

COMMONWEALTH

V.

CUBBAGE

INSTRUCTION _____

The Court instructs the jury that in determining whether or not the deceased was the aggressor they may take into consideration the reputation of the deceased as to whether he was a dangerous and violent man.

COMMONWEALTH

v.

CUBAGE

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JAMES R. SIFE
ATTORNEY AT LAW
HARRISONBURG, VA.

COMMONWEALTH

V.

CUBBAGE

INSTRUCTION _____

The Court instructs the jury that the credibility of witnesses is a question exclusively for the jury; and from the appearance of the witnesses on the stand, their manner of testifying, the reasonableness and consistency of their testimony, their apparent candor and fairness, their apparent intelligence or lack of intelligence, the opportunity of the witnesses to know whereof they speak, the relationship of the witnesses to the parties, if any, the interest of the witness in the result of the trial, if any appear, and from all other surrounding circumstances appearing on the trial, the jury has the right to determine which witnesses are more worthy of credit and what is the relative weight of any such testimony and to give credit accordingly.

COMMONWEALTH

v.

CURRAGE

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COMMONWEALTH

V.

CUBBAGE

INSTRUCTION _____

In considering whether or not the Commonwealth has met its burden of proving the guilt of the accused beyond reasonable doubt, the Court instructs the jury that you should not overlook the word "reasonable" nor its meaning. A reasonable doubt is a doubt which is founded on reason, and is not to be confused with imaginable or possible doubt, for the law does not say that a man must be proved guilty beyond every imaginable, conceivable or possible doubt.

In passing upon the sufficiency of the proof of the charge, the jury must limit its consideration to the evidence presented at the trial of this case, including the natural and reasonable inferences to be drawn therefrom. The jury cannot go beyond such evidence to create doubt, nor can you go beyond such evidence to find inferences of guilt.

Furthermore, the jury should bear in mind that any doubt arising from lack of evidence, from conflicting testimony or from questionable proof of any particular fact, should be a doubt of a material fact essential to the proof of the guilt of the accused and not a mere doubt concerning immaterial and immaterial circumstances.

If, after a reasonable and honest consideration of all of the evidence, your minds are left in such a state of doubt as to prevent you from reaching a convinced belief of the guilt of the accused, then the Commonwealth has failed to meet its burden.

If, on the otherhand, after an impartial and reasonable consideration of all the evidence in the case, you have an abiding conviction of the truth of the charge, you are then satisfied beyond all reasonable doubt.

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JAMES R. SIFE
ATTORNEY AT LAW
HARRISONBURG, VA.

COMMONWEALTH

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INSTRUCTION _____

The Court instructs the jury that where death ensues on a sudden provocation, or sudden quarrel, without malice, the killing is manslaughter, and in order to ^{justify or excuse the} ~~reduce the offense to~~ killing in self-defense, the accused must prove two things,

(1) That before the mortal wound was given, he declined further combat, and retreated as far as he could with safety; and

(2) That he killed the deceased through the necessity of preserving his own life or to save himself from great bodily harm, or that there was reasonable ground to believe that the killing was necessary to preserve his own life or to save himself from great bodily harm.

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great bodily harm.

COMMONWEALTH

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INSTRUCTION _____

The Court instructs the jury that voluntary manslaughter is the intentional killing of one human being by another without malice, in the heat of sudden passion engendered or brought about by reasonable provocation, ~~or in mutual combat.~~

Involuntary manslaughter is the killing of one accidentally, contrary to the intention of the parties, in the prosecution of some unlawful, but not felonious, act; or, in the improper performance of a lawful act.

COMMONWEALTH

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The Court instructs the jury that the indictment in this case shall not be considered by the jury as any evidence of the guilt of the accused.

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INSTRUCTION NO. _____

If the jury believe from the evidence ~~in this case that all reasonable doubt has not been eliminated,~~ that the actions of the accused in this case resulted from the fact that he was assaulted by the deceased and that the assault was made with such display of force or violence that the accused believed himself to be in imminent danger of loss of life or great bodily harm; then, in that case, the accused was not bound to retreat, but had the right to stand his ground, repel force with force, and, if need be, kill his adversary, to prevent the loss of his own life, or to prevent his receiving great bodily injury; and it is not necessary that the jury believe the deceased would, in fact, have taken the life of the accused, or inflicted great bodily harm upon him, but only that the accused was under an apprehension that the decedent would do so.

If the jury believe from the evidence in this case that all reasonable doubt has not been eliminated, that the actions of the accused in this case resulted from the fact that he was assaulted by the deceased and that the assault was made with such display of force or violence that the accused believed himself to be in imminent danger of loss of life or great bodily harm; then, in that case, the accused was not bound to retreat, but had the right to stand his ground, repel force with force, and, if need be, kill his adversary, to prevent the loss of his own life, or to prevent his receiving great bodily injury; and it is not necessary that the jury believe the deceased would, in fact, have taken the life of the accused, or inflicted great bodily harm upon him, but only that the accused was under an apprehension that the deceased would do so.

INSTRUCTION NO. _____

The Court instructs the jury that every fact necessary to constitute the offense charged must be proven beyond a reasonable doubt, and that if there is a reasonable doubt, arising out of the evidence, as to any such fact, they shall acquit; that the result of the evidence must be to exclude every reasonable hypothesis of innocence, and be consistent only with the guilt of the accused; that the jury is not at liberty to guess, and where a fact is equally susceptible of two interpretations, one of which is consistent with the innocence of the accused, they cannot arbitrarily adopt that interpretation which incriminates him.

