

## New Jersey Court of Errors and Appeals.

THE STATE

vs.

JOHN E. SCHUYLER.

Indictment for  
Murder.

Defendant convicted May 9, 1907.

Defendant sentenced May 14, 1907.

Writ of error tested June 4, 1907.

Writ of error returnable June 8, 1907.

There are but two errors assigned :

1. Remoteness of prior altercation.

(A) The general Rule is, That the objection of remoteness goes only to the weight and not to the competency of such evidence. Ency. of Evidence, vol. 6, p. 646, citing—

People vs. Hong, 61, Cal., 387.

People vs. Brown, 76, Cal., 573.

State vs. Hoyt, 46, Conn., 330.

Abbott vs. Com., 24, Ky. L. Report, 148.  
68, S. W. Report, 124.

State vs. Grant, 79, Mo., 113.

State vs. Adams, 76, Mo., 335.

State vs. Wright, 141, Mo., 333.

Territory vs. Roberts, 9, Montana, 12.  
22 Pac., 132.

It is no objection that threats were remote—

People vs. Decker, 157, New York, 186.

Remoteness of a threat may affect its weight but not its admissability. Encyclopedia of Law, 2nd ed., vol. 21, p. 221.

Remoteness is a question for the Court in the exercise of its discretion—

Com. vs. Holmes, 157, Mass., 233.

“ “ Abbott, 130, “ 472.

“ “ Ryan, 134, “ 223.

(B) The State insists that the printed book should furnish to this Court all the evidence showing the relations of the parties. Had it done so it would appear that the deceased and the defendant had two vicious fights, both instigated by the defendant, both without provocation from Riley, and in both of which the defendant was thoroughly whipped; that for the last one the defendant was convicted in Morris Co., and fined, as appears by his cross-examination, page 434.

It further appears that every effort of the State to show the existence of bad blood between the parties from the time of the first fight to the time of the killing was strenuously objected to by counsel for the defense, but that, nevertheless, it did appear by the evidence of John B. R. Clark, page 195, &c., that when they met in the village the night of the murder they did not speak.

The case further shows that though they lived in the same neighborhood for the past twelve years, there was no intimacy between them since the fight, nor could any one be found who could testify that they were ever on speaking terms since their first fight.

The second error assigned is to the charge of the Court, and in the alleged book handed to the Prosecutor on the night of June 17, is stated as follows only:

“His Honor of the Judge

“Then there is the evidence of blood upon the hands of the defendant and there was no blood, as far as appears, upon the hands of anyone else.”

“His Honor of the Judge also charged:

"You must take all these facts and consider whether they connect the defendant with the perpetration of this act, and whether the absence of similar circumstances in connection with any other person excludes the probability that another person could have been likely to commit the crime."

The State insists that even as here stated the language of the Court is entirely unobjectionable.

But the State also insists that it is unfair to cut out a mere excerpt and that the defence should have printed all that the Court said upon the subject, which is as follows :

"Then there is the evidence of blood upon the hands of the defendant, and there was no blood, as far as appears, upon the hands of any one else. That the blood existed seems to have been proven, and the defendant says he does not know whether, when he was in the bar-room at the time claimed, it existed on his hands or not, but he says if it did it must have come from wiping his nose; that he had been subject to nose bleeding ever since he convalesced from typhoid fever, and that he had an attack of nose bleeding that very afternoon, the inference being that the blood in his nose had partially coagulated, and he might, by wiping his hand across it, have saturated his hand in the way in which it was seen by Beatty and others. You must say whether that explanation renders it so probable that such is the manner by which the hand became saturated with blood as to leave it doubtful whether it occurred by reason of the defendant being a party to the violence originally inflicted upon Riley, or by his subsequent handling of or conduct with Riley. This blood seems to have appeared upon the defendant's hand when he first returned to the hotel that evening; whether he got his hand bloody from anything he did to Riley upon that first meeting, if he did meet him, is a question for you.

"You must take all these facts and consider whether

they connect the defendant with the perpetration of this act, and whether the balance of similar circumstances in connection with any other person excludes the probability that another person would have been likely to commit this crime. You can consider the circumstances entirely free from the alleged confession or consider them with the alleged confession; you consider whether they give force and probability to the evidence of Beam that Schuyler said to him what Beam said he did, and then, taking the whole case together, you are to say whether the evidence convinces you beyond a reasonable doubt that John Schuyler is the man who inflicted the injuries upon Riley that night."

This statement, as it appears in full, is obviously correct and there is nothing more to be said except that the charge in its entirety was pre-eminently clear, fair and legal.

Respectfully submitted,  
GEO. K. LARGE, Prosecutor.

June 25, 1907.

## New Jersey Court of Errors and Appeals.

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STATE OF NEW JERSEY,

*Defendant in Error,*

*vs.*

JOHN E. SCHUYLER,

*Plaintiff in Error.*

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Indictment

for

Murder.

### Brief for Defendant.

The evidence shows that the only unpleasantness that ever occurred between the deceased and the defendant was between ten and eleven years ago ; there were two fights which occurred within a week ; at the conclusion of the last altercation the defendant threw a stone at the deceased which did not hit him ; the defendant was worsted in both fights.

The defendant objected to the evidence as too remote.

There was no evidence that any unpleasantness of any nature had taken place in the interim, although they had lived most of the time in the same neighborhood and had met frequently. There was evidence that they had not spoken together since the trouble.

The authorities indicate that evidence of this

kind is competent and that remoteness alone is no bar, but there are very few cases where so long a time had elapsed. A thorough search has revealed but two, a Connecticut case, 46 Conn. 330, where the time was thirteen years, and the other an Indiana case, 96 Ind. 550.

Each case should be judged by the circumstances of that particular case.

In nearly all the cases there was some evidence to show that the ill will had continued, that threats had been made by the defendant or that he had been guilty of some act which indicated a continuance of the previous condition of mind.

