going into examination in chief; overruled; exception noted for the accused.

Q Had you stopped at the corner, or were you going on, or what were you doing at the time he came around the corner?

Objection; overruled; exception noted for accused.

A I was going across the street, over to Mrs. Myers corner.

THE COURT: You say he passed you at the corner?

WITNESS: Of German and Water Streets.

A Yes, sir.

To year you with Mrs. Dovol when she passed by the Mirach nonser A I was in front of her a piece.

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XQ You were three feet, but you were practically with new,

you and the vere walking along together? A Yes, sir.

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. Terrace out of no besiev I A Twoles and he to the corner.

The you hear eny rock thrown there's A no, air.

The total the sea anything of it at all? A No. sir.

IQ And you were with Mrs. Bovel? A Yes, elr.

# DIRECT EXAMINATION RESUMES BY MH. CONNAD:

THE COURT: Where was Mr. Ludwig Mirson when you saw him?

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A I was going across the street, over to Mrs. Myers corner.
THE COURT: You say he passed you at the

WITHESS: Of Cennan and Water Streets.

THE COURT: Did you see him before he got to you?

WITNESS: Yes, sir, I saw him coming up water Street from the stable.

MR. SIPE: What Mr. Hirsch was that?

BY MR. SIPE:

WITNESS: Mr. Ludwig Hirsch.

XQ You know Mr. Ludwig Hirsch well? A Yes, sir.

XQ How near do you live to him? A I live on South High Street.

XQ How far? A Passed the foundry.

MR. HARRIS: Out on the Warm Springs road? WITNESS: Yes, sir.

XQ You continued with Mrs. Dovel after you crossed the Street?

A Yes, sir.

XQ She was crossing the street with you? A Yes, sir.

XQ Did Mrs. Dovel say anything to you at all as you went along there about any fight or any disturbance? A I did not hear her.

XQ She just continued along with you? A Yes, sir.

#### BY MR. CONRAD:

Q When did you first know that there had been a fight, that there had been a man knocked down?

Objection; overruled; exception for the accused.

A I heard the lick and I looked around when I heard the lick. That is the first I knew of it.

Q When you looked around where was Mr. Isaacs?

Objection; overruled; exception for the accused.

A Hewas in the road.

Q He was in the road, but standing up, or lying down, or how?

Objection; overruled; exception for the

accused.

Q You say you heard the lick and looked around and saw Mr. Isaacs in the road, at what place on the road? A I didn't see

THE COURT: Did you see him before he got

withfile: Yes, cir, I saw him coming up without to the atopic.

MR. SIFR: Wast Mr. Hiroon was that?

BY MR. SIPH:

WITHERS: Mr. Ludwig Hirsch.

XQ You know Mr. Budwig Biresh welly A Yes, sin.

MQ How near do you live to nim? A I live on south High street.

AG How fart A Pauled the foundry.

MR. HARRIS: Out on the warm springs road?

wirmings: You, size,

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A Yes, sir.

XQ She was manuful the street with your A Yes, sir.

Me Bld Mrs. Boyel day slything to you at all as you nent niong

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BY MM. COURAD:

That, that a men been a men knowled tent there had been a fight, that

Objection; overraled; exception for the

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Q Vacan you looked around where was Mr. Isance?

Objection; over miled; exception for the acoustion

A Mewas in the road.

Q He was in the road, but standing up, or lying down, or how?
Objection; oversuled; exception for the accused.

Q You say you heard the lick and looked around and saw Hr.

him right at first because I didn't look in the road when I first turned around.

THE COURT: Was he on his feet or on the ground?

WITNESS: On the ground.

- Q Was he laying down or standing up when you saw him?
- A When I looked at him he was laying down.
- Q Did you see Mox Hirsch? A Yes, sir, saw him after he walked away from him.
- Q How long after you heard this lick did you see Mox walk away from him? A I cannot say how long it was, but It wasn't but a few seconds, I don't expect.

WItness told to stand aside.

MRS. MARY HOLLAR, examined for the commonwealth by Mr. Conrad:

- Q Mrs. Hollar, just let me locate you, you were living at the time of this difficulty in the house just opposite where Mr. Isaacs and Mr. Snell lived? A Yes, sir, I live north of them, I don't live right direct across. I live in the first house after you cross the bridge on the west side of the street.
  - Q It is practically opposite from where Mr. Isaacs lived?
  - A Yes, sir.
- Q What first drew your attention to the fact that there was any difficulty out there? A First I heard was the lick.
- Q Where were you at that time? A I was sitting on my front porch.
- Q From there, then, where did you go? A I got right immediately up and went up the street as far as Mrs. Rosenberger's
  gate and there I met her coming out and we walked straight out to
  where Mr. Isaacs was in the road.
- Q Mrs. Rosenberger lives -- A In the house right next to mine.

him right at first because I didn't look in the road when I first turned snound.

THE COURT: Has he on his fast or on the

wirmings: On the ground.

- That was now nerw qu gullwests we need guivel sa saw p
  - A When I looked at him he was laying down.
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- Q Where were you at that time? A I was sitting on my front
  - Q From there, then, where did you go? A I got right inmediately up and wont up the street as far as Mrs. Rosenberger's gate and there I met her coming out and we walked straight out to where Mr. Issaes was in the road.
  - Q Mrs. Hosenberger lives -- A In the house right next to mine.

- Q The one immediately south of yours? A Yes, sir.
- Q That house is about opposite where the Isaacs live, too?
- A Yes, sir.
- Q Well, now, you got up from your porch and walked out to your front gate and came up the pavement as far as Mrs. Rosenberger's gate and she came out and you both went where? A Right straight across where Isaacs lay in the road.
- Q Had Mr. Ludwig Hirsch gotten there when you and Mrs. Rosenberger reached there or did he come after you reached there?
  - A He came after I got there.
- Q After you reached there? A Yes, sir, after I reached Mr. Isaacs.

# CROSS-EXAMINATION BY MR. LEE:

- XQ When you got to where Mr. Isaacs was lying, what did you do? A I didn't do anything but stand there and look at him.
  - XQ Did you say anything? A No, sir, I didn't say anything.
- MQ Did you make any effort to help him or to see how badly hurt he was? A No, sir. Me and Mrs. Rosenberger walked up there and seen the man lying in the road, and I asked her what man it was and she said Mr. Isaacs.
- XQ You just looked at him and made no effort to help him at all? A No, sir, I did not take hold of him at all.
  - XQ Did you see anything of Mr. Mox Hirsch at that time?
  - A No, sir, I did not see him at that time.
  - XQ Did you see anything of Mrs. Arthur Hirsch at that time?
  - A Yes, sir, I noticed her around there.
- XQ Where was she? A Just standing a little ways from him. She was standing on the sidewalk. By the time we walked up she was on the side walk.
- XQ What was she doing? A I don't think she was doing anything. Frightened like the rest of us.

- one immediately south of yours? A Yes, sir.
- Year ,evil somes and eredw edisoggo frods of seron thirty
  - A Yes, our.
- Q moll, now, you got up thom your parent and walked out to your front gate and came up the javement as far as Mrs. Hosenbarger's gate and she ords out and you both went where? A Hight straight across across where Issaes lay in the road.
  - -denes . But Mrs May nest enter the start plant the start of the start there or the come after you reached there?
    - A He came after I got there.
    - q After you remeded there? A Yes, sir, after I readhed Mr. Isaues.

### CHOSS-WIXAHENATEON BY MIL BURS:

- IQ when you got to whore Mr. Lances was Lying, what dit you
  - .mid to sool has exect bands too guint you ob d'abit I A Tob
- XQ Did you say anything? A No, sir, I didn't say anything.
- NO Did you make any effort to help him or to see how badly hurt he wast A Ho, sir. Me and Mrs. Rosenberger walked up thore and the man lying in the road, and I seked her what man it was and she mad Mr. Issaes.
  - If You just looked at him and made no effort to help him at all.
    - No Did you see anything of Mr. Mox Hirsen at that time?
      - A Mo, sir, I did not see him at that time.
  - Yearly Just de mosell mustal . arill to guildyne see may bill PX
    - A Yes, air, I noticed her around there.
- No where was she? A Just starting a little ways from him. She was standing on the side walk. By the time we walked up she was on the side walk.
- AQ What was she doing? A I don't think she was doing anything. Frightened like the rest of us.

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XQ Did you see anything of Mrs. Isaacs? A Yes, sie, she was there too.

XQ What was she doing? A Nothing. Walking backwards and forwards on the sidewalk, all I seen.

XQ How long after you got there was it that Mr. Albert got there? A Few minutes.

XQ Do you mean minutes or seconds? A I think it might have been a minute or two. Not much more than that. He wasn't so far below me.

XQ Who got there first, Mr. Albert or Mr. Hirsch? A Why, Mr. Hirsch got there first.

XQ Mr. Hirsch got there first? A Yes, sir, he ran and picked up Mr. Isaacs' head.

XQ When did you first see Mr. Hirsch? A When he ran up and picked up his head.

XQ Did you see where he came from? A Came as if he was coming from his home.

MQ In other words, he came right across the street? A He may have come right across the street, but if he did he ran to Mr. Isaacs.

XQ How near was he to Mr. Isaacs' body before you saw Mr. Ludwig Hirsch? A I may have seen him two or three feet.

XQ If you only saw him within two or three feet of the body how do you know in what direction he came? A I know he didn't come by me. I was standing most to Isaacs' body.

XQ You did not see him until he got within two or three feet of the body? A No, sir. I said he came up and almost grabbed Mr. Isaacs head up.

WITNESS TOLD TO STAND ASIDE.

No Did you see anything of Mrs. Isancer A Yes, nie, she was there too.

Me shrands on the showelk, ald I seem.

NO How long after you got there was it that Mr. Albert got there's A Few minutes.

NO DO POR MEAN MINATER OF RESONARY A I think it might have been a minute or two. Not man more than that. He rann't so fer below me.

AQ Who got there first, Mr. Albert or Mr. Hirsant A uny,

No Mr. Hiroth got there first? A Yes, sir, he ren and planted up Mr. Issaes head.

and placed up his nead.

NO Did you see where he came from? A dame as if he was com-

M In other words, he came right across the street? A He may have come right across the street, but if he did he ren to in. Isaacs.

Industry Hirach? A I may have seen him two or thros feet.

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Isol north to out midtle to entit me got within two or thron for or thron or thron or the off the the body? A Ho, eir. I said he came up and almost grabbed Mr. Insgon head up.

WITHESS TOLD TO STAND ASIDE.

MRS. ROSENBERGER, examined for Commonwealth by Mr. Comrad:

- Q I believe you are a German lady? A Yes, sir, I can't speak the English.
  - Q You live in the house right next to where Mrs. Hollar lives?
  - A Yes, sir.
  - Q And you were living there at the time Mr. Isaacs was killed?
  - A Yes, sir.
  - Q That is just across the street from where Mr. Isaacs lived?
  - A Right across.
- Q You are the wife of Mr. Rosenberger who has a tayloring establishment on East Market Street? A Yes, sir.
- Q Were you at home the night Isaacs was killed? A Yes, sir, I was at home.
- Q How did you first find there had been any difficulty in the road there? A Little girl first called me, called me from the kitchen. I was in the kitchen at this time.
- Q You were out in your kitchen at the time your little girl called you? A Yes, sir.
  - Q She was on the front porch and called you? A Yes, sir.
- Q When you came out -- A When I came out from the kitchen I found Mr. Isaacs in the middle of the road.
  - Q When you came out from the kitchen? A Yes, sir.
  - Q You found Mr. I saacs in the middle of the road? A Yes, sir.
- Q You came out onto the front porch from the kitchen? A Yes, sir, front porch.
- Q And from there to the front gate? A Yes, came first to the front yard.
  - Q And went out to the front gate? A Yes, sir.
- Q Did you see anything of Mrs. Hollar there then? A Yes, she came with me.