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INSTRUCTION NO. _____

The Court instructs the jury that the law presumes the accused to be innocent until he is proven guilty beyond a reasonable doubt, and if there is upon the minds of the jury any reasonable doubt of the guilt of the accused, the law makes it their duty to acquit him, and that mere suspicion or probability of his guilt, however strong, is not sufficient to convict, nor is it sufficient if the greater weight or preponderance of evidence supports the charge in the indictment, but to warrant his conviction, his guilt must be proved so clearly that there is no reasonable theory, consistent with the evidence, upon which he can be innocent.

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CUBBAGE

CHARGE TO JURY

If you find the accused, Benjamin Franklin Cabbage, Jr., guilty of voluntary manslaughter, as charged in the indictment, you will say so and fix his punishment at confinement in the penitentiary for not less than one nor more than five years.

If you find him not guilty of voluntary manslaughter, but find him guilty of involuntary manslaughter as further charged in the indictment, you will say so and fix his punishment at confinement in the penitentiary for not less than one nor more than five years, or, in your discretion, by a fine of not exceeding One Thousand Dollars (\$1,000.00), or by confinement in jail for a period not exceeding one year, or by both such fine and imprisonment.

If you do not find the accused guilty of either of the above felonies, but find him guilty of assault and battery, you will say so and fix his punishment by confinement in jail for a period not exceeding twelve months, or by a fine not exceeding Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.

If you find him not guilty, you will say so and no more.

NOTE.

If you find him not guilty, you will say so and no

and imprisonment.

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ment at confinement in the penitentiary for not less than one

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but find him guilty of involuntary manslaughter as further

If you find him not guilty of involuntary manslaughter,

five years.

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Jr., guilty of involuntary manslaughter, as charged in the

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COMMONWEALTH

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The Court instructs the jury that evidence of the good reputation of the accused may be considered by the jury along with other evidence in the case in determining the guilt or innocence of the accused.

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not exceeding one thousand Dollars (\$1,000.00), or by confine-
ment in jail for a period not exceeding one year, or by both
such fine and imprisonment.

If you find him not guilty, you will say so and no

more.

September 28, 1962

Mr. J. Lynn Lucas
Attorney at Law
Lucas Building - 15 South Court St.
Luray, Virginia

Re: Commonwealth v. Benjamin Franklin Cabbage, Jr.

Dear Mr. Lucas:

I am enclosing herewith photostatic copies of the medical examiner's report and of the autopsy.

If I can be of any further assistance, please let me know. With best personal wishes, I remain

Very truly yours,

James R. Sipe

JRS/sfd

Enclosures



August 16, 1962

J. Lynn Lucas, Esquire
Lucas Building
Luray, Virginia

Re: Commonwealth v. Cabbage

Dear Mr. Lucas:

I appeared in the Rockingham County Court today, and as previously agreed between us, had the case set for preliminary hearing on September 14 at 2:00 p.m.

I am enclosing herewith a copy of the statement given to me by your client.

