

John D. Lee, Second Trial

Judge Jacob S. Boreman
Charge to the Jury

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[[Bk 6 29 cont.]]788

WEDNESDAY [space]

BOREMAN J. TO THE
JURY [space]
JURY CALLED [space] *SPEECHES*[?]
TO THE JURY AND TO THE BAR
ALSO WAS *NTRPRN/NPRN*[?]
SO/SHOW/SH[?] *IT/AT*[?] CONVICTION
SO/SHOW[?] TOO MADE
EXAMINATION THIS MATTER UNTIL
LATE INTO THE NIGHT LAST NIGHT
AND *MUST/MYSELF*[?] AFTER THIS I
HAVE *GENERALLY*[?] IT AFTER
HAVING ←-[?]→ IT ALL READ [space]
OVER[?]. I THINK THIS COVERS ALL
THE GROUND IF THERE BE ANY
CHANGES HERE ~ [space]
GENTLEMEN OF THE JURY
IN ORDER TO AID YOU IN ARRIVING
AT A CORRECT CONCLUSION IN
YOUR VERDICT THE DUTY
DEVELOPED UPON ME TO
GIVE YOU ANY *CHARGE*[?] AND LAW
APPLICABLE ^{[[30]]} TO THE CASE AND
SUGGESTION AS THE
NECESSITY OF THE CASE
SEEM TO REQUIRE
YOU ARE TO BE THE SOLE
JUDGES OF THE FACTS AND OF THE
CREDIBILITY OF THE WITNESSES
AND WHATEVER I MAY SAY TO YOU
RESPECTING FACTS

[*Jacob S. Boreman, Charge to Jury,*
September 20, 1876, CCF 31.]

IN THE DISTRICT COURT FOR THE
SECOND JUDICIAL DISTRICT OF
UTAH TERRITORY:
SEPTEMBER TERM, 1876;
THE PEOPLE &^c}
VS.}
JOHN D. LEE, IMPLEADED WITH &^c
DEFENDANTS}
CHARGE OF THE COURT TO THE
JURY:

GENTLEMEN OF THE JURY:
IN ORDER TO AID YOU IN ARRIVING
AT A CORRECT CONCLUSION IN
YOUR VERDICT, THE DUTY
DEVOLVES UPON THE COURT TO
GIVE YOU IN CHARGE THE LAW
APPLICABLE TO THE CASE, AND TO
MAKE SUCH SUGGESTIONS AS THE
NECESSITIES OF THE CASE MAY
SEEM TO REQUIRE.
YOU ARE, HOWEVER, THE SOLE
JUDGES OF THE FACTS AND OF THE
CREDIBILITY OF THE WITNESSES;
AND WHATEVER I MAY SAY TO YOU
RESPECTING THE FACTS,