- ung. Hossaulmest, examined for dommonwealth by Mr. Conwed:
- I'man I wile you are a derivan lady? A Year wir, I don't appealt the registrant
- Thevall relief .and execute of their stight enter out it will not p
  - A Yes, Bir.
- 9 And you were living thore at the time Hr. I somes was billind?
  - . The , ser A
- that in just across the street from where in. lasted?
  - A Hight acroom.
  - of You are the wife of Mr. Resember or who has a tayloring
- the sex A Theallis and cornel stiple and emon to new our o
  - of value little was must been excelled that there may all out on the world was from the world and the sale of the
  - orther your with ent the mitchen at the time your little girl
  - of the van or the from porch and called your A Yea, sir.
  - o when you came out -- A when I came out from the hitchen I found Mr. Issage in the middle of the road.
    - out you came out from the kitchen? A Yes, sir.
- Tin, asy A Theorem to either adt at some I am baret we'l
- o You seme out onto the front porch from the kitchen? A You, air, front porch.
  - g and rees there to the front gate? A Yes, asserting to the front yard.
    - Q And went out to the front gate? A Yes, mir.
  - q Mid you see anything of Mrs. Holler there them? A Yes,

- Q Where did you go from your gate? A I came straight down the middle of the road and saw Mr. Isaacs laying in the middle of the road.
  - Q Straight over to Isaacs laying in the middle of the road?
  - A Yes, sir.

4

- Q Do you know Mr. Ludwig Hirsch, the old gentleman? A Yes, sir.
- Q Did he get there to Isaacs body before you and Mrs. Hollar got there or after? A No, when I came I found Mr. Hirsch had hold of Mr. Isaacs' head.
- Q When you came out to Isaacs' body -- A Mr. Ludwig Hirsch was sitting at the head of Mr. Isaacs.
- Q He was out there when you reached him? A Yes, sir, when I came out I found both men first.
  - MR. CONRAD: If I understand the witness I am taken by surprise, but I will ask it again to be sure.
- Q On account of your trouble in speaking English I want to get clear just what you have to say, now. When you got outside of the gate you then went where? A Went straight in the middle of the road.
- Q Was Mr. Isaacs' body laying straight in front of your gate or up the road or down the road? A Right at my gate -- to the right of my gate.
- Q To the right of your gate, do you mean it was lying up towards the corner? A Up in the middle of the road.
- Q Was it right in front of your gate; this body, was it lying up towards the corner or was it lying down towards the bridge?
- Q No, his feet was to Mr. Isaacs' side, the head was to my side.
- Q That still don't tell me what I am trying to get at. I am not asking what position his body was in, but whereabouts in the

- Where did you go from your gate? A I came straight down the middle of the middle of the road.
  - Q Straight over to Issaes laying in the middle of the rout?
    - A Yes, mir.
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  - of That offile don't tell me what I am trying to get at. I am not seking what position his body was in, but whereabouts in the

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road was his body lying, was it right in front of your gate, as you came out, or was it up the hill from your gate? A It was up the hill more.

Q Up towards the corner? A up to the corner.

JUROR: Up towards the corner more, she says.

Q When you came out of your gate you had to turn up that way to get to the body? A Yes, that way from me.

Q How far from your gate do you think it was that his body was lying? About how far?

THE COURT: couldn't she identify the position by that photograph?

MR. CONRAD: I don't know whether she can, her house sets back.

THE COURT: Let me ask a question. Do you live in the house next to the bridge. Mrs. Hollar lives there, and you live next to Mrs. Hollar?

WITHESS: Yes, sir.

THE COURT: Who lives in the house south of you?

WITNESS: Mrs. Clatchey.

THE COURT: Who lives in the next house, Mrs. Myers?

WITNESS: Mrs. Myers; yes, sir.

- Q Now, here is a picture; this is the pavement that runs in front of your house; there is the gate to your yard there. You came out of that gate? A Yes, sir.
  - Q Did you go out in the middle of the road and go up there?
  - A I went up the pavement.
  - Q You went up the pavement? A Yes, sir.
- Q To where Mr. Isaacs' body was lying? A Yes, sir. Mr. Isaacs' body wasn't on the pavement it was in the middle of the road.
  - Q You came out on the pavement and went up to where Mr.

road was his body lying, was it right in front of your gate, as you cans out, or was it up the hill from your gate? A It was no the hill more.

Q Up towards the sormery A Up to the corner.

JUROR: Up towards the corner more, sile

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THE COURT: Let me sak a quantion. Do you live in the Beace next to the bridge. Mrs. Holler lives there, and you live have next to Mrs. Holler?

WITHHOS: You, Bir.

THE COURT: The lives in the house South

WITHES: Mrs. Clatcher.

THE COURT: The Lives in the next house, Mrs. Myere?

WITHKES: Mrs. Muers; yes, sir.

Q Mon, home is a ploture; this is the pavement that runs in fromb of your house; there is the gate to your yard there. You came out of that gate? A Yes, pin,

- Q Bid you go out in the addals of the read and go up there?
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- Q You went up the payementy . A Yes, sir.
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- 4 You came out on the pavement and went up to where Mr.

Isaacs' body was, if I understand you right. Now, did Mr. Hirsch, old Mr. Hirsch, Mr. Ludwig Hirsch -- was he there with Mr. Isaacs' body before you got up to it? A Yes, sir. When I came I found Mr. Hirsch by his side.

Q When you got up to the body you found Mr. Ludwig Hirsch there? A Yes, sir.

Q I will ask Mrs. Rosenberger if she did not, in answer to that question five minutes ago, in that room there, say that Mr. Ludwig Hirsch got there after she got there.

MR. SIPE: Does your Honor think that is proper to be asked of his own witness?

THE COURT: I think he can ask her the question.

Q Did I ask you, or did I not, in the room there just a few minutes ago, before you came out, -- didn't I ask you whether you got to Isaacs first or whether Mr. Ludwig Hirsch got to him first?

A I say when I came out I found Mr. Hirsch with Isaacs. That is all I could say. I couldn't say more than I saw.

- Q I don't want you to say anything more than what you saw?
- A That is all I can do.
- Q Didn't you tell me just a few minutes ago -- A Mrs. Hollar will tell you.
- Q Didn't you tell me the same thing? A I didn't say anything, Mrs. Hollar told you.
- Q Which got there first? A I think I got there first and Mrs. Hollar came after me. I don't remember which was coming at that time.

Witness told to stand aside.

Isnaon' body wes, if I understand you right. Now, did Mr. Hirsch, old Mr. Hirsch, w. Hirsch, Mr. Ludwig Hirsch -- wes he there with Mr. Landn' body before you got up to it? A Yes, sir. When I came I found Mr. Hirsch by his mide.

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MR. FIFE: Does your Honor think that is

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q Midn't you toll me just a few minutes ago -- A Mrs. Holler will tell you.

o Didn't you tell me the same thing? A I didn't may quething,

Mrs. Hollar come after me. I don't remember which was coming of tingt time.

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MEMO: court adjourned until Friday morning, 9:30 o'clock.

MR. CONRAD: I am through for the commonwealth, sir.

introduced, on behalf of the Commonwealth, to maintain the issue on its behalf, in rebuttal, thereupon the defendant, to further maintain the issue on his behalf, introduced, in surrebuttal, the following testimony:

JULIA HIRSCH, for the defense: examined by Mr. Harris:

Q Mrs. Dovel stated on yesterday that while she was passing your father's residence on the evening of the 29th of July, after the killing of Mr. Isaacs, she heard you run down the street and call for your father, "Papa, papa, come here." State whether or not you did that? A No, sir, I did not.

CROSS-EXAMINATION BY MR. CONRAD:

XQ Your relations to Mr. Isaacs and his wife, and the relations of your sister Lessie, have been entirely friendly for some time, have they not? A Yes, sir.

XQ You live in the home of your father and Mox? A Yes, sir.

MR. HARRIS: You are a sister of Mr. Mox Hirsch?

WITNESS: Yes, sir.

Witness told to stand aside.

MRHO: Govert adjourned until Friday morning, 9:50 o'slock.

MM. Committee I am through for the commonwantsh, sir.

THIS BEING ALL OF THE TESTINGEN introduced, or offered to be introduced, on behalf of the Commonwealth, to maintain the insue on its behalf, in rebuttal, thereupon the defendant, to further pointain the issue on his behalf, introduced, in surrebuttal, the following testimony:

JULIA HIRSON, For the defended examined by Mr. Herris:

o Mrs. bovel stated on yesterday that while me was passing your Enther's rerigions on the evening of the SSth of July, after the Elising of Mr. Isason, she heard you mun down the etreet and eald for your Estner, "Page, page, come here." Sinke theirer or not you did to to to A We, sir, I did not.

CROSS-EIGHTWALOW BY MR. COMMAND:

My Your relitions to hr. Issaes and his wife, and the relacions of your studen bessio, have been efficient for some time, have they not? A Yes, eir.

AN YOU-Live in the home of your father and Mox! A Velynin.

MM. MANUAS: You are a single of Mr. nox

WITHHS: Yes, sin,

Withose told to stand seller.

And this being all the evidence introduced on behalf of the Commonwealth and on behalf of the accused, the Court instructed the jury as is set out Bills of Exception No. 4 and No. 5, and thereupon, after argument of counsel, and after the jury had rendered their verdict of murder in the second degree and ascertained his punishment at confinement in the penitentiary for nine years, and before judgment thereon by the court, the accused, by counsel, moved the court to sed aside the verdict of the jury and grant him a new trial upon the ground (in addition to those set forth in Bills of Exception No. 1, No. 2, No. 3, No. 4 and NO 5. that the said verdict was contrary to the law and the the Court evidence, which motion was overruled and refused to set aside said verdict and grant the accused a new trial. to which ruling and judgment of the Court the accused excepts and tenders this his Bill of Exception No. 6, and prays the same may be signed, sealed, enrolled and, togrther with the evidence hereimbefore setforth adduced at the trial may be made a part of the record, which is done, and the Court certified the foregoing once as all the evidence adduced at the trial.

signed, sealed and enrolled this the 28 day

id Court . 7 % Haas

Judge of the Circuit Court -kingham Cinia.

And this being all the evidence introduced on behalf of the Commonwealth and on behalf of the accused, the Court instructed the jury as is set out Bills of Exception No. 4 and No. 5, and thereupon, after argument of counsel, and after the jury had rendered their verdict of murden is in the country right bereb ascertained his punishment at confinement in the penitentiary for nine years, and before judgment thereon by the court, the accused, by couried, moved the court to sed aside the verdict of the jury and grandel mew trial upon the ground (in addition to those set forth in Fills of Exception No. 1, No. 2, No. 3, No. 4 and No 5. end bue wal ody of yrandees saw tolbest otes end tand evidence, which motion was overruled and refused to latry wen a become end grant the account a set as trial, becupes add truck and to trempbut bus gatior dolder of excepts and tenders this Bill of Exception No. 6, and praye the may be signed, sealed, enrolled and, becabba directes eretada lered ecuebive edi dily redirect at the trial of te made a part of the record, which is done, and till Court centified the foregoing . Isiya sub De Astrobas Sons live sub Ili

one will believe one being the

1-8.20

Instruction No. \_\_\_.

The Court instructs the jury that murder in the first degree is any willful, deliberate, premeditated killing with malice aforethought. All other murder than murder in the first degree, is murder in the second degree.