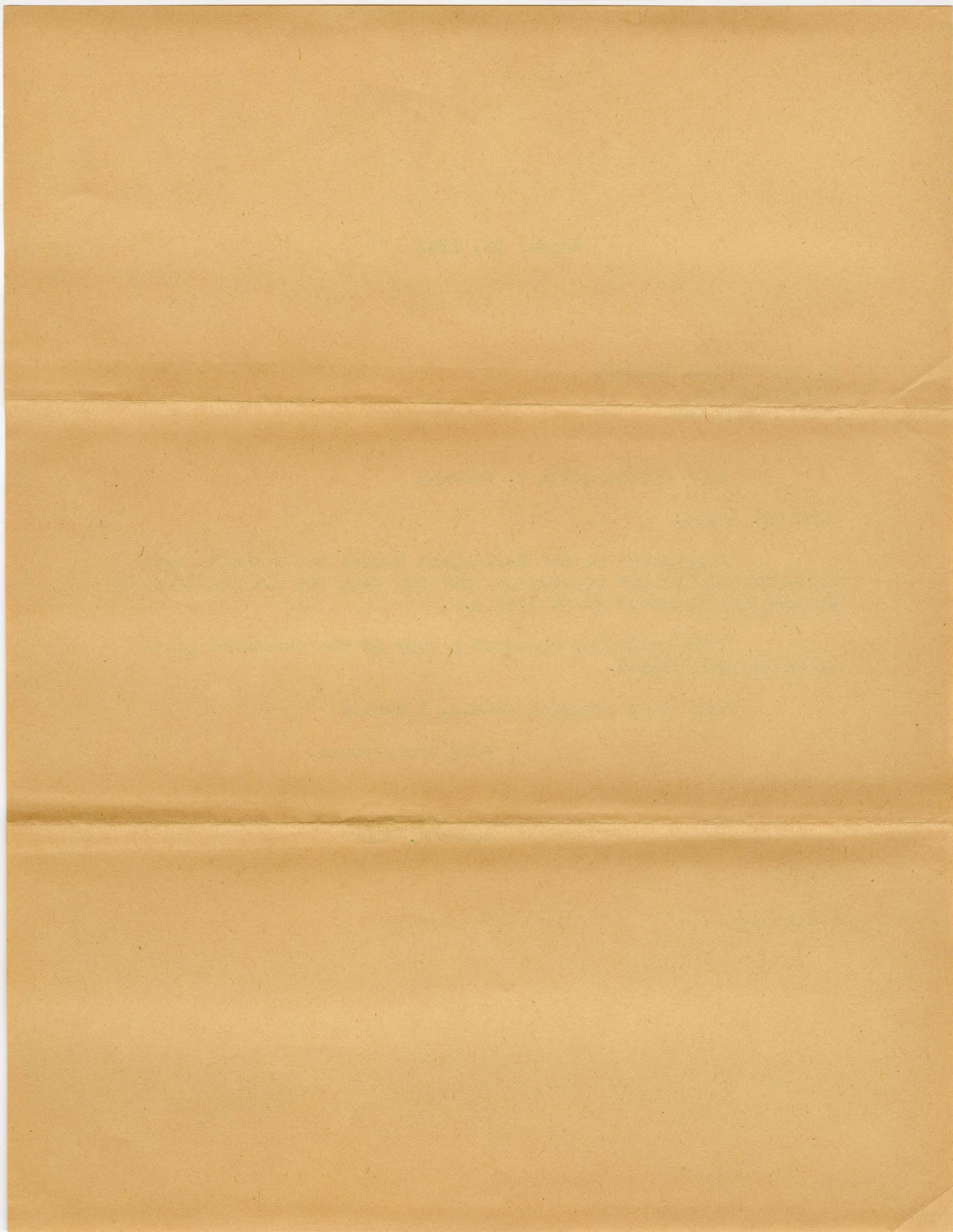
With best personal wishes, I remain

Very truly yours,

James R. Sipe

JRS/sfd

Enclosure 1



Benjamin Franklin Cabbage, 97-36 - Rt 2, Eldon -
Merk + Co. (13 yrs. - chemical generator) - wife's name
Doris May Cabbage

July 29th -
4:20 - happened -

Rt 2, Eldon -

Benjamin Cabbage - animal - 34 - been drinking
all day -

He hit me - & called me names

Daddy came out -

had ax in hand -

They started arguing -

hit him w/ fist -

never there -

beat him to death -

no argument before -

Father ~~did~~ did not strike him at all -

77 or 78

7 children

Rt # 602 + 636 (East Rt Rd.)

[grant - Dick, Lotter, Dr. Tanner + myself]

Everett Williams -

at hand - spinal on last 2 knuckles -
cut under skin on rt side (swollen neck on rt side) -