This case is free from any evidence, of continued ill will save the negative testimony of the witnesses of the State, that the defendant and deceased were never observed to speak afterward. Neither did it appear that the defendant ever made any threats or did anything to show ill will within said time.

There was no caution to the jury by the trial Judge that the remoteness of the evidence affected its probative value; without that warning the jury would be much inclined to give it more consideration than it deserved to the damage of the defendant.

The charge of the Court that the jury were to take into consideration the fact that malice against the deceased had not been shown to have existed in any other person; that there did not appear to have been blood stains on the hands of

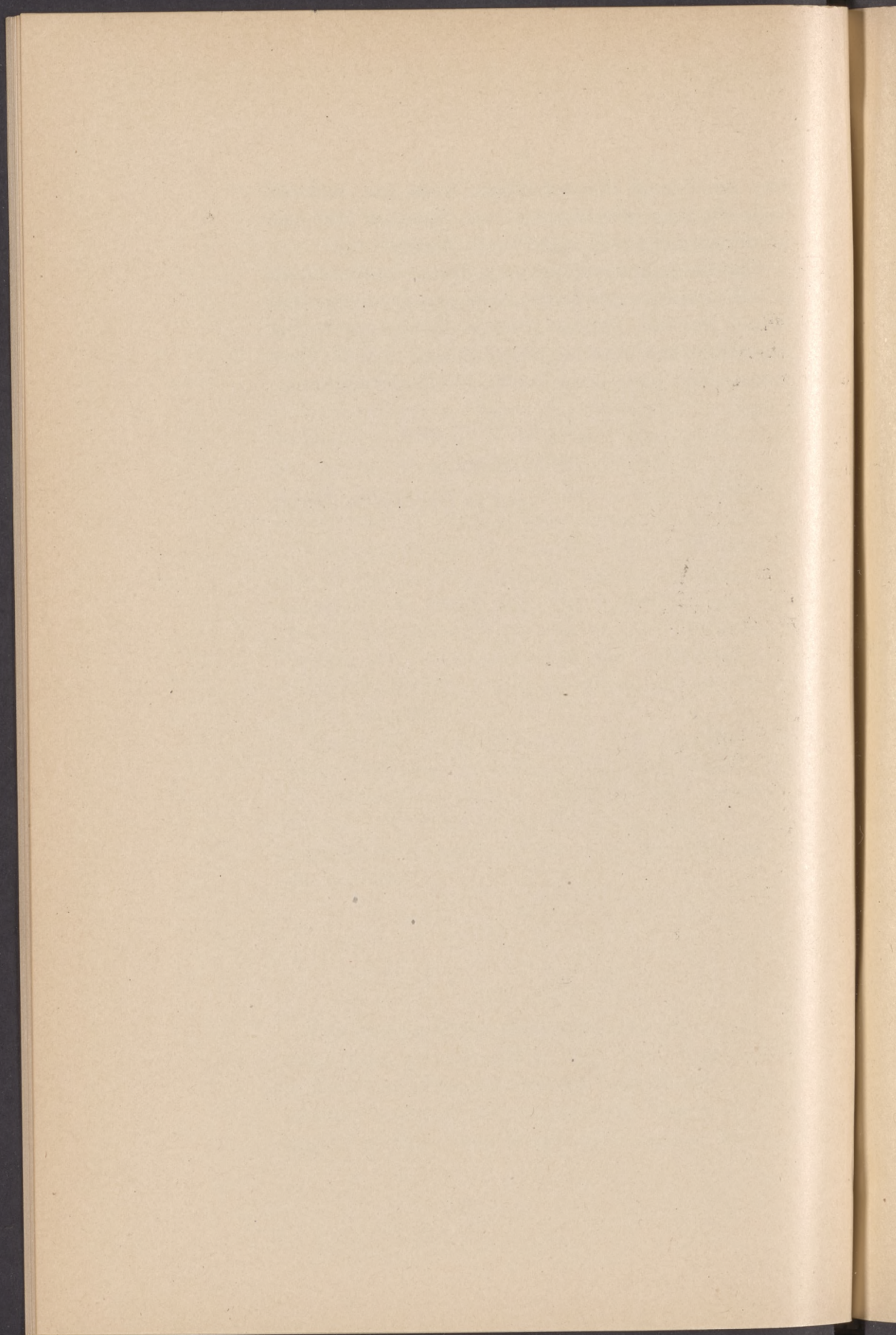
any one except the defendant, were not matters that the jury should have considered or that the Court should have called their attention to.

The defendant should have been convicted, if at all, upon the testimony that appeared, not that which did not appear, unless it appeared that there was the absence of some fact which must necessarily have been known to the defendant.

H. L. STOUT and

H. B. HERR,

*Att'ys Plaintiff in Error.*



## New Jersey Court of Errors and Appeals.

STATE OF NEW JERSEY,

*Defendant in Error,*

*vs.*

JOHN E. SCHUYLER,

*Plaintiff in Error.*

Indictment

for

Murder

*Returnable June 8, 1907.*

New Jersey, ss.

THE STATE OF NEW JERSEY to Alfred Reed, Esq., one of the Justices of the Supreme Court of the state of New Jersey, and to the Judge of the Court of Common Pleas of the County of Hunterdon, constituting the court of Oyer and Terminer, holden in Flemington in and for the county of Hunterdon, of the term of April in the year of our Lord nineteen hundred and seven.

Because in the record and process, and also in giving of judgment upon a certain indictment against John E. Schuyler, late of the township of Tewksbury, in the county of Hunterdon, for the murder of one Manning Reiley, pro ut the indictment and the several counts therein, whereof, before you he hath been indicted, and is thereof convicted by a certain jury of the county, taken between the state of New Jersey and the said John E. Schuyler, as it is said manifest error hath intervened to the great damage of the said John E. Schuyler, as from his complaint we have received information, we being willing, in his be- 20

## 2 New Jersey Court of Errors and Appeals.

half, to correct the error in due manner, if anywhere shall be, and that speedy justice be done to him the said John E. Schuyler, command you that if judgment be thereon given, then that you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our court of Errors and Appeals in the last resort in all causes of law to be held at Trenton on the eighth day of June next, and this writ, that the record and proceedings aforesaid being inspected,  
10 ed, we may further cause to be done thereupon for correcting that error, what of right and according to the laws and customs of New Jersey ought to be done.