Every imlawful hornicide is fresumed by law to be murder in the second degree by the Commonwealth would elevate the offence to murder in the first degree, she must prove the Characteriaties of that Mence; and from the prove the prover would be duce the offence of the theorem of the prover is on him.

THE STREET

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Firstmotton No.

The dount instructs the jury that munder in the first degree is any willful, deliberate, premeditated killing with malice aforethought. All other marder then marder in the first degree, is under in the sedend degree.

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Instruction No. \_\_\_\_\_.

The Court instructs the jury that to constitute willful, deliberate and premeditated killing, it is not necessary that the intention to kill should exist for any particular length of time prior to the actual killing; it is only necessary that said intention should come into existence for the first time at the time of such killing or any time previously. (See Wright's case, 33 Gratt., 880, and Wright's case, 75 Va., 914.)

Instruction No.

The Court instructs the jury that to constitute willing, deliminate and premoditated willing, it is not necessary that the intention to still should exist for any perticular length of time union to the sexual willing; it is only necessary that intention should come into existence for the first time at the time of the case, we say the reviewer. (See Tiret time at the time of each ...)

Instruction No. \_\_\_\_.

The Court instructs the jury that manslaughter is the unlawful killing of another without malice, either expressed or implied. The difference between the crimes of murder and manslaughter consists in this, that manslaughter, where voluntary, arises from the sudden heat of the passions, murder from the wickedness of the heart

malice afacthinght is any formed design of doing mischief, whither arising from hatred and revenge against demosed, or from a per-

Express malie consists in a deliberate purpose to take the life of the person stain or to do thin some brilly harm, the intention being ascertained from external circumstances, as by lying in wait, antecedent menaces, former gradges, the attentant circumstances to.

Implied malice is any tril design in general and it means that the circumstances manifest a wicked, depraved and malignant spirit, regardless of social of duly and deliberately bent on mischief.

## Instruction wo.

The Court Instructs the juny that manalaughter is the unlawful billing of emother without malige, either engages. Or implied. The difference between the crimes of murder and manalaughter consists in this, that menelaughter, where voluntery, arises from the sudeen heat of the manalaughter from the wickedness of the heart.

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Sentered that the commentaries of series

Instruction No. \_\_\_\_.

The Court instructs the jury that voluntary manslaughter is the unlawful killing of another without malice, actual or implied, upon a sudden heat, a reasonable provocation or in mutual combat.

Ingtruction vo.

The Court instructs the just that voluntary mentanting in the unlawful killing of enother without malies, sermed or in-

Instruction No. \_\_\_\_.

The Court instructs the jury that in order to justify a homicide on the ground that it was committed in self defence, it must be shown that the accused, at the time he caused the death of the deceased, was acting under a reasonable belief that he was in imminent danger of death or great bodily harm from the deceased, and that it was necessary for the accused to strike the fatal blow in order to avoid death or great bodily harm which was apparently imminent to the accused.

And the Court further instructs the jury that the necessity relied upon to justify the killing of another, must not arise out of the prisoner's own misconduct. The acoused must not have toing on the difficulty.

THE PRINCIPLE NO.

The Court indirect the jour that is consisted in color to fuctive a footest of footes, it was consisted in color defence, it was comet be cheen that the stoneed, at the time he connect the death of the decreed, was coting under a remonable bolish that he was in tention of death or great bodily have from the decembed, and that it was necessary for the scouned to strike the fatal blow in order to avoid death or great bodily harm which was apparently in-

And the Court further instructs the jury that the necessity relied upon to justify the killing of enother, must not arise out of the prisoner's own misconduct.

Refused

Instruction No. \_\_\_\_\_.

otj.

The Court instructs the jury that in all cases of insult and insufficient provocation, if it may be reasonably inferred from the weapon made use of, or the manner of using it, or from any circumstance, that the party intended merely to do some great bodily harm, such homicide will be murder in the second degree, in like manner as if no provocation had been given, but not a case of murder in the first degree. (See Mc.Daniell vs. Commonwealth, 77 Va., 281-286).

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Instruction No.

The court institute the jury that in all cases of involted and insufficient provenation, if it may be reasonably inferred from the weapon made use of, or the menner of using it, or from any circumstance, that the party intended merely to do some great bodily harm, such headedde will be murder in the second degree, in the menner as if no provenation had been given, but not a coas of marder in the first degree. (See We.Paulell vs. Commonwealth, 77 vs., 881-888).

Reposer

Instruction No. \_\_\_\_\_.

Thy.

The Court instructs the jury that where a person, though excited by an insult and by a severe blow, for which he had the right of redress, was not by either of these causes, so deprived of his mental faculties that he could not distinctly understand what he was about, kills the person by whom he had been insulted and struck and after he had done so, said that he had given the deceased what he deserved and that any man of spirit would do the like, it constitutes murder in the first degree. (See Commonwealth vs. Jones, I Leigh, 598).

Braches Dig. Vol. 7 p. 120

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Inntruction No.

The dourt instructs the jury that where a person, though excited by an insult and by a serore clow, for which he had the right of redrose, was not by either of these causes, so deprived of his mental faculties that he could not distinctly understand what he was about, kills the person by whom he had been insulted and struck an effect he had done so, sold first he had riven the incensed what he deshived and that any man of spirit would do the like, it constitutes mirror in the first degree. (See Commonwealth vs. Jones, I beigh, 698).

The cinis Dry. Het D. 1.120

Repused

Instruction No. \_

The Court instructs the jury that when a mortal wound is given, with a deadly weapon in the previous possession of the slayer, without any, or upon very slight provocation, it is prima facie a willful and premeditated killing and throws upon the accused the necessity of proving extenuating circumstances.

Thy. sust =

gres Case. 100 Va. 842

On a Charge of murder, malice is presumed from the fact of killing - When the killing is from the fact of killing - When the killing is from and is unaccompanied with circumstances of pallialism, the burden of disposing malice is more on the accused.

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Transport No.

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given, with a deadly weapon in the previous possession of the alove, with a deadly or mean very significant sew, it is extra classes a willim and preceditated killing and throws upon the sectioned the necessity of moving extenuating circumstances.

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VIRGINIA.

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY. September OCTOBER TERM, 1909.

COMMONWEALTH OF VIRGINIA

VS

MAXIMILIAN HERSCH.

BILL OF EXCE PTION NO.5.

Be it remembered that upon the trial of this case and after the introduction of all the testimony on behalf of the commonwealth and on behalf of the accused, the accused tendered certain instructions to the Court and prayed the Court to grant the same, which instructions, as tendered by the accused are lettered A to N., inclusive, as follows:

A .

The Court instructs the jury that the accused is presumed to be innocent until his guilt is established beyond all reasonable doubt, and that this presumption of innocence follows the accused throughout the entire case and applies at every stage thereof until removed beyond all reasonable doubt; therefore, if the jury entertain a reasonable doubt of the guilt of the accused, or of any fact necessary to establish his guilt, such doubt is decisive and it is the duty of the jury to find the accused not guilty.

VIRGINIA.

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY.

OCTOBER THEM, 1909.

COMMONWEALTH OF VERCINEA

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MAXIMILIAM MERCH.

HOLDE ADDE TO LATE

De it remembered that upon the trial of this case and after the introduction of all the testiment on behalf of the commonstant and on behalf of the accused tendered certain instructions to the Gourt and prayed the Court to grant the same, which instructions, as tendered by the accused are lettered a to M., inclusive, as fellows:

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The Court instructs the jury that the accused is presumed to be innocent until his guilt is established beyond all reasonable doubt, and that this presumption of innocence follows the accused throughout the entire case and applies at every stage thereof until removed beyond all reasonable doubt; therefore, if the jury entertain a reasonable doubt at the guilt of the soused, or of any feet necessary to establish his guilt, such doubt is decisive and it is the duty of the jury to

The Court instructs the jury that if upon the whole evidence in the case there is any rational hypothesis consistent with the conclusion that the homicide was excusable the accused cannot be convicted of any offence.

C.

The Court instructs the jury that by reasonable doubt is meant such a substantial doubt growing out of the evidence, or lack of evidence, as would cause a man of average prudence to hesitate and be uncertain about a matter involving the graver transactions of life.

D.

The Court instructs the jury that if they entertain a reasonable doubt as to whether the deceased or the defendant was the original aggressor in the conflict which ensued and in which the deseased met his death, it is their duty to solve such doubt in favor of the defendant and to consider the case just as though the deceased was the original aggressor and committed the first assault.

E.

The Court instructs the jury that if they shall believe from the evidence that the defendant struck and killed the deceased under a reasonable apprehension that he was in danger of serious bodily harm sat the hands of the deceased, then he was excusable in so doing, though such danger may have been unreal. The question for the jury in this case is not whether the taking of

The Court instructs the jury that if upon the whole evidence in the once there is any rational bypothesis consistent with the conclusion that the
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The Court instructs the jury that if they shall believe from the evidence that the defendant struct and killed the decembed under a reasonable apprehension that he was in danger of serious bodily here at the hands of the decembed, then he was excusable in so doing, though such danger may have been unreal. The question for the jury in this case is not whether the taking of

F.

The Court further instructs the jury that although they may believe from the evidence that the defendant, on the afternoon of the tragedy, used rude and insulting language to, or about the little child of the deceased, and that such rude and insulting language was communicated to the deceased, this did not justify or excuse the deceased in making an assault upon the defendant, nor did the use of such language by the defendant, in any way, deprive him of his right of self defende.

G.

that on the afternoon of July the 29th last, the defendant was one one of the public streets of the Town of Harrison-burg, and was conducting himself in a lawful and peaceable manner, and was then and there assaulted by the deceased, then said defendant had the right to repell force by such force as he believed, and had reason to believe, was necessary for his own protection from serious bodily harm; and if, in the exercise of this right of self-defense, his assailant was killed, such killing was excusable and the jury should find the defendant not guilty.

the life of the decemed might have been mately avoided, but whether the secured, under all the direcumstances by which he found bimself surrounded, might responsibly have believed and did believe it mecensury to use the defensive notion which resulted in the death of the nessilant in order to avoid serious bodily harm.

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The Court English instructs the jury that
elimough they may believe from the evidence that the
defendant, on the afternoon of the tragedy, uses rude
and insulting language to, or about the little child
of the decensed, and that such rude and insulting
language was communicated to the decessed, this did not
justify or excuse the decessed in making an assent upon
the defendant, nor did the use of such language by the
defendant, in any way, deprive him of his right of solf
defendant.

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If the jury dutit believe from the evidence that on the effects was that on the effection of July the E9th last, the defendat was on one of the public streets of the fown of Maryison-burg, and was conducting nimeelf in a lawful and peace-able manner, and was then and there assembled by the decreased, then said defendant had the right to repell force by such force as he believed, and had reason to believe, was necessary for his own protection from asrious todily harm; and if, in the exercise of this right of secureable and the jury should find the defendant ast guilty.

The Court instructs the jury that, although they may believe from the evidence that there was ill-feeling existing between the deceased and the defendant, and that the defendant had uttered threats against the deceased, still, if they further believe from the evidence that while the defendant was lawfully and peaceably upon the streets of Harrisonburg, he was assaulted and struck in the faceby the deceased, then the act of the defendant in striking the deceased must be referred to the provocation of the blow received by him, rather than to the previously existing ill-feeling.

I.