Nicholson

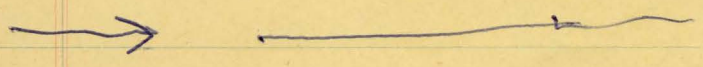
ax
axe
ax
axe

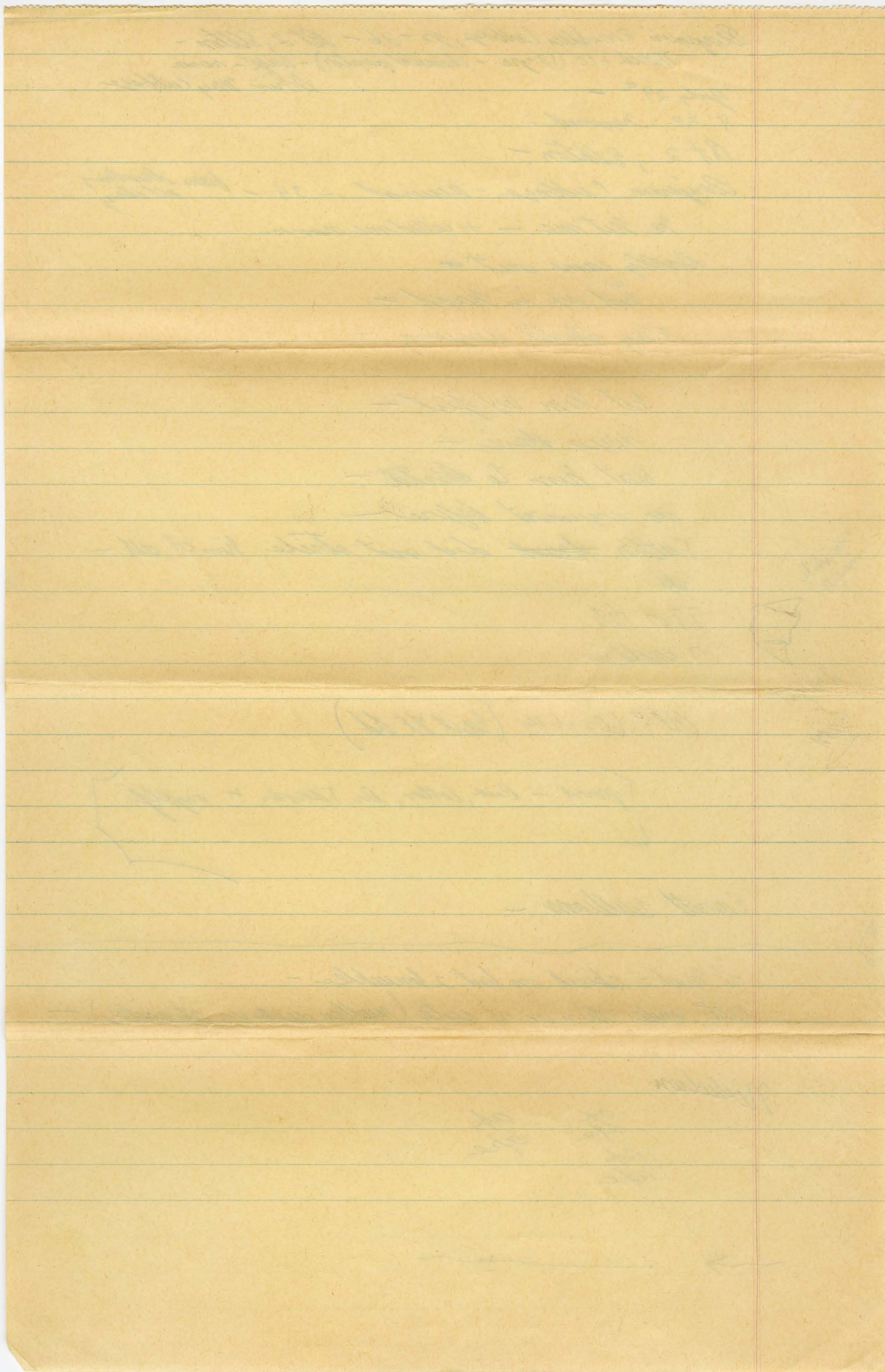
minute marks



1/2 night

Scam





8A- 9/14/62

Com v. Benjamin Franklin Cabbage, Jr.

July 29 - Everett Williams - (77) -

Dr. Kemner - cardiac arrest, apparently due to
a contusion of the heart -

Witnesses: Barbara Ann Cabbage (daughter) - 9 -

(1) ~~Phyllis Cabbage~~ (niece) - I was on top of hill -

telling what
I saw
granddaddy had
out on rack -

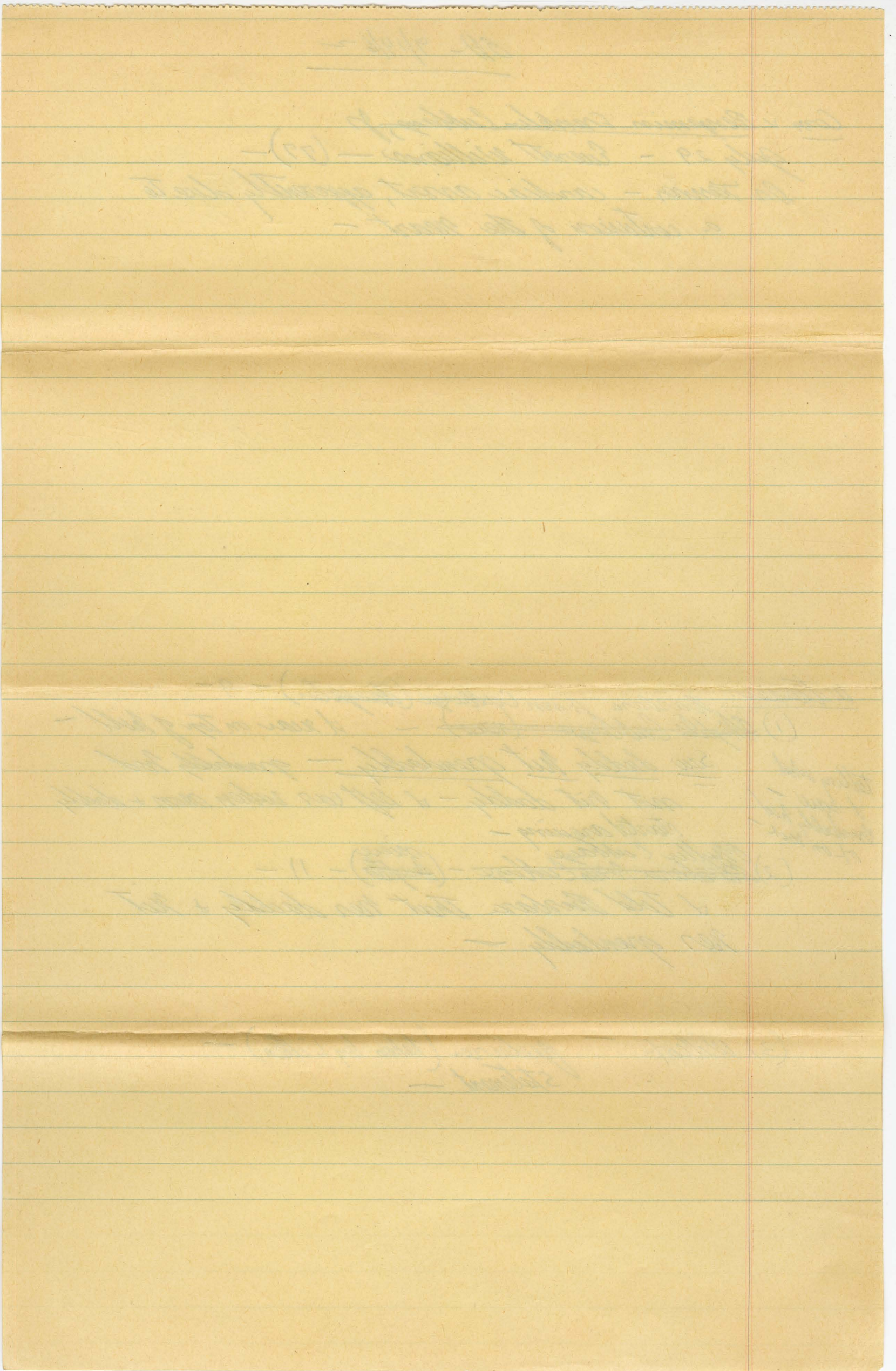
Saw daddy hit granddaddy - granddaddy had

not hit daddy - I left car when mom + daddy
started arguing -

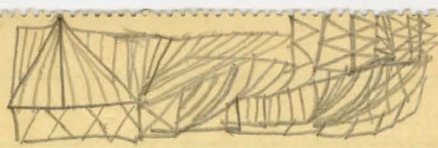
(2) ~~Barbara Ann Cabbage~~ (niece) (daughter) - 11 -