Witness William J. Magie, our Chancellor and President Judge of our said court of Errors and Appeals at Trenton this fourth day of June nineteen hundred and seven.

H. L. Stout and H. B. Herr,  
Attorneys of Plaintiff in Error.  
Filed June 14, 1907.

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S. D. Dickinson, Clerk.

*The answer of the Judges of the Court of Oyer and Terminer within named. The record and proceedings whereof mention is within made, with all things touching the same, to the Court of Errors and Appeals in the last resort in all causes, within specified at the day and place within contained we certify in a certain schedule to this writ annexed, as we are within commanded.*

ALFRED REED,  
JOHN L. CONNET,

30

*Judges.*

*The execution of this writ appears by the schedule annexed.*

O. A. FAREEY, Clerk.

State of New Jersey, Hunterdon County, ss.

Hunterdon County, to wit: Be it remembered, that at a Court of Oyer and Terminer holden at Flemington, in and for the said County of Hunterdon, on the second Tuesday of April in the year of our Lord one thousand nine hundred and seven, before the Honorable Alfred Reed, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and Honorable John L. Connet, Judge of the Court of Common Pleas, in and for the said County, according to the form of the statute in 10 such case made and provided, by the oath of George F. Martens, Junior, Walter Martin, Frank Cole, James H. Willever, James B. Rockafellow, Lansing B. Baker, Samuel F. Fauss, John Q. Holcombe, Henry M. Harmon, Porter C. Little, George C. Cramer, William Sailor, James Kugler, Lawrence H. Trimmer, Daniel Mullaly, Harry Cramer, Joseph Altvater, Edward N. Danley, Austin L. Davison, Whitfield Kels, Richard Runkle, John Park, and Lewis C. Potts, good and lawful men of the said County of Hunterdon, duly summoned, and then and 20 there sworn, and charged to inquire for the State of New Jersey, in and for the body of the said County of Hunterdon, it is presented in manner and form following, that is to say:

Hunterdon Oyer and Terminer,  
April Term, A. D., 1907.

Hunterdon County, to wit:

The Grand Inquest of the State of New Jersey, in and for the body of the County of Hunterdon, upon their respective oath present, that John E. Schuyler, late of the 30 Township of Tewksbury in the County of Hunterdon, on the nineteenth day of January in the year of our Lord one thousand nine hundred and seven, with force and arms, at the township of Tewksbury aforesaid, in the County of Hunterdon aforesaid, and within the jurisdiction of this court, in and upon one Mannig Reiley in the peace of God and of this State then and there being, feloniously, wilfully, deliberately and of his malice aforethought did make an assault; and that the said John E. Schuyler with a certain fence paling of the length of four

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feet, and width of two inches and thickness of one inch, which he the said John E. Schuyler in his right hand then and there had and held, the said Manning Reiley in and upon the back part of the head of him the said Manning Reiley, then and there, feloniously, wilfully, deliberately, and of his malice aforethought did strike and beat, giving to the said Manning Reiley then and there, with the fence paling aforesaid, in and upon the back part of the head of him the said Manning Reiley, one mortal wound  
10 of the breadth of four inches and of the depth of one inch; of which said mortal wound he the said Manning Reiley then and there instantly died; and do the Grand Inquest aforesaid, upon their respective oath aforesaid do say, that the said John E. Schuyler him the said Manning Reiley, in manner and form aforesaid, feloniously, wilfully, deliberately and of his malice aforethought, did kill and murder; against the peace of this state the government and dignity of the same. And the Grand Inquest aforesaid, upon their respective oath aforesaid, do  
20 further present, That the said John E. Schuyler on the nineteenth day of January in the year of our Lord one thousand nine hundred and seven, with force and arms, at the Township of Tewksbury aforesaid, in the County of Hunterdon aforesaid, and within the jurisdiction of this court, in and upon the said Manning Reiley, in the peace of God and of this State, then and there being feloniously, wilfully, deliberately, premeditately, and of his malice aforethought, did make an assault; and that the said John E. Schuyler with a certain dangerous weapon  
30 and instrument to the Grand Inquest aforesaid unknown, which he the said John E. Schuyler in his right hand then and there had and held, the said Manning Reiley, in and upon the back part of the head of him the said Manning Reiley, then and there feloniously, wilfully, deliberately, premeditately and of his malice aforethought, did strike and beat, giving to him the said Manning Reiley, then and there, with the said dangerous weapon and instrument, to the Grand Inquest aforesaid unknown, in and upon the back part of the head of him the said Manning

Reiley, divers mortal bruises, contusions, fractures, and wounds; of which said mortal bruises, contusions, fractures, and wounds, he the said Manning Reiley then and there instantly died; and so the Grand Inquest aforesaid, upon their respective oath aforesaid, do say, that the said John E. Schuyler, him the said Manning Reiley in manner and form aforesaid, feloniously, wilfully, deliberately, premeditatedly and of his malice aforethought did kill and murder; contrary to the form of the statute in such case made and provided, and against the peace of 10 this State, the government and dignity of the same. And the Grand Inquest aforesaid, upon their respective oath aforesaid, do further present, That the said John E. Schuyler, on the nineteenth day of January in the year of our Lord one thousand nine hundred and seven, with force and arms, at the township of Tewksbury aforesaid, in the County of Hunterdon aforesaid, and within the jurisdiction of this court, in and upon the said Manning Reiley in the peace of God and of this State then and there being, feloniously, wilfully, deliberately, premedi- 20 tately and of malice aforethought, did make an assault; and him the said Manning Reiley then and there, feloniously, wilfully, deliberately, premeditatedly, and of his malice aforethought, did kill and murder: contrary to the form of the statute in such case made and provided, against the peace of this State, the government and dignity of the same.