The Court instructs the jury that if they believe from the evidence, that on the evening of the 29th day of July last, the accused was lawfully and peaceably upon one of the streets of the Town of Harrisonburg, and that he was then and there assaulted and struck in the face by the deceased, then he had a right to use such force as was reasonable necessary in order to repell such attack. And should the jury further believe from the evidence that in repelling such attack the defendant used a piece of plank, not previously in his possession, but suddenly picked up by him while the assault upon him was being continued, a blow from which would not ordinarily produce death or serious bodily harm, and unintentionally used therewith more or greater force than was necessary, but that such force was used by him for the sole purpose of repelling his assailant and without any intention to cause him serious bodily harm or death, then the killing would ke only be in voluntary manslaughter.

The Court instructs the jury that, although they may believe from the evidence that there was illfeeling existing between the decembed and the defendant, and that the defendant had uttered thrests against the decembed, still, if they further believe from the evidence that while the defendant was lawfully and peaceably upon the extents of Harrisonburg, he was assaulted and struck in the faceby the decembed, then the act of the defendant in striking the decembed must be referred to the provocation of the blow received by him, rather than to the previously existing ill-feeling.

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The Court instructs the jury that voluntary manslaughter is the intentional killing of another in heat of blood, upon strong provocation and without malice.

K.

The Court instructs the jury that although they may believe from the evidence that the defendant, while engaged in a personal combat with the deceased, struck Mrs. Arthur Hirsch, who had run between them, either purposely or accidently, they are not to consider that fact, if fact it be, in determining the guilt or innocence of the defendant in this case.

L.

The Court instructs the jury that in determining whether or not the defendant struck the deceased under a reasonable apprehension that he was in danger of serious bodily harm, and in weighing and determining the nature and character of his acts at that time, they should consider all the facts and circumstances, as disclosed by the evidence, as they may reasonably have appeared to the defendant at the time he struck the blow.

M.

The Court instructs the jury that while the burden of proof rests upon a person pleading self-defense, that burden has been borne whenever the evidence, whether offered by him or the Commonwealth, creates in the minds of the jury a reasonable doubt as to whether he struck in self-defense or otherwise.

The Court instructs the jury that voluntary manufactor is the intentional killing of another in heat of blood, upon strong provocation and without malice.

X

The Court instructe the jury that although they may believe from the evidence that the defendant, willo engaged in a personal combat with the deceased, struck Mrs. Author Hirsch, who had run between them, either purposely or aceidently, they are not to consider that fact, if fact it be, in determining the guilt or imposmes of the defendant in this case.

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The Court instructs the jury that while the burden of proof rests upon a person pleading self-defence, that burden has been borne whenever the evidence, whether offered by him or the Commonwealth, creates in the sinds of the jury a reasonable doubt as to whether he struck in self-defence or otherwise.

The Court instructs the jury that if upon all of the evidence in this case they entertain a reasonable doubt as to whether the defendant struck the fatal blow under a reasonable apprehension that he was in imminent danger of death or serious bodily harm, or for some other reason, it is their duty to solve such doubt in favor of the accused.

But the Court refused to instruct the jury as prayed for by the accused, as aforesaid, in the Instructions A to N. inclusive, but granted Instructions A. C. and F., as tendered; and modified E.G., and I.; and, thereupon, gave to the jury instructions Nos. 12, 13, 14, 15, 16 and 17, as follows:

12.

The Court instructs the jury that the accused is presumed to be innocent until his guilt is established beyond all reasonable doubt, and that this presumption of innocence follows the accused throughout the entire case and applies at every stage thereof until removed beyond all reasonable doubt; therefore, if the jury entertain a reasonable doubt of the guilt of the accused, or of any fact necessary to establish his guilt, such doubt is decisive and it is the duty of the jury to find the accused not guilty.

The Court instructs the jury that if upon all of the evidence in this case they entertain a reasonable doubt as to whether the defendant struck the fatal blow under a reasonable apprehension that he was in imminent danger of death or serious bodily harm, or for some other reason, it is their duty to solve such doubt in favor of the secueed.

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12.

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The Court instructs the Jury that by reasonable doubt is meant such a substantial doubt growing out of the evidence, or lack of evidence, as would cause a man of average prudence to hestitate and be uncertain about a matter involving the graver transactions of life.

## 14.

If the Jury believe from the evidence that the accused struck and killed the deceased undera reasonable belief that he was in danger of serious bodily harm at the hands of the deceased andthat it was necessary for him to use such means for his own protection from death or serious bodily harm, and, in the opinion of the Jury, the circumstances existing at the time, as they appeared to the accused, were reasonably sufficient to produce such belief in the mind of the prisoner, then the prisoner was excusable in so doing, though such danger may have been unreal. question for the Jury is whether the taking of the life of the deceased might in fact have been safely avoided, but whether the accused, under all the circumstances by which he found himself surrounded, as shown by the evidence, might have reasonably have believed and did believe it necessary to use the defensive action which resulted in the death of the assailant in order to avoid serious bodily harm.

## 15.

The Court instructs the Jury that although they may believe from the evidence that the defendant, on the afternoon of the tragedy, used rude and insulting language to, or about the little child of the deceased, and that such rude and insulting language was communicated to the deceased, this did not justify or excuse the

The Court instructs the Jury that by remsonable doubt is meant such a substantial doubt growing out of the evidence, or lack of evidence, as would cause a man of average prudence to hestitate and be uncertain about a matter involving the graver transactions of life.

Id.

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deceased in making an assault upon the defendant, nor did the use of such language by the defendant, in any way, deprive him of the right of self-defense.

16.

If the jury believe from the evidence that on the afternoon of July 29th, last, the defendant was on one of the public streets of the Town of Harrisonburg, and was conducting himself in a lawful and peaceable manner, and was then and there assaulted by the deceased, then the defendant had the right to repell anch force by faree such as under the circumstances then existing, as they appeared to the accused, was reasonably necessary for his own protection from sprious bodily harm; and if, in the exercise of this right of self-defense, his assailant was killed, such killing was excusable and the jury should find the accused not guilty.

17.

The Court instructs the jury that if they believe from the evidence that on the evening of the 29th of July last, the accused got into a difficulty with the deceased in which it was not necessary for his own protestion from serious bodily harm to kill the deceased or to do him great bodily harm, and that in the course of said difficulty used a piece of plank, not previously in his possession, but suddenly picked up by him, a blow from which was not likely to produce death, considering the manner of its use, and from which it would be contrary to any reasonable expectation for death to result, then the killing would only be involuntary manslaughter.

Involuntary manslaughter is a killing contrary

deceased in making an essent upon the defendant, nor did the une of such language by the defendant, in any way, deprive him of the right of solf-defense,

16.

on the eftermoon of July 29th, last, the defendant was on one of the public streets of the Town of Harrisonburg, and was conducting himself in a lawful and peaceable manner, and was then and there assaulted by the descended, then the defendant had the right to repell force by ferce such as under the circumstances then existing, as they appeared to the accused, was reasonably necessary for his can protection from stricus bodily harm; and if, in the exercise of this right of self-defence, his assailant was killed, such killing was excussble and the jury should find the accused not guilty.

TO.

The Court instructs the jury that if they believe from the evidence that on the evening of the 29th of July last, the accused got into a difficulty with the deceased in which it was not necessary for his own protestion from serious bodily harm, and that in the deceased or to do him great bodily harm, and that in the course of seld difficulty used a piece of plant, not previously in his possession, but suddenly picked up by him, a blow from which was not likely to produce death, considering the manner of its use, and from which it would be contrary to any reasonable expectation for death to result, then the killing would only be involuntary manelaughter.

Involuntary manalunghter is a killing contrary

to intention, with an instrument not likely to produce death, or from which it would be contrary to any reasonable expectation for death to result, in sudden heat of passion.

and refused, in toto, Instructions numbered B.D.H. J.

K. L. M. and N. to which action of the Court in refusing to grant the Instructions prayed for by the accused, as follows: B. D. H. J. K. L. M. and N., and each of them and in refusing to grant Instructions numbered

E. G. and I. as tendered by the accused and modifying them, and each of them, the accused, by counsel, excepts and prays that this his Bill of Exception No.

5 may be signed, sealed and enrolled, and made a part of the record which is accordingly done, this the day of October, 1909, and within thirty days inext from the adjournment of said Court.

Judge of the Circuit Court of Rockingham County, Virginia.

to intention, with an instrument not likely to produce desth, or from which it would be contrary to any reasonable expectation for death to result, in sudden heat of passion.

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adjournment of said Court.

Judge of the dirouit Court of Rockingham County, Virginia.

The Pourt instructs the young that wany unlawful Longeide muse- be Either minder of mansldughte and whether it be the one on the other defends alone upon whether the party who perpetrated the act-aid it with molice or not -malice rither express or implied. Rid os Com. 22 Gratt 924 Repused

Hankoust institute the year that her willinger tempera musi- le rithe muder el manchemple and interested it has the one on the peter defends alone when whichen the party who despectated Trading to the Experience du marghinel.

The Court institutes the young that in the case of a felorious Lomicide to reduce the killing from the degree of minder to that of man. Clangher Hut a reasonable provocation should be received but it is also moresay that the provocaliti Should fave the Effect of producing surviden passion under the influence of which alone the offense was Committed. aced os Com. 22 Gutt. 924 Represed.

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VIRGINIA.

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY.
September
OCTOBER TERM, 1909.

COMMONWEALTH OF VIRGINIA.

VS

MAXIMILIAN HIRSCH,

BILL OF EXCEPTION NO. 4.

BE IT REMEMBERED that on the trial of this case after all of the testimony on behalf of the Commonwealth and on behalf of the accused had been introduced, the Commonwealth prayed the Court to instruct the jury as follows:

-1-

The Court instructs the jury that murder in the first degree is any wilfull, deliberate and premeditated killing with malice aforethought. All other murder is murder in the second degree.

Every unlawful homicide is presumed by the law to be murder in the second degree. If the Commonwealth would elevate the offense to murder in the first degree, she must prove the characteristics of the offense; and if the prisoner would reduce the offense, the burden of proof is on him.

VIRGINIA.

IN THE CINCUIT COURT OF ROCKINGHAM COUNTY.

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COMMONWALTH OF VIRGINIA.

MAXIMILIAN MERSON,

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NAME AND ASSOCIATED ASSOCIATION AND ADDRESS OF THE PARTY AND PARTY.

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-3-

The Court instructs the jury that manslaughter is unlawful killing of another without malice, either express or implied. The difference between the crimes of murder and manslaughter consists in this, that manslaughter, where voluntary, arises from a sudden heat of passion, murder from the wickedness of the heart.

-4-

Malice aforethought is any formed design of doing mischief, whether arising from hatred and revenge against deceased, or from perverse malignity and depravity of heart in general.

Express malice consists in a deliberate purpose to take the life of the person slain or to do him some bodily harm, the intention being ascertained from external circumstances, as by lying in wait, antecedent menaces, former grudges, and attendent circumstances, &c.

Implied malice is any evil design in general and it

time of such Killing or any time previously. if such intention come into existence for the first Mas at the length of time prior to the actual killing; it is sufficient that the intention to kill should exist for any particular wilful, deliberate and premeditated Milling, it is not necessary The Court instructs the jury that to constitute

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In general. deceased, or from perserse malignity and depresity of heart mischief, whether arising from hatred and revenge against Malice aforethought is any formed design of coing

grudges and attendent circumstances, &c. stances, as by Mying in wait, sutscedent menaces, former harm, the intention being ancortained from external circumto take the life of a person slain or to do him some bodily Express malice consists in a deliberate purpose

Implied unlice is any cril design in general and it

means that the circumstances manifest a wicked, deprayed and malignant spirit, regardless of social duty and deliberately bent on mischief.

-5-

Voluntary manslaughter is the unlawful killing of another without malice, express of implied, upon a sudden heat arising on a reasonable provocation or mutal combat.