I told Barbara that her daddy + hit
her granddaddy -

(3) Willet - pictures (taken by Litten) -
statement -



△'s witness: 



(1) Dr. Nicholson -
- unable to determine cause of death -

- X⁽¹⁾ autopsy - was you present -

(1) trouser -


(2) Mrs. Everett Williams -

(3) △ couple of been in Luray -



(1)
- drew pin at back when I hit him
- probably could not go back
- coming toward me
- been getting along w/ him fine

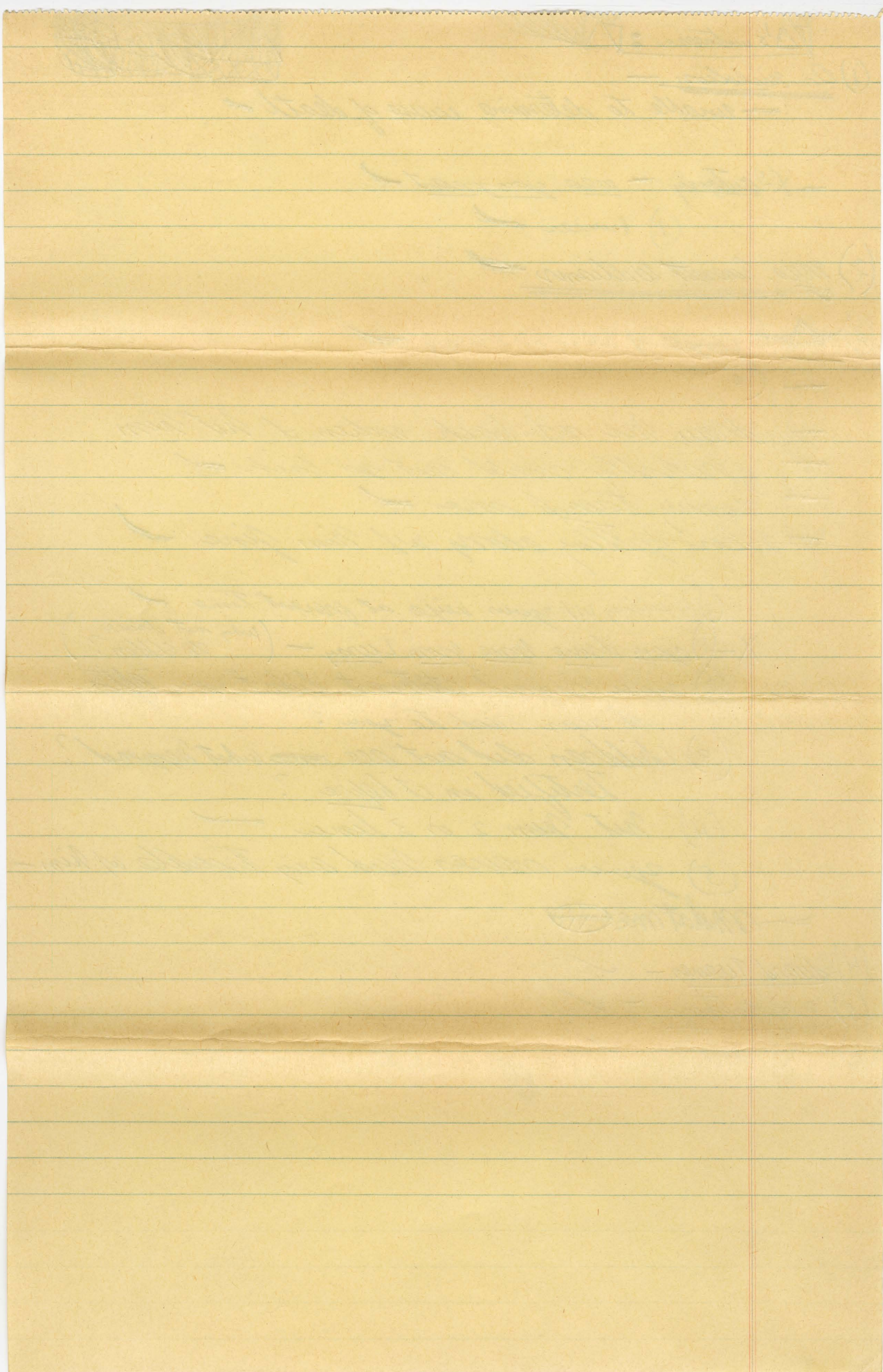
- (1) Living w/ your wife at present time -
- X - (1) you drove home from Luray - (why not drive to Elkhorn?)
- (2) you signed statement didn't you after it was read to you?
- (3) children did not see ~~me~~ what happened? testified in it before?
- (4) hit him 2 or 3 times -
- (5) you never had any trouble w/ him -