Geo. K. Large,

Prosecutor of the Pleas.

Geo. F. Martens, Jr., 30  
Foreman.

(Endorsed)

Hunterdon Oyer & Terminer, April Term, A. D., 1907.

|                   |   |                        |
|-------------------|---|------------------------|
| The State         | } | Indictment for Murder. |
| vs.               |   |                        |
| John E. Schuyler. |   |                        |

Geo. K. Large,

Prosecutor of the Pleas.

A true bill,

Geo. F. Martens, Jr., Foreman.

And afterwards, that is to say, at the same Court of Oyer and Terminer, held at Flemington aforesaid, in the County aforesaid, on Monday the twenty-second day of April, in the year last aforesaid, before Honorable Alfred Reed, Justice of the Supreme Court of the State of New Jersey and John L. Connet, Esquire, Judge of the Court of Common Pleas in and for the said County, comes the said John E. Schuyler in his proper person, and now here, touching the premises in the said indictment above speci-  
10 fied and charged upon him, being asked in what manner he will acquit himself thereof, he says he is not guilty thereof, and of this he puts himself upon the country; and the said George K. Large, Esquire who prosecutes for the State in this behalf, does likewise the same, and afterwards, that is to say, at a Court of Oyer and Terminer held at Flemington aforesaid, in the County aforesaid, on Monday the sixth day of May in the year last aforesaid, before the Honorable Alfred Reed, Justice of the Supreme Court of the State of New Jersey, and John  
20 L. Connet Esquire, Judge of the Court of Common Pleas in and for said County, the said John E. Schuyler being set at the bar, George K. Large, who prosecutes for the State, moves the trial of the indictment aforesaid, wherefore, let a jury thereupon come, on this day last aforesaid, before this Court of Oyer and Terminer aforesaid, of good and lawful men of the County of Hunterdon aforesaid, by whom the truth of the matter may be better known, and who are not of kin to the said John E. Schuyler, to recognize upon their oaths whether the said John  
30 E. Schuyler be guilty of the murder in the indictment aforesaid above specified, or not guilty because as well the said George K. Large, who prosecutes for the State in this behalf, as to the said John E. Schuyler have put themselves upon the said jury, and the jurors of the said jury, by Elisha W. Opdycke, Esq., Sheriff of the said County of Hunterdon, for this purpose empanelled and returned agreeably to the statute in such case made and provided, to wit, Henry B. Kline, Horace M. Reading, Oscar Burd, George Clickenger, John Lambert, Erastus C. Rockafellow, Harry S. Warne, Stewart Anthony,

George W. Hunt, Frank Whitlock, Asher Carrell, George M. Britton, who being chosen, tried and sworn, to speak the truth of and concerning the premises, upon their oaths say that the said John E. Schuyler is guilty of murder in the first degree, on him above charged in the form aforesaid, and as by the indictment aforesaid is above supposed against him, and thereupon the said John E. Schuyler is remanded to the custody of the Sheriff of the County of Hunterdon aforesaid, and afterwards that is to say, at the same Court of Oyer and Terminer, holden 10 at Flemington aforesaid, in the County aforesaid on Tuesday the fourteenth day of May, in the year last aforesaid before the Honorable Alfred Reed, Justice of the Supreme Court of the State of New Jersey, and John L. Connet, Esquire Judge of the Court of Common Pleas in and for the said County of Hunterdon, the said John E. Schuyler being set at the bar, George K. Large, who prosecutes for the State in this behalf moves for judgment on the said John E. Schuyler, the defendant aforesaid, whereupon the Court now here do order and ad-20 judge, and the judgment of the Court is, that the said John E. Schuyler be returned to the County Jail from whence he came, and there to be kept in confinement until Friday the twenty-eighth day of June next, and on that day, between the hours of ten o'clock in the forenoon and six o'clock in the afternoon, he be taken to the place of execution, and there hanged by the neck until he is dead. I do herewith send to our Court of Errors and Appeals in the last resort in all causes the return of the caption indictment together with all things touching and 30 concerning the same as fully and entirely as the same remain of record in my office.

In witness whereof I have hereto set my hand and the seal of said Court at Flemington, this eighth day of June, A. D., 1907.

O. A. FARLEY,  
Clerk Court of Oyer and Terminer, Hunterdon County,  
New Jersey.

## Hunterdon Court of Oyer and Terminer.

|                   |   |                     |
|-------------------|---|---------------------|
| The State         | } | HOMICIDE            |
| vs.               |   | BILL OF EXCEPTIONS. |
| John E. Schuyler. |   |                     |

George K. Large, Prosecutor.

H. L. Stout, }  
H. B. Herr, } Attorneys for the Defendant.

10 Be it remembered that on the Sixth day of May in the  
year of our Lord nineteen hundred and seven, at a Court  
of Oyer and Terminer holden at Flemington, in and for  
the County of Hunterdon, before Hon. Alfred Reed, Jus-  
tice of the Supreme Court, and Hon. John L. Connet, Jus-  
tice of the Court of Common Pleas, of the County of  
Hunterdon, the issue joined in the above-stated cause be-  
tween the said parties, came on to be tried by a jury for  
that purpose duly empaneled; and, thereupon, the said  
George K. Large, the Prosecutor, of the County of Hun-  
20 terdon, to maintain issue on his part offered Harry Hand  
a witness on the part of the State who was asked:—

Q. Were you ever present at any altercation between  
Manning Riley, the deceased and the defendant, John  
Schuyler?

A. I was.

Q. Where was it?

A. In Califon.

Q. About when was it?

A. Between ten and eleven years ago, as near as I can  
30 tell you.

Q. And they have both lived in that locality since?

A. Well, they did at that time.

MR. HERR. I object to any evidence concern-  
ing that altercation as being too remote.

Objection overruled.

Defendant's counsel pray an exception to the  
above ruling. Exception allowed; let it be sealed  
and it is sealed accordingly.