-6-

That

that it is committed in self defense, it must be shown

that the accused, at the time he caused the death of the

deceased, was acting under a reasonable belief that he was in im
iminent danger of death or great bodily harm from the deceased,

and that it was necessary for the accused to strike the fatal

blow in order to avoid death or great bodily harm which was

apparently imminent to him. And the Court further instructs

the jury that the necessity relied upon to justify the

killing of another must not arise out of the prisoner's

own misconduct. The accused must not bring on the difficulty.

-7-

The Court instructs the jury that where the accused pleads self defense, the burden of proof rests upon the accused to sustain such plea by evidence to the satisfaction of the jury.

means that the ofrountances manifest a wicked, deprayed and victorately malignant appropriate, regardless of social duty and deliberately.

-5-

Voluntary mensions is the unlawful killing of enoties without maline, express of implied, upon a sudden heat arising on a resecondle provocation or a mutal combat.

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In order to justify homioide on the ground that it is committed in salf defence, it must be shown that the accused, at the time he caused the death of the decessed, was acting under a reasonable belief that he was in implement danger of death or great bodily harm from the decessed, and that it was necessary for the accused to strike the fatal blow in order to evoid death or great bodily harm which was apparently imminent to him. And the Court further instructs the jury that is necessity relied upon to justify the balling of another must not arise out of the prisoner's own misconduct. The accused must not oring on the difficulty.

-2-

The Court instructs the jury time where the coursed pleads used upon coursed pleads used to the catteraction of the gary.

is a quarrel between two persons, both being in fault, and combat as a result of such quarrel takes place and death ensues, in order to reduce the killing in self defense the prisoner must prove two things: first, that before the mortal blow was given, he declined further combat and retreated as far as he could with safety: and, secondly, that he necessarily killed the deceased in order to preserve his own life or save himself from great bodily harm.

-9-

The Court instructs the jury that the question whether, under all the circumstances, there was ground for a reasonable belief in the mind of the accused that a necessity existed for the taking of the life of the deceased, or of inflicting upon the head of the deceased a heavy blow, is one for the determination of the jury, and the jury are to arrive at their conclusion under all the evidence in the case.

-10-

The Court instructs the jury that if they believe from the evidence that an assault was made by the deceased, Louis Isaacs, upon the accused without a weapon and apparently causing peril of a mere indignity to the person of the accused or a mere battery from which great bodily harm could not reasonably have been apprehended, such assault by said Isaacs did not excuse resistance by the accused to the

The Court instructs the jury that where there is a quarrel between two persons, both being in fault, and comisst so a result of such quarrel takes place and death ensues, in order to reduce the killing in self defense the prisoner must prove two things: first, that before the mortal blow was given, he declined further combat and retreated as far as he could with safety: and, secondly, that he necessarily himself from great bodily harm.

-0-

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extent of taking the life of the said Isaacs, even though such peril could not have been escaped by retreat or though the danger to the accused by retreat would have been increased. (See Honesty vs. Commonwealth 81 Va. 283).

## 11.

The Court instructs the jury tht if they believe from the evidence that the accused met Louis Isaacs and his wife on the street on the evening of July 29th, 1909, and that upon Mrs. Isaacs asking the accused concerning his having cursed her child, the accused struck at her and that thereupon her husband struck the accused, and that the accused then threw a rock at Louis Isaacs and that Isaacs then followed the accused into the road and that either while the accused and said Louis Isaacs were then engaged in mutual combat or while said Louis Isaacs was attempting to assault or assaulting said accused with his fists, the accused struck said Isaacs a violent blow on the head with a deadly weapon, thereby fracturing the skull of said Louis Isaacs so that he died therefrom on the 30th day of July, 1909, and that at the time said fatal blow was made, the accused did not reasonably apprehend that he was in immediate danger of death or serious bodily harm from said Louis Isaacs and that it did not reasonably appear to the accused necessary then and there to use the force an d violence of the blow inflicted by him upon the of Louis Isaacs, and if the jury further believe from the evidence that in inflicting said fatal blow the accused did so through malice towards said Louis Isaacs and intending either extent of taking the life of the said Isaacs, even though such peril could not have been escaped by retreat or though the danger to the accused by retreat would have been increased. (See Honesty vs. Commonwealth 81 Vs. 283).

. 11

The Court instructs the jury that if they believe from the evidence that the acoused mot hould lease and his wife on the atreet on the evening of July 29th, 1909, and that upon Mrs. Issaes asking the accused concerning his having oursed her ohild, the accused struck at her as d that thereupon har husband struck the accused, and that the accused then threw a rock at Louis Isaacs an d that Isaacs a would nedt beareon and eline regite that the bear and oint beareon and and seld Louis Isaacs were then engaged in mutual combat or antifurers to fineses of ambiguatia saw seesel shouldise office said accused with his fists, the accused struck said Issaes a violent blow on the head with a deadly weapon, thereby "aren't half and this or some I should blue to Iluis out guttufost? from on the 30th day of July, 1909, and that at the time eat fatal blow was made, the accused did not reasonably apprehend thit he was in immediate danger of death or serious bodily harm from anid Louis Isanos and that it did not reasonably appear to the accused mecessary then and there to use the force an d violence of the blos inflicted by him upon the head of Louis Issaes, and if the jury further believe from the bib beguees end wold later bine guitoffint of tant somebive so through malice towards said Louis Issaes and intending ofther to kill or do serious bodily harm to Isaacs, then the accused is guilty of murder in the second degree, and if the jury believe from the evidence in addition to the matters above setforth that in inflicting said fatal blow the accused wilfully, deliberately and premeditately killed the said Louis Isaacs, you will find the accused guilty of murder in the first degree.

A deadly weapon is any weapon or instrument which from its nature and the manner of its use by the accused is likely to produce death.

-18-

The Court instructs the jury as a matter of law that they are not to go beyond the evidence to hunt up doubts, nor are they to entertain such doubts as are merely chimerical or conjectural. A reasonable doubt must be based upon the evidence, or on the absence of evidence essential to proof of the guilt of the accused. It must not be an arbitrary doubt without evidence to sustain it. It must be serious and substantial in order to warrant an acquittal. It must be a doubt of a material fact or facts necessary for the jury to believe to find a verdict of conviction and not of immaterial and nonessential circumstances.

-19-

The Court instructs the jury that in arriving at a verdict in this case, they are the sole judges of the facts and of the credibility of the witnesses and of the weight to be given to the evidence or any part of it. When witnesses

to kill or do serious bodily harm to Isaacs, then the accused is guilty of murder in the second degree, and if the jury believe from the evidence in addition to the matters above setforth that in inflitating said fatal blow the accused wilfully, deliberately and premeditately killed the said Louis Isaacs, you will find the accused guilty of murder in the first degree.

A deadly weapon is any weapon or instrument which from its nature and the manner of its use by the accused is likely to produce death.

-81-

The Court instructs the jury as a matter of law that they are not to go beyond the evidence to hunt up doubts, nor are they to entertain such doubts as are merely chimerical or conjectural. A reasonable doubt must be based upon the evidence, or on the absence of evidence essential to proof of the guilt of the accused. It must not be an arbitrary doubt without evidence to sustain it. It must be serious and substantial in order to entent an acquittal. It must be serious to be a doubt of a material fact or facts mesessary for the jury to believe to find a verdict of conviction and not of immaterial and monescential circumstances.

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weight of the evidence as evenly balanced, but they have a right in determining the weight to be given to the testimony of varius witnesses, to take into consideration their interest in the result of the case, if they have any, their relationship to the parties involved, their feeling of bias, if any is shown, their appearance and demeanor on the witness stand, their appearance intelligence, the reasonableness or unreasonableness of their statements, their means of information and all the surrounding circumstances appearing on the trial, and to give or deny credit to the testimony of any witness, as, under the circumstances, they may deem proper or to such extent as they think proper.

of them the accused by counsel objected, but the Court overruled the objection and granted said instructions and each
of them, Numbered 1 to 11, inclusive, and 18 and 19, to
which action of the Court in granting said instructions and each
of them, numbered 1 to 11 inclusive, and 18 and 19, the
accused excepts and tenders this his Bill of Exception No. 4
which he prays may be signed, sealed and enrolled and made a
part of the record which is accordingly done, this the
day of October, 1909, and within thirty days next after the
adjournment of said Court.

Judge of the Circuit Court of Rockingham County, Virginia.



testify opposite to each, the jor is not bound to regard the weight of the evidence as evenly balanced, but they have a right in determining the weight to be given to the testimony of various witnesses, to take into consideration their interest in the result of the case, if they have any, their relations

ship to the parties involved, their feeling of bias, if any is shown, their appearance and demeaner on the witness stand, their apparent intelligence, their reasonableness or unreasonableness of their statements, their means of information and all the surrounding circumstances appearing on the trial, and to give or deny credit to the testimony of any witness, as under the circumstances, they may deem proper or to such extent as they think proper.

To the granting of which instructions and each of them the scoused by council objected, but the Court over-ruled the objection and granted said instructions and each of them, Numbered 1 to 11, inclusive, and 18 and 19, to which action of the Court in granting said instructions and each of them, sumbered 1 to 11 inclusive, and 18 and 19, the scoused excepts and tenders this his Hill of Exception No. 4 which he prays may be signed, sealed and enrolled and made a part of the record which is accordingly done, this the court day of Cotober, 1909, and within thirty days next after the adjournment of said Court.

Judge of the Circuit Court of Reals.

VIRGINIA.

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY.

September 00TOBER TERM, 1909.

COMMONWEALTH OF VIRGINIA.

VS

MAXIMILIAN HIRSCH.

BILL OF EXCEPTION

NO. 2.

BE IT REMEMBERED that on the trial of this case and after the Commonwealth had introduced its evidence in chief, and had offered evidence tending to show threats on the part of the accused against the deceased, the accused introduced Ludwig Hirsch, his father, a witness in his behalf, and thereupon the following questions were propounded and the following answers given, as appears from the Certificate of Evidence, in Bill of Exception No \_\_\_\_\_ (which Bill of Exception No. \_\_\_\_\_ is hereby made a part hereof, and to which reference is hereby specially made),:

Q. I will ask you, upon the occasion, Mr. Hirsch, just before Christmas, when you went to see your son-in-law, Mr. Isaacs, you had a conversation with him with reference to the relations which existed between your son Mox Hirsch, upon the one hand, and your son-in-law Isaacs, upon the other, and whether in that conversation any animosity was expressed by Mr. Isaacs towards your son Mox?

A. Yes sir.

Q. Just state what that conversation was, what he said ?
A. Well, I went up --

And thereupon the following proceedings took

place:

VIRGINIA.

IN THE CLECULT COURT OF HOURINGHAM COUNTY.

COMMONWEALTH OF VIRGINIA,

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DILL OF ENGRETION

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that conversation any animosity was expressed
by Mr. Issaes towards your son Mox ?

A. Yes sir.

in Just etate what that converention was, what he said ?

A. Well, I went up --

And thereupon the following proceedings took

place:

MR.CONRAD: I object. I don't know what you are after.

MR. HAMMER: I am going to lead up and show threats upon the part of the deceased.

THE COURT: Why not ask him if he ever heard any threats.

MR. HAMMER: Your Honor will recall that Mr.

Conrad asked Mrs. Isaacs about the relations that existed between her husband and the other members of the family. We have a right to go into that matter; it is right to ask this question upon the theory that it will show the feelings that existed between the deceased and Mox Hirsch.

THE COURT: The ruling of the Court to that objection if there is one, is that the objection is sustained.

Exception noted to ruling of Court for the accused.