- mad at me 

(4) Edward Turner - ✓

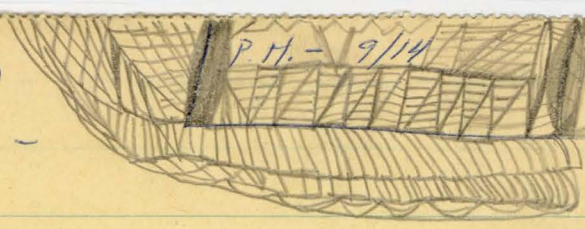
(5) J. W. Putman - ✓

(6) Deed - ✓



Com v. Benjamin Franklin Cabbage, gr. (36)

P.H. - 9/14



July 29, 1962 (Sunday) - 4:20 p.m. -

Guerritt Williams - dec'd - 77

Drain cabbage - wipe

East Pt. Rd (N of #33 - W of Elkhorn -
Greenmount section)

North Bed +
Pen Cab

cut on spin on outside -

motion -

Phyllis Cabbage - niece - 11 -

I told her that her daddy had hit her granddaddy -

Barbara Ann Cabbage - 9 - daughter - I was on top of hill -

saw daddy hit granddaddy - granddaddy had not hit daddy -

granddaddy had car on back - (also Phyllis saw it -



must have been another blow - ~~it was on back~~

Wilcox: (1) statement - ✓

(2) at head - dented on last 2 bristles - ✓

(3) pictures - ✓



statement

Tanner: (1) cardiac arrest, apparently due to a contusion of the heart

(2) Would equipment itself have caused it?

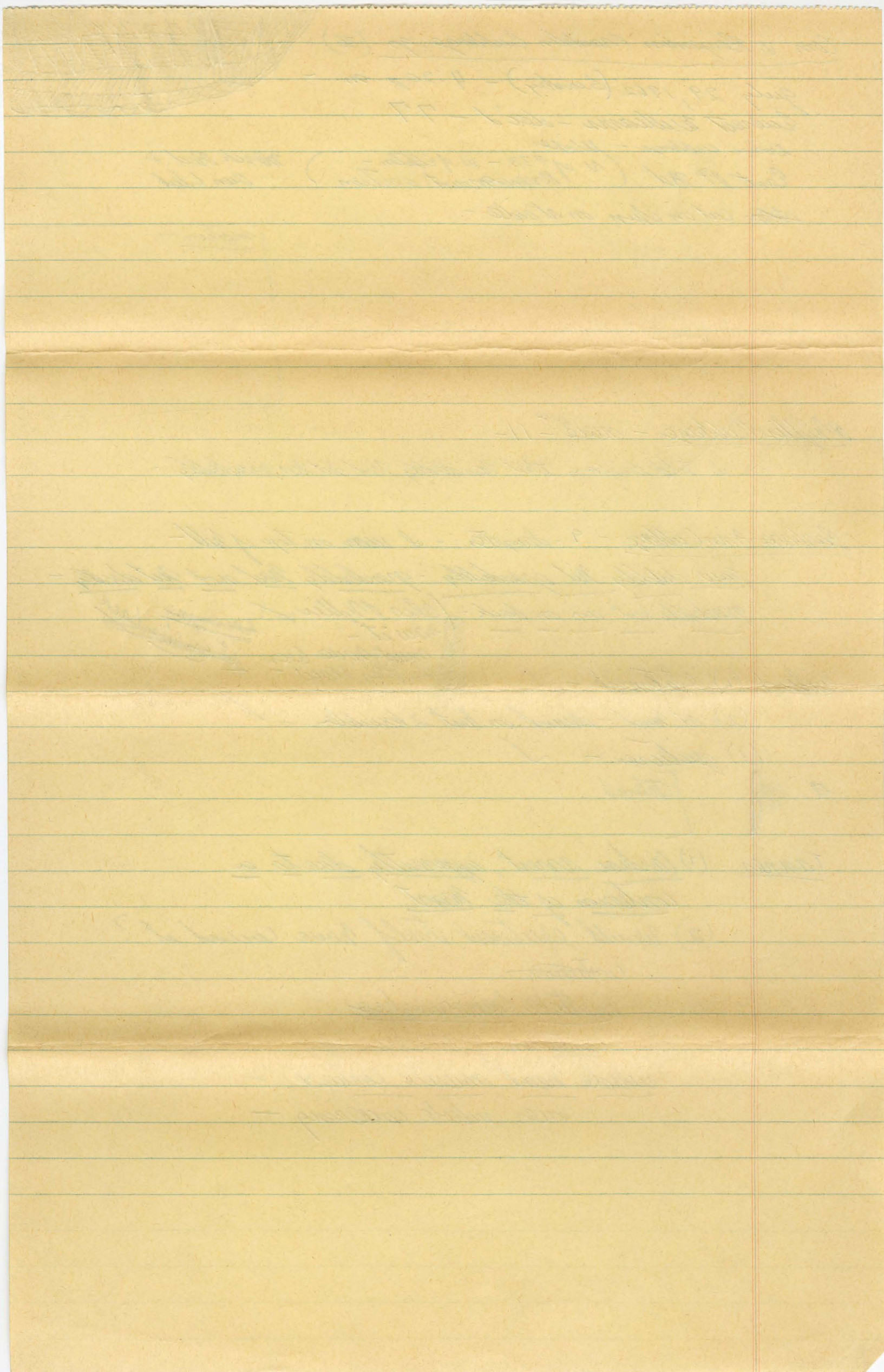
contusion

multiple hemorrhages

contusion of muscle -

whole heart muscle contused +

over whole covering -



COMMONWEALTH OF VIRGINIA

COUNTY OF ROCKINGHAM, to-wit:

In The Circuit Court of Rockingham County, October Term, 1962

The Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Rockingham, now attending the Circuit Court of the said County, upon their oaths present that Benjamin Franklin Cabbage, Jr., on the 29th day of July, 1962, in the County of Rockingham, Virginia, feloniously did kill and murder one Everett Williams, against the peace and dignity of the Commonwealth of Virginia.