ALFRED REED,  
Judge.

Prosecutor on part of the State also called Charles Miller.

Q. Were you present at an altercation between Riley and Schuyler?

A. I was.

Q. Where did it occur?

A. At the store there, Beatty's store, right in front. The fight was in the road. I was in the store there.

MR. HERR. We object to this as too remote.

THE COURT. Note the objection and the exception. Exception allowed; let it be sealed and it is sealed accordingly.

Judge.

Prosecutor called a witness Abraham Philhower, he testified.

Q. Do you know the defendant Schuyler very well?

A. Yes sir.

Q. And Manning Riley very well?

A. Yes sir.

Q. Were you present at this conflict in front of Beatty's Store?

A. I got there before they was up out of the road.

Q. You were not in the store when they started?

A. No, sir, I was home.

MR. HERR: I make the same objection with regard to evidence of this fact as to the previous witness.

THE COURT: The same objection and the same ruling. Defendant's counsel pray an exception to the above ruling of the court. Exception allowed; let it be sealed and it is sealed accordingly.

ALFRED REED,

Judge.

His Honor of the Judge.

Then there is the evidence of blood upon the hands of the defendant and there was no blood, as far as appears, upon the hands of anyone else.

His Honor of the Judge also charged.

You must take all these facts and consider whether

## 10 New Jersey Court of Errors and Appeals.

they connect the defendant with the perpetration of this act and whether the absence of similar circumstances in connection with any other person excludes the probability that another person would have been likely to commit this crime.

Filed June 14, 1907.

S. D. DICKINSON, CLERK.

### NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY, } In Error  
                                          VS.        } Assignment of Errors.  
10     JOHN E. SCHUYLER.

And now at this day, the plaintiff in error assigns the following causes of Error :

- 1     Because the Court of Oyer and Terminer, of the County of Hunterdon, admitted evidence of a fight between the said John E. Schuyler and the deceased, which occurred more than ten years before, and there was no evidence that connected it with the killing of the deceased.
- 20    2.   Because said charge of the Court, charged the jury that it did not appear that blood was seen on the hands of any one else than the defendant on the night of the murder.

H. L. STOUT, Attorney and

H. B. HERR, of Counsel with

Plaintiff on Error

COUNSEL SUMMED UP.

THE CHARGE.

REED, S. C. J., As you are well informed by this time, gentlemen, on Saturday evening, January 19th, 1907, at about eight o'clock, Manning Riley was seen at Emery's Hotel, at Califon, living. In an hour or so afterwards he was found dead in a road in that village. The autopsy made by the physicians disclosed a fracture of the skull near the rear base of the brain, and such injury to the brain that, in the opinion of those experts, these injuries <sup>10</sup> caused his death. I think, therefore, you will have no trouble in finding that Manning Riley died from the result of the violence visited upon him that night. If so, the question is whether the violence was the result of the actions of some person and not the result of an accident. I think you will have no trouble upon that point, nor in finding that it is beyond a reasonable doubt that Manning Riley was killed by the hand of some person.

Having passed that point, beyond a reasonable doubt, the state insists that the injury to the deceased was inflicted in some way by the defendant now on trial. <sup>20</sup>

The first question is whether the State has properly fixed the identity of the perpetrator of that violence.

The first alleged fact in the case is that the defendant confessed to having killed Riley. The rest of the case, apart from that, is based upon circumstantial evidence.

The State has the right to prove its case by a confession or by a confession supported by some circumstantial evidence, or, excluding the confession, by such proof in the way of circumstantial evidence as satisfies you <sup>30</sup> beyond a reasonable doubt that the defendant was the man who committed the crime charged.

While I do not intend to go over in detail the testimony which has been so elaborately and excellently summed up to you by the counsel on either side, I wish to call your attention for a moment to the character of this confession.

You recall, that Henry Beam's story is that he was called out of the barroom on to the porch of the hotel by the defendant who informed him that he the defendant

had killed Manning Riley; and you will recall Henry Beam's reply. The improbability of such a startling remark being made, and received so coolly and then followed up by a drink as has been testified, has been very forcibly commented upon by counsel for the defendant; and it does strike you as strange that a man who had committed a crime of this sort should call out a person and say to him "I killed so-and-so." In the first place you must recall the fallibility of human memory, particularly in reproducing conversations. The defendant may have said something to Beam and yet it may not have been in the exact words which Beam states. He may have said "I have done up Riley" or, "I have struck Riley and I am afraid I killed him" or something of that sort. The main point at this stage of the case is whether anything was said by the defendant to Beam at that time, which indicated to Beam that the defendant had come in contact with Riley and done him an injury. It does not matter whether Schuyler said he had killed Riley or  
20 whether he said he had struck him, or had a difficulty with him. Either expression would be of the same evidential force in tying the defendant to the perpetration of the violence upon Riley. So, while it may seem very strange, and does seem strange, that the defendant should come out and say to this witness "I have killed Riley," it may be that the words as reported are only a shade of words which were really said.

That something was said to Beam at the time he states, would be somewhat fortified if you believe that Beam  
30 and Ezra Schuyler subsequently followed the defendant Schuyler up the road and hid themselves behind the willow tree as they say they did.

That appears to be a new feature in their testimony,—they did not state before the Coroner's Jury that they concealed themselves behind the willow tree; and that is commented upon and it is a feature of the case which you should take into account. But you should also take into account that the class of witnesses to which both Beam and Ezra Schuyler belong, is unfamiliar with legal processes and undesirous, as a rule, of going into the wit-

ness chair, and, when there, very often answer, when asked "Why didn't you state so and so?" "I was not asked." They do not consider that their oath was to tell the whole truth; and that may explain the reason why heretofore neither of these witnesses testified to that occurrence. However, that is a circumstance for you to take into account. But if you believe they did that, would it not be evidential that Schuyler, the defendant, must have said something to Beam before he left the hotel to go up the road, which induced the two to follow 10 him and to cut across the field and conceal themselves and await his movements; otherwise, it would seem inexplicable as to what could have induced them to do so.