Q. Please state whether, in the conversation to which tou have just referred, the deceased Louis Isaacs, made any threats or expressed any animosity towards your son, Mox Hirsch, and, if so, state what he said?

MR. CONRAD: There are two questions there and I object to either one of them, until they have made out a prima facie case of self-defense.

MR. LEE: We contend that there has been ample evidence introduced in this case, both by the witnesses for the prosecution and by the witnesses for Mr. Mox Hirsch, to make a prima facie case of self-defense, and to allow us to introduce this evidence.

THE COURT:

I think I will allow you to ask the question.

Q. Now, Mr. Hirsch, please state what was said

in that conversation?

MR. CONRAD: You mean communicated threats?

MR SIPE: My purpose is to do that. I am doing it with the best of faith.

MR. CONRAD: I just asked you whether he was going to testify to communicated or uncommunicated threats.

um.cougant I object. I don't know what you are

NR. HAMMER: I am going to lead up and show threate upon the part of the deceased.

THE COURT: Why not sek him if he ever heard any threate.

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THE COURT:

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th. College I just naked you whether he was got got to to communicated or undomnunicated threats.

- A. My son-in-law, Lou Isaacs , had insulted my two little girls --
- Q. Tell what the conversation was.

THE COURT: No; you cannot tell the conversation. If Isaacs used any threats against Maximilian Hirsch you can tell it. Confine your answer to that.

- A. Yes sir; that night he said he would kill the damn son-of-a-bitch.
- Q. Did you tell Mox Hirsch about that?
  A. I did sir.

MR. LEE: Do I understand your Honor to hold the witness cannot telate what passed between himself and Mr. Isaacs?

THE COURT: Not on examination in chief, but on Cross-examination I think you could go into all the circumstances.

MR. LEE: No use for us to show the threat unless we can show the Jury the conditions under which that threat was made so they can understand the circumstances. Without stating anything as to what Mr. Ludwig Hirsch will testify, for I do not know that, suppose that he would testify he went to his son-in-law, Isaacs, for the purpose of bringing about a reconciliation, and, after that, had been met with that character of response from Isaacs, don't your Honor think that would be relevant testi ony in chief, shedding light upon the character of the threat made?

THE COURT: As I understand, there is nothing before the Court.

Q. I will ask this question, but don't answer it because the Court will probably not permit it to be answered. Now, Mr. Hirsch, please state under what circumstances the threat was made by Mr. Isaacs, and what conversation immediately preceded the statement of that threat by Mr. Isaacs?

Objection; sustained; exception for the accused.

A. My con-in-law, Low Issaco , had insolted my two little girls ---

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Objection; mustained; exception for the accused.

THE COURT: I am going to let the witness answer that question, after the jury has retired, for the purpose of being ruled on, and you can put in the record what you expect to prove.

MEMO: (Jury retired from court-room)

- Q. Mr. Hirsch, if I have used any language or expressions in that question which you do not understand, if you want, I will explain it.

  A. I wish you would explain it, please sir.
- Q. When I said 'preceding' I mean the language that immediately went before the statement that he made.
- A. On the night that I went up there there was some trouble between him and my girls. He insulted my girls. He said he would kick my little daughter her name is Julia he would kick her out of the house. That hurt my feelings very bad. I went up there to see him about it and told him, I says, "Lou, if my little children does you any insult or does anything wrong to you, it is your place to come to me and I would correct them right before your face, and he says, "No, I will kick them out. And its God damn equal to you, if you come in my house; and if that God damn son-of-a-bitch Mox Hirsch comes into my house I am going to kill him.
- Q. That is the last time you had any conversation with Mr. Isaacs?
  A. Yes sir.
  - THE COURT: We are not trying the case now,
    Mr. Sipe. The objection to the introduction of this testimony is sustained,
    and you save the point on that ruling.

MR. LEE: Of course we save the point.

MEMO: Court adjourned until 9:30 tomorrow morning.

to the iintroduction of which evidence the Commonwealth objected and the Court sustained the objection and refused to permit the evidence aforesaid to go to the jury, to which ruling and action of the Court in sustaining the objection of the Commonwealth, as aforesaid, and in refusing to permit the evidence aforesaid to go to the jury, the accused by counsel excepts and prays that this his Bill of Exception No. 2 may be signed, sealed, enrolled and made a part of the record, which is

THE COURT; am noting to let the withous answer that question, after the jury has retired, for the purpose of being ruled on, and you can put in the record what you expect to prove.

MRMO: (Sury retired from court-room)

expressions in that question which you do not expressions in that question which you do not understand, if you want, I will explain it.

G. When I said 'preceding' I weam the language that inusdiately went before the statement that he made.

A. On the might that I went up there there was some trouble between him and my girls. He insulted my girls. He said he would dok my little daughter - her name is Julia - he would tok my little daughter - her name is Julia - he would need with him out of the house. That hurt my lealings year year had told him, I says, "lou, if my little children and told him, I says, "lou, if my little children for you any insult or does anything wrong to you, it is your place to come to me and I would correct than right before your face, and he says, "Mp, I that the them out. And its God damn equal to you, if you come in my house; and if that God damn and of the him.

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A. Yes eir.

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MR. LERI Of course we save the point.

10210: Court adjourned until 9:50 temerrow

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accordingly done, this the  $2\sqrt[3]{\frac{1}{h}}$  day of October, 1909, and within thirty days next after the adjournment of said Court.

Judge of the Circuit Court of Rockingham County, Virginia.

accordingly done, this the 2 4 day of October,

1909, and within thirty days next after the adjournment

. James blas to

Judge of the Circuit Court of Rockingham County, Virginia,

VIRGINIA.

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY.
Schulter
OCTORER TERM, 1909.

COMMONWEALTH OF VIRGINIA:

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VS

BILL OF EXCEPTION.

MAXIMILIAN HIRSCH.

NO. 3.

BE IT REMEMBERED that on the trial of this case, during the delivery of the testimony on behalf of the accused, the Commonwealth asked for and obtained permission to recall D.E. Croushorn, a witness who had been previously examined on behalf of the Commonwealth who testified that he was one of the deputy sheriffs, and that he was guarding Mox Hirsch from two or three o'clock on the morning of July the 30th, 1909, at which time he had a conversation with him, and which the witness detailed; and thereupon after the witness had been examined in chief and had been cross-examined on behalf of the accused touching said conversation, and had testibled as appears from the evidence as certified in Bill of Exception # 6 (which Bill of Exception No. 6 is hereby made a part hereof and to which reference is hereby specially made, as if fully set forth herein), the witness, in answer to a question by counsel for the accused answered as follows:

<sup>&</sup>quot; Then he (referring to the accused) says:

<sup>&#</sup>x27; I had been to church'; he (referring to

VIRGINIA.

IN THE CIRCUIT COURT OF ROCKIESHAM COURTY. outown Them, 1909.

COMMONWEALTH OF VIRGINIA

BILL OF EXCEPTION.

MAXIMILIAN HINSON. :

MO. S.

To Island and on that Chemical of the this came, during the delivery of the testimony on behalf of the accused, the Componwealth asked for and obtained permispies to recall D.E. Grousbern, a witness who had been previously examined on behalf of the Commonwealth who tostified that he was one of the deputy sheriffu, and that he was guarding Max Hirach from two or three o'clock on the morning of July the 30th, 1909, at which time he had a convergation with him, and which the witness decalled; and thereupon after the witness had been examined in chief and had been cross-examined on behalf of the accused touching said converention, as appears from the evidence as certified in Bill of Emergican & Comican Bill of Emergican no. C is herely made a part hereof and to which reference is hereby specially sade , as if fully set forth herein), the witness, in answer between because out tol leanues of nelianup a of as follows:

<sup>&</sup>quot; Then he (referring to the accused) says: of privater) of thought to meed bed I .

1 44

accused) says: 'I wasn't the least bit excited. I was just as cool as I am just now'. "

And thereupon the following question was propounded to the witness by counsel for the accused:

Q. That is, when he came from church and met these people, he was just as cool as he was then?

And thereupon the following colleguy ensued:

MR. CONRAD: I object. That is for argument.

THE COURT: Was there anything more said?

WITNESS: I don't think there was anything more that I recollect now. After he told me that I cautioned him again. I didn't want to hear anything about it. 'Don't talk to me about it'. and he said, "All right".

And thereupon the following questions were pro-pounded by counsel for the accused, and the following answers given by the witness:

- XQ. And that was the end of the conversation?
- A. Yes sir.
- XQ. What he did say to you was, He had just been to church and was coming from church and was perfectly cool at the time?
- A. He says, 'I just came back from church', he says, 'I wasn't the least bit excited. I was just as cool as I am now.'
- XQ. That is all he said?
- A. That is all he said that had any significance at all. I believe he did
  say he hadn't been in much trouble except a couple of little warrant trials.
  I believe he told me that.

accused) says: I wasn't the lengt bit excited. I was just as cool as I am just are cool as I am just

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A. You mir.

MQ. What he did say to you was, He had just been to church and was coming from church and was perfectly cool at the time?

A. He says, "I just came back from church", he says, "I wasn't the least bit excited.

I was just as cool as I am now."

A. That is all he said that had any sigA. That is all he said that had any significance at all. I believe he did
say he hadn't been in much trauble except a couple of little warrant trials.
I believe he told me that.

And thereupon, upon re-direct examination by the attorney for the commonwealth, the following question was propounded to the witness:

The language he used about being cool, to what was he referring when he said he had just come from church and was as cool as he was at the time he was talking to you?

To the propounding of which question the accused by counsel objected, but the Court overruled the objection and permitted the witness to answer, and his answer is as follows:

> "In view of the conversation we had I took it to mean that he meant when the tragedy happened he was just as cool as he was then. I cannot give the language we both used between is there, but judging from it, I took it that that is what he meant".

And thereupon the accused by counsel objected to the Court's action in permitting the answer of the witness to go to the jury, and moved the Court to strike out the same, which motion the Court overruled. To which action and ruling of the Court in overruling the objections of the accused and permitting said question to be propounded and permitting the witness to answer the same, as aforesaid, and to which ruling and action of the Court in refusing to strike out the answer of the witness to the question aforesaid and permitting said answer to remain in evidence, the accused by counsel excepts, and prays that this his Bill of Exception No. 3 may be signed, sealed and enrolled, and made a part of the record, which is accordingly done; this the 26th day of October, 1909. and within thirty days next after the adjournment of said Court.

Judge of the Circuit Court of Rock-

ingham County, Virginia.

And thereupen, upon re-direct examination by the attorney for the communanth, the following question was propounded to the witness:

Q. The language he used shout being cool, to what was he referring when he said he had just come from church and was as cool as he was the time he was talking to you?

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Judge of the Circuit Court of Rock-

VIRGINIA.

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY.

September TERM, 1909.

COMMONWEALTH OF VIRGINIA :

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------:

VS

MAXIMILIAN HIRSCH.

BILL OF EXCEPTION NO.1.

Be it remembered that upon the trial of this case and during the delivery of the testimony on behalf of the Commonwealth, the Commonwealth introduced as a witness in its behalf Mrs. Arthur Hirsch, a sister of the deceased and a sister-in-law of the accused, and during her examination, as setforth in the evidence as certified in Bill of Exceptions #6 (which Bill of Exceptions #6 is hereby made a part hereof and to which reference is hereby specially made) inquired of the witness whether the accused had been on bad terms with Isaacs, the deceased, who stated that he was on bad terms with the deceased from the day that her brother and sister-in-law were married. Thereupon, on Cross-Examination, counsel for the accused propounded these questionsto the witness:

"You say Mox Hirsch has not been on good terms with your brother? And: No sir.