Upon the evidence of Deputy Sheriff G. M. Wilcox, witness sworn in open court and sent to the Grand Jury to give evidence.

evidence.

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Upon the evidence of Deputy Sheriff G. M. Wilcox,

the Commonwealth of Virginia.
murder one Everett Williams, against the peace and dignity of
in the County of Rockingham, Virginia, feloniously did kill and
Benjamin Franklin Gubage, Jr., on the 23rd day of July, 1962,
Circuit Court of the said County, upon their oaths present that
and for the body of the County of Rockingham, now attending the
The Grand Jurors of the Commonwealth of Virginia, in

In The Circuit Court of Rockingham County, October Term, 1962

COUNTY OF ROCKINGHAM, CO-VA-2:

COMMONWEALTH OF VIRGINIA

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Benjamin Franklin Cabbage, Jr., on the 13th day of July, 1962,
Circuit Court of the said County, upon their oaths present that
and for the body of the County of Rockingham, now attending the
The Grand Jurors of the Commonwealth of Virginia, in

In The Circuit Court of Rockingham County, October Term, 1962

COUNTY OF ROCKINGHAM, to-wit:

COMMONWEALTH OF VIRGINIA

LAW OFFICES
J. LYNN LUCAS
LURAY, VA.
LUCAS BLDG. - 15 S. COURT ST.

August 17, 1962

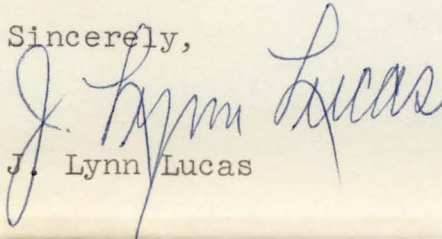
Mr. James R. Sipe
Attorney for the Commonwealth of Virginia
for the County of Rockingham
Harrisonburg, Virginia

Dear Mr. Sipe: Re: Commonwealth
 v. B. F. Cabbage

Reference is made to your letter to me, of August 16, last, in which was enclosed copy of statement given to you by Cabbage.

I take this means to express to you, again, my deep appreciation of your usual consideration and cooperation, in connection with this, and other matters, involving your and my offices.

Sincerely,


J. Lynn Lucas

JLL/dw

LAW OFFICES
J. LYNN LUCAS
LUMAY, VA.
LUCAS BLDG. - 18 S. COURT ST.

August 17, 1962

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for the County of Rockingham
Harrisonburg, Virginia

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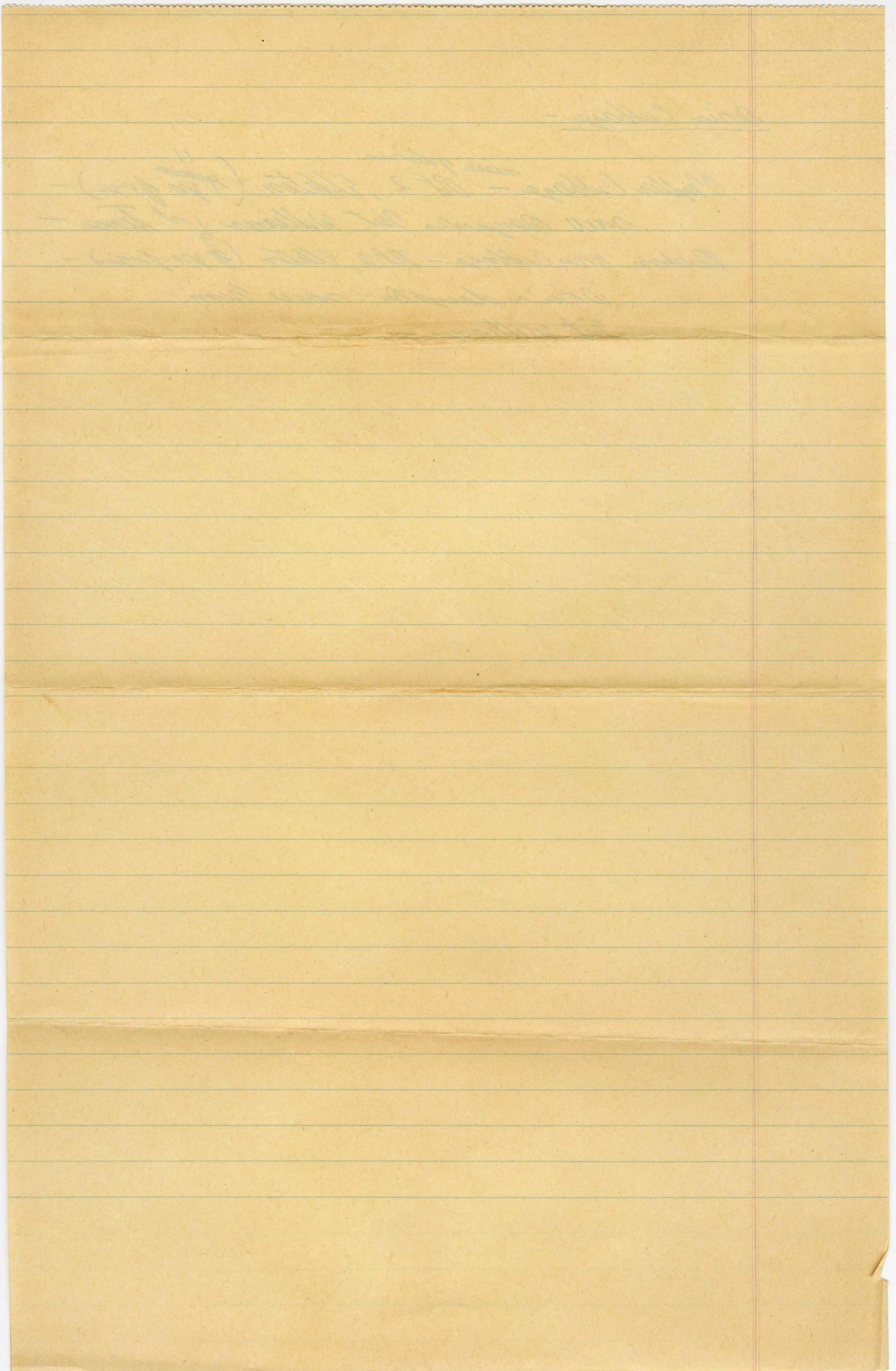
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Sincerely,