You are to take that testimony, gentlemen, and give it such force as you please.

If you believe the defendant said he killed Manning Riley, or that he struck Manning Riley then, having come to the conclusion from the other testimony beyond a reasonable doubt that Riley was killed by violence, you would have the right, upon confession alone, to convict 20 the defendant. But in this case I charge you, as a matter of precaution, as well as law, that this confession, as proved, should be fortified by other facts corroborating it before a verdict against the defendant can be based upon it.

Therefore, we next come to the other facts in the case, —not that I intend to go over them minutely, but only so far as to call to your attention those matters you have a right to rely upon and which are to my mind of the greatest importance as evidence in the case. 30

In the first place the question of motive is of very great importance. A man can be convicted of any crime, including murder, without the proof of any motive. Motive is not absolutely essential in the State's case, in proving murder, but it is a very important feature, because it helps to tie a particular person to the act itself. So, being proved, the absence of any evidence of a motive on the part of any one else would help to exclude the probability of any one other than the defendant being the perpetrator of the criminal act. You have heard the al-

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leged motive of Schuyler discussed. The motive, if it existed, seems to have arisen from the fact that some ten years ago Riley and the defendant had a conflict in which Riley was the conqueror and Schuyler, the defeated party. And, so far as appears, since that time, and possibly before that time, as was suggested by counsel, they never have had any intercourse.

It is for you to say whether a man of the character of the defendant, probably proud of his physical prowess  
10 and suffering the mortification of a defeat at Riley's hands, would keep lurking in his heart all these years such a hatred as would lead to an act like this. Then, again, the state insists that this defendant had an opportunity to commit this crime, that opportunity being that as Riley passed off the porch of the Emery house that night, John Schuyler followed him, followed him so closely that the witness Cole says he was not over twenty or thirty feet behind him. It is said that Schuyler is a rapid walker. Riley had this bag of meat which  
20 he was carrying home. If they continued their way and if Schuyler was going to Hoover's, where he and Minnie were to spend the night, he must have been not far from the deceased when the blow was struck by somebody. The defendant says, however, that he stopped, first at the post office and then at the crossing. If so, he would have been quite a distance away from the place where the body was found, at the time of the occurrence. It is for you to say what the probability is and whether he did stop at the crossing or whether he followed Riley  
30 up to the point where the violence was inflicted. In connection with that, the State relies upon the manner by which Schuyler is said to have partially concealed himself in the doorway, and, as it claims, possibly armed himself and waited until Riley passed out in front of him. That is a circumstance which you are to pass upon and if the evidence convinces you that it actually exists you are to give it such force as you think it is entitled to.

Then there is the evidence of blood upon the hands of the defendant and there was no blood, as far as appears.

upon the hands of any one else. That the blood existed, seems to have been proven, and the defendant says he does not know whether, when he was in the barroom at the time claimed, it existed on his hands or not, but he says that if it did it must have come from wiping his nose; that he had been subject to nose bleeding ever since he convalesced from typhoid fever and that he had an attack of nose bleeding that very afternoon, the inference being that the blood in his nose had partially coagulated and he might, by wiping his hand across it, <sup>10</sup> have saturated his hand in the way in which it was seen by Beatty and others. You must say whether that explanation renders it so probable that such is the manner by which the hand became saturated with blood as to leave it doubtful whether it occurred by reason of the defendant being a party to the violence originally inflicted upon Riley, or by his subsequent handling of or conduct with Riley. This blood seems to have appeared upon the defendant's hand when he first returned to the hotel that evening; whether he got his hand bloody <sup>20</sup> from anything he did to Riley upon that first meeting, if he did meet him, is a question for you.

Then, again, a feature more striking than the blood possibly, is the swollen hand. Does the evidence show that the condition in which the hand was found after that Saturday night, existed before that Saturday night? You have heard the testimony of a number of witnesses who had an opportunity to see the defendant's hands on Saturday and who observed neither blood nor the protruberance on the hand. That such protruber- <sup>30</sup> ance existed after Saturday night is an admitted fact. From all the facts in respect to that is it clear to you that the broken bone in the hand was the result of the defendant's participation in, or attempt to, inflict violence upon the deceased? Did he strike the deceased with his fist either naked or armed with knuckles? Did the deceased fall forward on his face, and were the other wounds subsequently inflicted by the defendant either for the purpose of producing extinction of life, or for the purpose of misleading as to the character of the blows

which resulted in death? Those are questions for you. In connection with that is the evidence of the defendant's visit to Emmons' at twelve o'clock on Saturday night. It is testified that he visited Emmons and knocked at the door; he was invited in, he sat down a few moments and pretty soon he said "Manning Riley was killed tonight." I said 'Manning Riley got killed?' and he said 'Yes, Manning Riley got killed and somebody killed him.' I said 'Where was Manning Riley?' He said 'He laid along the big road by John Sutton's place.' I said 'What did they do with him?' He said 'They took him out to Apgar's wagon factory.'" Mr. Emmons says that the defendant then stuck out his hand and said "'Look at that hand, ain't it awful, where Charley Hoover pushed me down the cellar steps.' I said 'I don't remember that John.' He said 'Yes, you do.' I said 'John, I don't remember that' and he said 'You can remember that,'" and Emmons says that he then gave him no answer.

20 The first question in this connection is whether that is an accurate statement of what took place. I have already warned you as to the fallibility of human memory in recollecting conversations, but if it is substantially accurate what did that conversation, at twelve o'clock on Saturday night, mean? Did it mean that the defendant wanted Emmons to fabricate a story as to how that injury to his hand had occurred, and, if he did, why did he want Emmons to do it at that particular time. These are questions for you.