You have not been on good terms with any of the Hirsches, have you? "

Thereupon the following colloquy ensued between Mr. Conrad, the Attorney for the Commonwealth, and Mr. Lee, of counsel for the accused:

MR. CONRAD: That is not the question. This is not the trial of the Hirsch family, but it is the trial of Mox Hirsch.

VIRGINIA.

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY.

OCTOBER THEM, 1909.

COMMONWEALTH OF VIRGINIA

ME

WAXIVILIAN HIRSON.

RIFF OR EXCEPTION

NO.1.

be it remembered that upon the trial of this case and during the delivery of the tentiony on behalf of the Commonwealth, the Commonwealth introducted me a witness in its behalf was. Arthur Hirsoh, a minter of the deceased and a minter-in-dos of the accused, and during her examination, as setforth in accused, and during her examination, as setforth in the eridence as certified in Bill of Exceptions # 6 (which Bill of Exceptions # 6 is hereby made a wart hereof and to which reference is hereby unde a midel inquired of the witness whether the accused had midel inquired of the witness whether the accused had tone on bad terms with Innada, the decended from the that he was an bad terms with the decended from the day that her trather and sinker-in-inw were married. Thereupon, on Gross-Examination, counsel for the

"You may Max Firsch find not been on good terms with your brainer?" And: No sir.

You have not leen on good terms with any of the Mirsohes, have you? "

Thereupen the lollowing colloquy enduce between Mr. Conrad, the Attorney for the Commonwealth, and Mr. Lee, of counsel for the accused:

MR. COMPAD: That is not the quention. This is not the trial of the Hirsch family, but it is the trial of Mox Hirsch.

MR. LEE: I simply want to show the relation of the witness to the parties.

THE COURT: I expect you had better confine the testimony to the accused.

MR. LEE: I want to show the animus. I will ask a few questions and let your Honor rule them out so I can take an exception. I think this is pertinent evidence.

And thereupon the following proceeding took

# place:

XQ. You married a son of Mr. Ludwig Hirsch?
A. Yes sir.

XQ What is your husband's name? A. Arthur Hirsch.

XQ. How long has it been since you were non speaking terms with Max Hirsch?

A. Let's see! He stopped speaking to me before I went to house-keeping. That was four years ago last spring.

XQ. So you and Mox have not been on speaking terms for about four years?

A. Yes, sir.

XQ. I am going to ask you if it is not also a fact that for a long time you have not been on speaking terms with Mox Hirsch's father, Mr. Ludwig H irsch?

A. Yes sir.

XQ. That is a fact, too, is it not?
A. Yes sir.

XQ. You have not been on speaking terms with him?

A. Yes sir.

MR CONRAD: I want to object.

MR. LEE. I thought so.

XQ. Now, don't answer until the gentleman has an opportunity to object. Isn't it a fact that for a long time you have not been on speaking terms with youtr brother-in-law, Mr. Leon Hirsch?

Objection: sustained; exception noted for the accused.

I simply want to show the relation of HELL THES. the witness to the parties.

THE COURT: I expect you had better confirm the testimeny to the accused.

.suming safe works of Jane I :Mill .AM nok a few questions and let your Honor -ion. I think this is pertinent evidence,

And thereupon the following proceeding took

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Yourn a brudeud Tuoy al JadW . down HIreday

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Let's see! He stopped spesking to me before I went to house-keeping. was four years ago last spring.

n cale for at it it way and of maley me I fact that for a long time you have not been on upcaking torus with Mex Hirsch's father, Mr. Ludwig H irsch?
Yes sir.

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That is a fact, too, is it not? ·A

You have not been on apealth of terms with

.wis soY . A

MR COMRAD: I want to object.

.os Jilayeni I MR. LEER.

Now, don't answer until the contemnn has an apportunity to object. Isn't it n fact that for a lone time you have not been on grand terms with your brother-in-law, "r. Meen Hirson?

Objection: sustained; exception noted

XQ. Isn't it a fact that for a long time you have not been on speaking terms with any of your sisters-in-law, the daughters of Mr. Ludwig Hirsch?

Objection; sustained; exception noted for the accused.

XQ. Is it not a fact that for a number of years the relations between you and all of the Hirsch's have been strained and you have not been on speaking terms with the family?

Objection; sustained; exception noted for the accused.

It being designed to show by the answers of the witness to the foregoing questions and each of them, the objections to which were sustained, that the witness was not on speaking terms with Leon Hirsch, a brother of the accused; that she was not on speaking terms with her sisters-in-law, and the sisters of the accused, and that for a number of years the relations between the witness and the entire Hirsch family had been strained, she not being on speaking terms with any of them, in-cluding Ludwig Hirsch, her father-in-law.

But the court sustained the objection of the Commonwealth to said questions, and each of them, as aforesaid, and refused to permit the witness to answer the same, or either of them, to which ruling and action of the Court in sustaining the objection of the Commonwealth to the said questions and each of them, hereinbefore enumerated, and in refusing to permit the witness to answer the same, the accused by counsel excepts, and prays that this his Bill of Exception No. 1 may be signed, sealed and enrolled, and made a part of the record which is accordingly done, this the standard of October, 1909, and within thirty days next from the adjournment of said Court.

Judge of the Circuit Court of Rockingham County, Virginia.

MQ. Imn't it a fact that for a long time you have not been on speaking terms with any of your sisters-in-law, the daughters of Mr. Ludwig Hirsch? Objection; sustained; exception noted for the accused.

NQ. Is it not a fact that for a number of years the relations between you and all of the Hirsch's have been strained and you have not been on speaking torso with the facility?

Objection; sustained; exception noted for the accused.

It being designed to show by the answers of the witness to the foregoing questions, and each of them, the objections to which were sustained, that the witness was not on speaking terms with Leon Hirsch, a brother of the accused; that she was not on speaking terms with her sisters-in-law, and the bisters of the accused, and that for a number of years the relations between the witness and the entire Hirsch family had seen strained, she not being on speaking terms with any of them, in-cluding Ludwig Hirsch, her father-in-law.

But the court sustained the objection of the Gommonwealth to said questions, and each of this, as aforesaid, and refused to permit the witness to answer the same, or either of them, to which ruling and action of the Court in sustaining the objection of the Commonwealth to the said questions and each of them, hereinbefore enumerated, and in refusing to permit the witness to answer the same, the accused by counsel excepts, and prays that this his hill of Exception No. 1 may be algred, sealed and enrolled, and made a part of the record which is accordingly done, this the said court.

Suppose of October, 1909, and within thirty days mext from the adjournment of said Court.

Judge of the Chronit Court of

Reprosed

The Court instructs the jury that although they may believe from the evidence that the defendant, while engaged in a personal combat with the deceased, struck Mrs. Emma Hirsch, who had run between them, either purposely or accidentally, they are not to consider that fact, if fact it be, in determining the guilt or innoceace of the defendant in this case.



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The Court instructs the first into although they may be all over two trots the evidence what his differential, wills separate in a contact that the separate is the two as a contact that the two as a contact that yet could be a contact that it is a contact the contact to the contact that it is the contact that the contact the contact the contact that the contact the contact that contact the contact the contact that contact the contact that contact the contact the contact that contact the contact that contact the contact that contact the contact the contact that contact the contact that contact the contact the

Repused - covered by

The Court instructs the jury that in determining whether or not the defendant struck the deceased under a reasonable apprehansion that he was in danger of serious bodily harm, and in weighing and determining the nature and character of his acts at that time, they should consider all the facts and circumstances, as disclosed by the evidence, as they may reasonably have appeared to the defendant at the time he struck the blow.

The Court inverse the jusy that in determine indeed in descent order a rome of this of the defendant attribute the descent order a rome on the descent of the section booking have, and in degree of section booking have at it weighted and determining the nature and connected of the act in the indeed and circumstants of the factories, and disclosed by the crudence, as they any respectable have appeared to the defendant at the time struck the blow.

Report

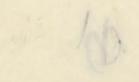
Instruction No.

The Court instructs the jury that while the burden of proof rests upon a person pleading self defense, that burden has been borne whenever the evidence, whether offered by him or the Commonwealth, creates in the minds of the jury a reasonable doubt as to whether he struck in self defense, or otherwise.



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The dense instances the jury that while he burden it proof while upon a person pleading self defense, that burden has been been alsonever the evidence, meeter offered by him or the demonstrate, oresten in the minds of the jury a ressonable doubt as to she har he struck in well defense, or otherwise.



Repose)

Instruction No.

The Court instructs the jury that if upon all of the evidence in this case they entertain a reasonable doubt as to whether the defendant struck the fatalb blow under a reasonable apprehension that he was in imminent danger of death or serious bodily harm, or for some other reason it is their duty to solve such doubt in favor of the accused.



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Instruction No.

or the court in this case they entertain a remonship while at to evidence in this case the court of the court of the court of the court of court of the court of court of the court of the

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Repured

The Court instructs the jury that if upon the whole evidence in the case there is any rational hypothesis consistent with the conclusion that the homocide was excusable the accused cannot be convicted of any offence.

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Refused

The Court instructs the jury that if they entertain a reasonable doubt as to whether the deceased or the defendant was the original aggressor in the conflict which ensued and in which the deceased met his death, it is their duty to solve such doubt in favor of the defendant and to consider the case just as though the deceased was the original aggressor and committed the first assault.

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And fourt tendences the Jury that it important and account a measurable doubt as to whether the deceased or the defendant was the original measure in the contribute and in the defendant and in the deceased as the defendant and to consider the case fact that as though the deceased was the original aggreeasy interest and the life the life account.

and that he counciloused by the chamber of the cham

9. Mod. & Levin

The Court instructs the jury that if they shall believe from the evidence that the defendant struck and killed
the deceased under a reasonable approximation that he was in
any law of the gray metatory for him to the deceased, then
the was excusable in so doing, though such danger may have been
ureal. The guestion for the jury in this case is not wheth
the taking of the life of the deceased might have been
lided, but whether the accused, under all of the
which he found himself surrounded, might
ed and did believe it necessary to
i resulted in the death of the
us bodily harm.

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If the jury believe from the evidence that on the afternoon of July 29th last, the defendant was on one of the public streets of the Town of Harrisonburg, and was conducting himself in a lawful and peaceable manner, and was then and there assaulted by the deceased, then said defendant had the right to repell force by such force 2s he believed, and had reasonto believe, (was) necessary for his own protection from serious bodily harm; and if, in the exercise of thisright of self-defense, his assailant was killed, such killing was excusable and the jury should find the defendant not guilty.

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Arternoon of Maly 29th 10th, and alternoon was on one or can
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individual in a lastal and verteable abroat, and was equivalent
individual in a lastal and verteable abroat, and was then and
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duterno, his assuriant was billion, and initiate has excessed
to our country and if, is the exercises of independs of self-

Rub.

The Court instructs the jury that, although they may believe from the evidence that there was ill-feeling existing between the deceased and the defendant, and that the defendant had uttered threats against the deceased, still, if they further believe from the evidence, that while the defendant was lawfully and peaceably uponthe streets of Harrisonburg, he was assaulted and struck in the face by the deceased, then the act of the defendant in striking the deceased must be referred to the provocation of the blow received by him, rather than to the previously existing ill-feeling.



hat

The court ingulate the local test, although they are believe included that the believe arisation of the and the local test in although arisation of the and the defendent, and that the callent in the lateral and the lateral and the lateral and the field the following and the states of the states are defendent as a lateral and percent of the states of the states and the states of the states of

mod. o given

The court instructs the jury that if they believe from the evidence, that on the evening of the 29th day of July last, the accused was lawfully and peaceably upon one of the streets of the Town of Harrisonburg, and that he was then and there as saulted and struck in the face by the deceased, then he had a right to use such force as was reasonably decessary in order to repell such attack. And should the jury further believe from the evidence that in repelling such attack the defendant used a piece of plank, not previously in his possession, but suddenly picked up by him while the assault upon him was being continued, a blow from which we also not creditarily produce death or serious bedily harm, and unintentionally used therewith more or greater force than was necessary, but that such force was used by him of the sole purpose of repelling his assailant and without any intention to cause him serious bodily harm or death, then the killing would only be involuntary manslaughter.