J. Lynn Lucas
J. Lynn Lucas

Doris Cabbage -

Phyllis Cabbage - ^{niece of Doris} Rt 2, Elkton (¹¹ ~~9~~ yrs of age) -
saw Benjamin Pitt Williams ¹ at time -
Barbara Ann Cabbage - Rt 2, Elkton (⁹ ~~8~~ yrs of age) -
Doris's daughter - saw him
Pitt Williams -



STATE OF VIRGINIA
COUNTY OF ROCKINGHAM

To-Wit: _____ No. _____

TO ANY SHERIFF OR POLICE OFFICER:

Whereas, JAMES R. SIPE

has this day made complaint and information on oath before me, IVAN D. LOKER
(Name)

JUSTICE OF THE PEACE

(Title)

of the said County, that

BENJAMIN FRANKLIN CUBBAGE, JR. in the said County

did on the 29th day of JULY, 1962: Unlawfully AND FELONIOUSLY

DID KILL AND MURDER ONE EVERETT WILLIAMS, AGAINST THE PEACE AND DIGNITY OF THE COMMONWEALTH OF VIRGINIA

These are, therefore, to command you, in the name of the Commonwealth, to apprehend and bring before the County Court of the said County, the body (bodies) of the above accused, to answer the said complaint and to be further dealt with according to law. And you are also directed to summon:

- _____ color _____ Address _____
- _____ color _____ Address _____
- _____ color _____ Address _____
- _____ color _____ Address _____
- _____ color _____ Address _____

as witnesses.

Given under my hand and seal, this 29th day of JULY, 1962

Ivan D. Loker (Seal)

(Title of Issuing Officer)
JUSTICE OF THE PEACE

STATE OF VIRGINIA—COUNTY OF _____, to-wit:

I, _____ a Judge of the County Court Justice of the Peace in and for the County aforesaid, State of Virginia, do certify

that _____

and _____, as his suret _____, have this day each acknowledged themselves indebted to the Commonwealth of Virginia in the sum of _____ Dollars

(\$ _____), to be made and levied of their respective goods and chattels, lands, and tenements to the use of the Commonwealth to be rendered, yet upon this condition: That the said _____, shall appear before the _____ Circuit Court of _____ County, on the _____ day of _____, 19____,

at _____ M., at _____, Virginia, and at any time or times to which the proceedings may be continued or further heard, and before any court thereafter having or holding any proceedings in connection with the charge in this warrant, to answer for the offense with which he is charged, and shall not depart thence without the leave of said court, the said obligation to remain in full force and effect until the charge is finally disposed of or until it is declared void by order of a competent court; and upon further condition that

the said _____ shall keep the peace and be of good behavior for a period of _____ days from the date hereof. Nonappearance shall be deemed to constitute a waiver of trial by jury.

Given under my hand, this _____ day of _____, 19____.

Judge. J. P.

DOCKET NO. _____

COMMONWEALTH

vs. } WARRANT OF ARREST

Executed this, the _____ day of _____, 19____

Upon the examination of the within charge, I find the accused

The following witnesses were recognized to appear before the _____ Circuit Court of _____ County, _____

Virginia, at _____ M., on the _____ day of _____, 19____, under penalty of \$ _____

COSTS

- Warrant _____ \$ _____
- Trial _____
- Bail _____
- Arrest _____
- Mileage _____
- Clerk _____
- Jail Fee and Board _____
- Witness Attendance _____
- Summoning Witnesses _____
- Commonwealth Attorney _____
- Total Costs _____ \$ _____
- Fine _____
- Total _____ \$ _____

- Fine _____ \$ _____
- Costs _____
- Total _____ \$ _____

CUBBAGE, BENJAMIN FRANKLIN, JR.

[Lynn Linton]
murder

7/30/62 - arraigned - p. r. set
for 8/30/62 -

Guinn - probably
see probation

9/14/62 - p. r. - sent to D. J. -

10/15/62 - A True Bill -
Entered plea of not guilty -
Trial - 11/21/62 -

11/21/62 - Verdict of not
guilty

Write
Do man
on
deposition
of
the