30 There is another question in the case and that is whether it is true that about half past eight (because it is impossible to fix time with accuracy unless a time-piece is looked at when the event occurs) John Schuyler ran down the railroad track to the road. The witness Stevens says he saw him do it. This was in a direction from where this body lay; Stevens says he was within twenty feet of the defendant when Schuyler struck the road, that he knew Schuyler and recognized him. It is said that Stevens was not produced before the Grand Jury. But what of that? The State does not produce

all its witnesses before the Grand Jury. Again it is said that Stevens stated outside of the court room that he did not see John Schuyler that night. Minnie Sutton and Miss Beam said this. They may tell the truth. That is a question for you; it is for you to say whether a man of Stevens' appearance would come here in a case like this, of such importance, and perjure himself by saying that he saw John Schuyler that night running down the railroad and saw him strike the road, and as to whether he could be mistaken when he said the defend-  
10  
ant struck the road about twenty feet away from where he, Stevens, stood. But you should also take Stevens' story in connection with Miss Philhower's evidence. She says that sometime, a quarter before nine, she says, but as I said before, it is very difficult to fix time accurately, she saw a man running down the road in a direction which, if pursued, would have brought him out past the culverts to the road, into which Stevens says he saw Schuyler run.

I will not take up any more circumstances. I have 20  
only spoken of those which appear to me to be important, but of course the blood stains and other circumstances may be also important. It seems to me the circumstances which you should consider particularly in fixing the identity of the man who committed this deed are the motive, the opportunity, the manner, in which the defendant followed the deceased, the blood upon the hand, the injured hand and the racing of this person, sworn to be John Schuyler, down the railroad and so to the road.

You must take all these facts and consider whether they connect the defendant with the perpetration of this act and whether the absence of similar circumstances in connection with any other person excludes the probability that another person would have been likely to commit this crime.

You can consider the circumstances entirely free from the alleged confession or consider them with the alleged confession; you can consider whether they give force and probability to the evidence of Beam that

Schuyler said to him what Beam said he did, and then, taking the whole case together you are to say whether the evidence convinces you beyond a reasonable doubt that John Schuyler is the man who inflicted the injuries upon Riley that night.

If you reach that conclusion the question arises as to the degree of the defendant's criminality. In cases of homicide there are three degrees, murder in the first degree, murder in the second degree and manslaughter.

10 I will first speak of manslaughter. Manslaughter consists in the killing of a human being without malice; intentional manslaughter occurs when the reason is obscured by passion, from some adequate provocation which arouses hot blood and obliterates mental control over the judgment. The provocation must be adequate, provoking words are not adequate, nor is slight physical violence adequate. Usually the question of adequate provocation arises in cases of mutual combat. The rule is that if two men engage in a fight and while the pas-  
20 sions are aroused a blow is struck which kills, the offence is only manslaughter. That is not so, however, when the fight is provoked and sought by the offender for the very purpose of killing the other. This, I think is sufficient on the question of manslaughter, because unless you find some evidence in the case that there was mutual combat and that John Schuyler was provoked by physical violence to inflict the blow which resulted in death, there can be no question of manslaughter. Of course, I am assuming that you have found that the  
30 defendant inflicted the blow, as I have already said.

If you find beyond a reasonable doubt that the degree of the defendant's criminality, if any, is not that of manslaughter, the question is in what degree of murder is he guilty.

Murder in the first degree is defined by our statute, so far as it would meet the facts of this case, as a wilful, deliberate and premeditated killing. Therefore, to constitute murder in the first degree it is essential that there be an intention, not merely to do some grievous bodily harm, but an intention to take life and the intention

must have been deliberately formed before the killing and before the intent was executed. The deliberatness of the intention need not exist for a long period before its execution for if the intention exists for an appreciable period of time before it is executed, it is sufficient to brand the killing as willful and premeditated murder.

Murder in the second degree may consist in an intent either to kill or to merely commit severe or enormous bodily harm, such harm being followed by the death of the person injured.

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The distinction between these two degrees of murder depends upon, first, an intention to kill and not merely to inflict a grievous injury and, secondly, upon the premeditation and the intent to kill. Should you find beyond reasonable doubt that the violence inflicted upon Riley was premeditated the question would then remain whether John Schuyler, when he inflicted the blows which resulted in death, if he did, so intended to kill the deceased or only intended to inflict severe injury without an intention that it should result in death. If the 20 defendant went to the place of this occurrence that night with the idea of severely punishing Riley and by means of a paling or any other instrument inflicted a blow upon the deceased for the purpose of punishing and severely injuring him, but not intending to kill him, and that blow resulted in death, the defendant would be only guilty of murder in the second degree. That is the distinction. Therefore, all the testimony in regard to the hair upon one picket and the blood upon the other and the testimony in respect to the character of the 30 wound is important for the purpose of ascertaining, if possible, how these injuries were inflicted so as to judge whether they were inflicted in such a way as to leave the inference beyond a reasonable doubt that there was an intention to kill.

Often the intent may be determined from the character of the weapon used. A man firing at another with a pistol and killing him raises the inference at once that he intended to do what the weapon he used was calculated to do—that he intended to kill. So, if a man uses

a long dagger, a poinard, and stabs another, the inference is that having used a deadly weapon his intent was to do what that weapon was calculated to do, and so to kill. But in this case there is no proof except such as has been offered in the shape of the fence picket produced here, as to what weapon was used and the character of the weapon can only be inferred from the nature of the wounds as they have been described.

Therefore, gentlemen, the distinction between the two  
10 degrees of murder, that of murder in the first degree and murder in the second degree, depends here entirely upon the question of premeditation, in the first place, about which I do not suppose there will be any difficulty, and then on the question of whether it appears beyond a reasonable doubt, that John Schuyler, assuming he struck the fatal blows, intended to kill the deceased. If he went there and struck Riley and the deceased fell forward on his face and the defendant then ran away, and did not intend to kill, that he returned  
20 again to see whether he had killed him, and struck no more blows—mind you, I say if he did not originally intend to kill—he would be guilty of murder in the second degree. If he went there with the intention of killing when he struck the first blow he would be guilty of murder in the first degree. If he did not intend to kill when he first struck the blow and he then left and afterwards returned and inflicted further injuries with the intention of extinguishing life (upon the theory advanced by the State) he would be guilty of murder in the first degree.  
30 Therefore you should keep that distinction in mind; if you find deliberation, the distinction between murder in the first degree and murder in the second degree, is as to whether the intention was to do bodily harm without killing, or to kill.