Involunting manufacipites is a killing Controng to intention with an instrument not or from which it would conting to any manufactory too duty be with the wind heart of the series have a proved time not sufficient to reduce homicide to manufaciptates. The Fourt Landwoods 1, 2 Juny 100' if may billow from the Court Landwoods 1, 2 Juny 100' if may billow from the Court Landwoods 1, 2 Juny 100' if may a four 100' if

Reprised

The Court instructs the jury that voluntary manslaughter is the individual killing of another in heat of blood, upon strong provocation and without malice.

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### CERTIFICATE OF COMMITMENT FOR TRIAL.

# VIRGINIA, COUNTY OF ROCKINGHAM --- To-wit :

To the Clerk of the Circuit Court of said Count	To	the	Clerk of	the C	Circuit	Court	of	said	County
---	----	-----	----------	-------	---------	-------	----	------	--------

that I have this day committed will be to the jail of said county, that he may be tried before the circuit court of said county, for a felony by him committed, in this, that he, on the day of the said county, of the said count	
this, that he, on the 29th day of July , 1909, in the said county, olid felviously and with maline afrothrough, kill and must one Louis is aces	
Actorional and with matice aforthragh, kill and musd	
our Louis Isaas	
	en
Given under my hand and seal, this 3 th day of August, 1909.	
Way, Posto, J. P. [L. S.]	

Course of Virginia vi? Serl of Commitment Maginilian Hirsel

## Instruction No.

The Court instructs the jury that the law presumes every person charg ed with crime to be innocent until his guilt is established by the n Commonwealth beyond a reasoable doubt, and this presumption of innocense goes with the accused through the entire case and applies at every stage thereof, and if, after having heard all of the evidence in this case, the jury have a reasonable doubt of the guilt of the accused upon the whole case, or as to any fact essential to prove the charge made against him in the warrant, it is their duty to give the prisoner the benefit of the doubt and find him not guilty.

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Comm suveelth Mapinillian Ausch A. J. Lokey 4. 19. Idoleniges 9. M. Ritchie Ed B. Aller. Joseph Coffman V.D. Liver ever. B. Dingled mie homas A. Rush In Walter Cirkey John It Beaux g. S. Scuffman . M. a almoutmit. J. R. Rhodes. Hong H. brides. James & Stednick.



6 H H 8-16 Inc Lack les Commonwell Jung 1 A. J. Larry 2 M. B. Holsinger 15 3 J. W. Michie + Joseph Coffman TH.D. Linweaver 4 Thomas A. Olish & John W. Beam 9 D. S. It uffman 1 Janua & Hearing

lo comme Hirsch O special section of the section of

6. /3 Cofned Furnished by council 26 7/3 " by all Lewis 238 2750 4 C. G

## Commonwealth of Virginia,

#### TO ALL TO WHOM THESE PRESENTS SHALL COME--GREETING:

WHEREAS, at a Circuit Court held in and for the County of	f
Rockingham in the month of October , in the year	r
one thousand nine hundred and him	-
Mnwimillian Hirsch,	
was convicted of Murdor 2nd Dogroe	-
and was thereupon sentenced to be imprisoned in the Ponitontiary	-
for the term of nine years , and whereas it appear	S
to the Executive that he is a fit subject for clemency,	
THEREFORE, I, W.M. HODGES MANN, Governor of the Commonwealth of Virginia	,
have, by virtue of authority vested in me, pardoned and do hereby pardon the said	ı
Maximillian Rivsch and do order that he be forthwith discharged	ı
from imprisonment, but upon the terms and conditions tollowing, namely:	
That the said Maximillian Hirsch will conduct himself in th	e
future as a good, law-abiding citizen; and if ever again he be found guilty of a	ı
violation of the penal laws of the Commonwealth this pardon shall be null and void.	
	-
Given under my hand and under the lesser seal of the Commonwealth, a	ıt
Richmond, this ay	f
Docember , in the year of our Lor	
one thousand nine hundred and ton , an in the one hundred and thirty-	
the Commonwealth.//	,
the Commonwealth for Hodges Many	
BY THE GOVERNOR:	
Hy Hankins	
Acting Secretary of the Commonwealth.	
Maximillian Hirsch. hereby accept the above pardon with the	
hereby accept the above pardon with the	0
, nerety decept the door paraon with the	ie
, hereby decept the above paraon with the	ne -

max An D. H. LIEE MARRES,

Rockingham County, To-wit:

To E. J. Carickhoff, Sheriff of said County;

whereas D. Z. Crourles has this day made complaint and information on eath before me, W. J. Points, a Justice of the Peace of said county that Maximillian Hirsch on the 29th day of July, 1909, in the said county feloniously and with malice of forethought, did kill and murder one, Louis Isaacs;

Virginia to command you forthwith to apprehend and bring before me or some other Justice of the Peace the body of the said Maximilian Hirsch to answer said complaint and further to be dealt with according to law. And you are hereby required to summon

to appear and give evidence on behalf of the Commonwealth on examina-

Given under my hand and seal this 300 day of August, 1909.

w. J. Point J. P. (L. S.)

E. J. darickhoff, S. R. C.

con ceputs for

Executed the within Warrant this the 3rd day of August, 1909, by arresting the within-named Maximillian Hirson, and bringing him before um, J. Peinte, a Justice of the Peace of Rockingham County, Virginia.

Executed the within Warrant this the 3rd day of August, 1909, by arresting the within-named Maximillian Hirsch, and bringing him before Wm. J. Points, a Justice of the Peace of Rockingham County, Virginia.

E. J. Carickhoff, S. R. C.

The state of the s

### VIRGINIA: Rockingham County, to wit:

I, D. H. LEE MARTZ, Clerk of the Circuit Court of Rockingham County, certify that
S. E. D. Davis attended under a summons as a witness before the Circuit
Court of said County, The days at the Jeft Term thereof, in the
year one thousand nine hundred and, on behalf of the Commonwealth, in her pros-
ecution against Meximilian Hingels for felony; said witness also traveled
miles in coming to place of trial, and the same in returning to
his place of abode-from which distance so traveled I have deducted ten miles each way, leaving
miles as the distance traveled, for which compensation is to be made.
He also paid tolis amounting to Dollar and Cents,
for which attendance, mileage and tolls he is entitled to bue Dollar and
Cents, payable out of the public treasury.
On the oath of said & & D. Day, taken before me and which I hereby
certify, an entry of the sum to which he is entitled, and for what, has been made by me in my office.
Given under my hand as Clerk aforesaid, this 12 day of Color 1909
\$ 150 Clerk.
Form—62—Berlin,

50 centr

## Commonwealth of Virginia,

# COUNTY OF ROCKINGHAM, To-wit: IN THE CIRCUIT COURT OF 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 at its. DEplifmber term, in the year 190. 9,
and now attending the said Court at itsterm, in the year 190,
upon their oaths present that.
maximillian Hirsch
on the 29 day of July in the year 1909, in the said County,
did in and upon one Louis Isaacs then and there being, feloniously,
wilfully and of his malice af forethought, make an assault; and
that the said Maximillian Hirsch then and there feloniously,
wilfully and of his malice exaforethought did strike and beat the said Louis Isaacs with a heavy piece of oak timber in and upon the
head of him, the said Louis reades and did then and there felo-
niously, wilfully and of his malice forethought, cast and
knock the said Louis Isaacs down to and upon the ground with great force and violence, giving to the said Louis Isaacs then and there
by the said beating and striking of him, the said Louis Isaacs
in the manner and form aforesaid, a mortal stroke, wound and bruise
in and upon the head of him, the said Louis Isaacs, of which said mortal stroke, wound and bruise he the said Louis Isaacs in the Coun-
ty aforesaid, from the 29th day of July in the year aforesaid to
the 30th day of July in the year aforesaid, in the County aforesaid
did languish and languishing did live; on which said 30th day of July in the year 1909, the sa Louis Isaacs in the County afore-
said of the said mortal wour moke and bruise died. And so the
the means aforesa, pon that the said if oresaid do say that the said
the means afort it, feron rilfully and of his malice of
against the peace and dignity of the Commonwealth of Virginia.
Same.

Upon the evidence of Buc. Buc	reangon Dovel-Dr Dan
Mis Grand Intiviler, T. R. Bang	his I good Braum
Grand Jury to give evidence.	witnesses sworn in open Court and sent to the
May complement that	
N-y- rather	* The state of the

Cof Gallery his enson his permether at Europens on charge in the moretimes, once in in The Descent doors in morns ourthous More inition House Ginty of much fred fine the prison

THE COMMONWEALTH OF VIRGINIA,

To the Sheriff of Rockingham County, Greating: We command you that you take Menor Nicher , if he be found within your County, and him safely keep, so that you have his body before the Circuit Court of Rockingham County, at the Court House forthwith, to answer us of a certain Felony whereof he stands indicted. And have then and there this writ. D. H. Lee Martz, Clerk of our said Court, at the Court House, the monwealth.

arresting the wildin- named Iminion levering him bet or &.f. Carierhoff Shiriff R. C. stands indicted. And have then and there this writ. Winners dourt House forthwith, to whewer us of a certain Velony whereof as his body before the Circuit Court of Rockingham County, at the be found within your dounty, and him safely keep, so that you have

to commend you that you take Thurs Muchelle, if ho To the Sheriff of Heakingher County, Orseting:

THE COMPONEALTH OF VIRGITA,

#### VIRGINIA:

In the Supreme Court of Appeals, held at the Library Building in the City of Richmond on MONDAY the 22nd day of November 1909.

The petition of Maxmillian Hirsch for a writ of error and supersedeas to a judgment rendered by the Circuit Court of Rockingham county on the 9th day of October, 1909, in a prosecution by the Commonwealth, against the said petitioner, for a felony, whereby it was considered by the said Court that the said Maxmillian Hirsch be confined in the State Penitentiary for the term of nine years, having been maturely considered and the transcript of the record of the judgment aforesaid seen and inspected, the Court being of opinion that the said judgment is plainly right, doth reject said petition and refuse said writ of error and supersedeas.

A Copy.
Teste: Mewartones 0.0.

If you find the prisoner not guilty you will say so and no more.

If you find the prisoner guilty of Murder in the first degree. as charged in the indictment, you will say so and no more.

If you find the prisoner not guilty of murder in the first degree but guilty of murder in the second degree you will say so and ascertain his punishment which shall be confinement in the Penitentiary not less than five years nor more than eighteen years.

If you find the prisoner not guilty of murder in the first degree, or second degree but guilty of voluntary manslaughter you will say so and ascertain his punishment which shall be confinement in the Penitentiary not less than one nor more than five years.

If you find the prisoner not guilty of murder in the first or second degree nor guilty of voluntary manslaughter.but guilty of involuntary manslaughter you will say so and ascertain his punishment which shall be fine of not less than \$5.00 or confinement in jail, either or both.

If you clind the personer not guilley you will not no more, SALTHE LILE HOW SEED IN AGODON ON ALL SALTERS TO THAT the rice portained which shall be continued in the The . wrong need the read not not not send ton vist