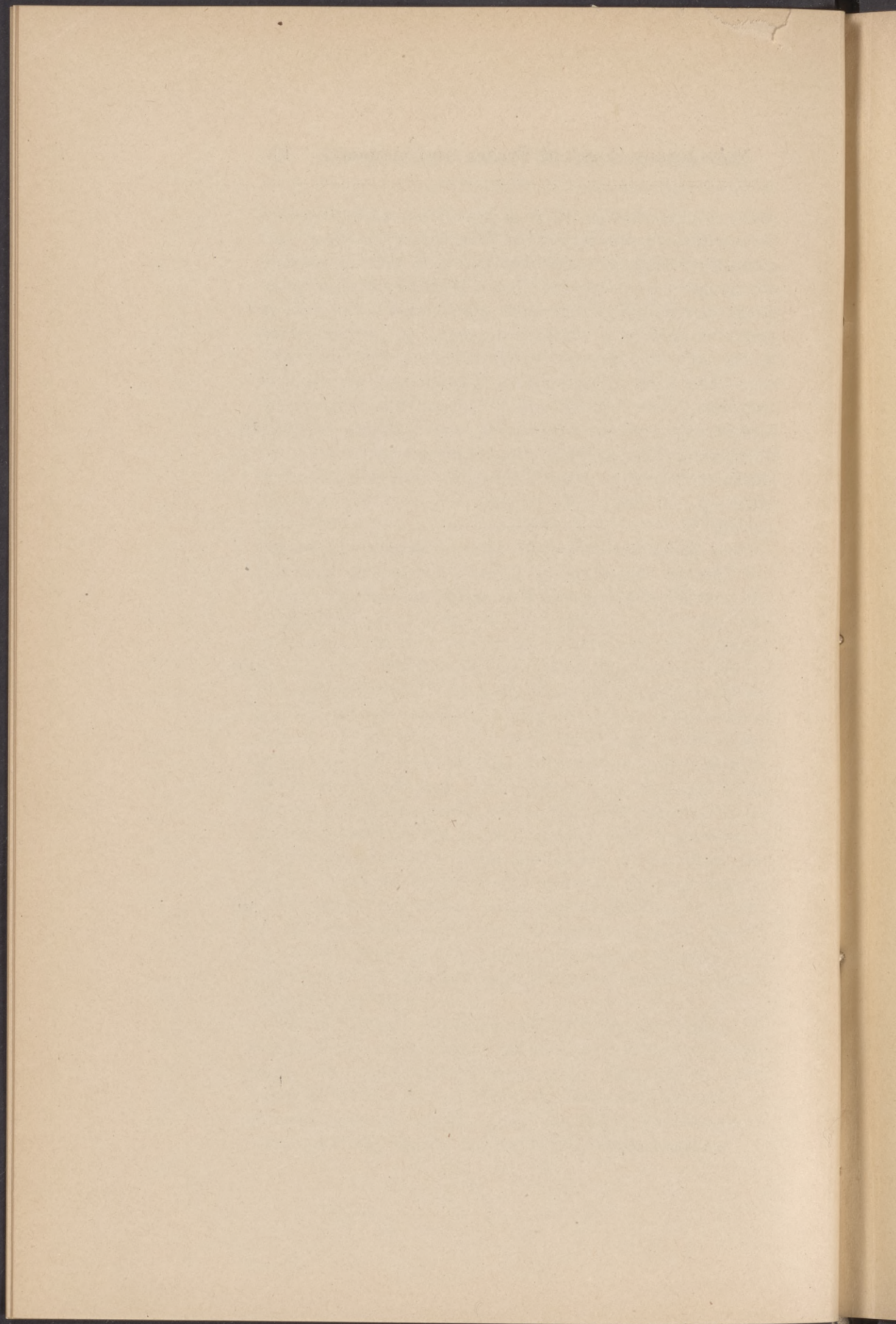
The defendant is entitled to all reasonable doubt. He is entitled to a reasonable doubt as to whether he is the man who committed this deed at all. If there is a reasonable doubt in your mind as to whether he is guilty of manslaughter or murder, he is entitled to the benefit of that doubt and should be convicted of manslaughter. If

there is a reasonable doubt in your mind as to whether he is guilty of murder in the first degree he should be given the benefit of that doubt and be convicted of murder in the second degree. But if there is no reasonable doubt in your mind that he is guilty, and that he is guilty of murder in the first degree, it is your business to say so. You are not responsible for the result any more than I am. My business is to charge you the law and then I am through and it is your business to say whether the evidence proves to your satisfaction that <sup>10</sup> the defendant is guilty of the crime charged in the indictment, and then you are through. The law does the rest.

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Defendant's counsel pray a general exception to the charge of the Court. Excception allowed, let it be sealed, and it is sealed accordingly.

JUDGE.



# New Jersey Court of Errors and Appeals

1890

Volume 1

Part 1

Part 2

Part 3

Part 4

Part 5

## REPORT OF THE COURT OF ERRORS AND APPEALS

The Court of Errors and Appeals, created by the Constitution of the State of New Jersey, and organized by the Act of the Legislature of 1844, Chapter 111, has the honor to submit herewith its report for the year 1890. The Court has the pleasure to announce that it has held its sessions during the year, and has rendered its decisions in the cases brought before it. The Court has also held its sessions for the purpose of receiving and considering the reports of the Justices of the Peace, and has rendered its decisions in the cases brought before it. The Court has also held its sessions for the purpose of receiving and considering the reports of the Justices of the Peace, and has rendered its decisions in the cases brought before it.

Attest: This 1st day of January, 1891, at Trenton, New Jersey.