788. A drawing of a gate appears on the verso of page 29.

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<p>ALTHOUGH IT MAY ASSIST YOU IN THE CIRCUMSTANCES OF THE CASE IS NOT BINDING UPON YOU AS YOU ARE THE SOLE JUDGES OF THE FACTS SO ON THE OTHER HAND THE COURT IS THE SOLE JUDGE OF THE LAW AND THE JURY CAN'T PASS THEIR JUDGMENT UPON ANY CASE OF LAW THEREFORE WHATEVER IS DECLARED BY THE COURT TO BE THE LAW IS CONCLUSIVE AND BINDING UPON THE JURY [space] THE PRISONER AT THE BAR JOHN D. LEE STANDS BEFORE YOU CHARGED WITH BEING A PARTICIPANT AND LEADER IN <i>THE/A</i>[?] MOST ATROCIOUS AND UNPROVOKED MASSACRE OF MAN BECAUSE AT MOUNTAIN MEADOWS IN THE SOUTHWEST PART OF THIS DISTRICT IN 1857 THE EVIDENCE SHOWS THAT THE PERSONS KILLED WERE EMIGRANTS WHO HAD PASSED AND BEFORE <i>BEGINNING</i>[?] THAT <i>THAT BEFORE/BY</i>[?] PASSING <i>OUT</i>[?] THROUGH THE TERRITORY</p> <p>ON THEIR WAY TO SOUTHERN CALIFORNIA BEGINNING THEIR JOURNEY OVER THE WIDE DESSERT THEY WERE RECRUITING THEIR STOCK UPON THE RICH AND <i>RNGDR</i>—[?] FOR SEVERAL DAYS</p> <p>MAKING ATTACKS UPON THEM AND HAVING <i>FAILED</i>[?] AFTER <i>R</i>—[?] <i>AT THEIR</i>—[?] —[?]</p>	<p>ALTHOUGH IT MAY ASSIST YOU IN THE CONSIDERATION OF THE CASE, IS NOT BINDING UPON YOU. AS YOU ARE THE SOLE JUDGES OF THE FACTS, SO ON THE OTHER HAND, THE COURT IS THE SOLE JUDGE ^{[[2]]} OF THE LAW, AND THE JURY CANNOT PASS THEIR JUDGMENT UPON ANY QUESTIONS OF LAW. THEREFORE, WHATEVER IS DECLARED BY THE COURT TO BE THE LAW IS CONCLUSIVE AND BINDING UPON YOU. THE PRISONER AT THE BAR, JOHN D. LEE, STANDS BEFORE YOU CHARGED WITH BEING A PARTICIPANT AND LEADER IN A MOST ATROCIOUS AND UNPROVOKED MASSACRE OF HUMAN BEINGS, MEN, WOMEN AND CHILDREN, AT MOUNTAIN MEADOWS IN THE SOUTH-WEST PART OF THIS DISTRICT, IN THE MONTH OF SEPTEMBER, 1857. THE EVIDENCE SHOWS THAT THE PERSONS KILLED WERE EMIGRANTS, WHO HAD PASSED WITH A NUMBER OF WAGONS AND MANY CATTLE, THROUGH THE SETTLEMENTS OF THIS TERRITORY, AND WERE ABOUT PASSING OUT OF THE TERRITORY UPON THE DESERTS TO THE WEST, ON THEIR WAY TO SOUTHERN CALIFORNIA. BEFORE BEGINNING THEIR JOURNEY OVER THE WIDE DESERTS, THEY WERE RECRUITING THEIR STOCK UPON THE <THEN> RANK AND RICH GRASSES OF THE MOUNTAIN MEADOWS. FOR SEVERAL DAYS A COMBINATION OF INDIANS AND WHITE MEN HAD BEEN MAKING ATTACKS UPON THEM, BUT HAVING FAILED IN EVERY EFFORT AT THEIR</p>
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<p>AND BEING DRIVEN BACK A <i>RESORT/CHANGE</i>[?] WAS <i>D/DECIDED</i>[?] UPON DECEIT TREACHERY AND DECEPTION TO EFFECT THEIR DESTRUCTION UNDER A WHITE FLAG THE PRISONER APPROACHES THE EMIGRANTS AND HAVING THERE <i>MEN/MET A</i>[?] DELEGATION FROM THE EMIGRANTS THE FEARS OF THOSE WHO HAD BEEN ATTACKED WERE BY SOME MEANS ALLAYED AND THEY GAVE ^{[[3]]} UP THEIR ARMS PUT THEM INTO THE WAGONS OF THE ATTACKING PARTIES AND THEN UNARMED PUT THEMSELVES IN THE PROTECTION OF THE WHITE MEN OF WHICH THE DEFENDANT LEE WAS ONE YOU HAVE HEARD THE SICKENING DETAILS OF THE PLOT AND FIENDISH WORK WHICH —[?] INDIANS AND WHITE MEN VIE WITH EACH OTHER IN THEIR EFFORTS AT THE WHOLESALE MURDER OF [space] 120 HUMAN BEINGS</p> <p>WHO HAD BEEN DISARMED AND LURED FROM THEIR STRONGHOLD BEHIND THEIR WAGONS YOU HAVE HEARD THE PART THE PRISONER PLAYED IN THE DREADFUL CHARGE [space] HOW [space] GUN [space] SHOT OTHERS WITH HIS PISTOL AND CUT THE THROAT OF ANOTHER AND TOLD AN INDIAN NOT TO SPARE A WOMAN’S LIFE WHOM THE SAVAGE ASKED TO HAVE SPARED</p>	<p>OVERTHROW AND BEEN ^{[[3]]} DRIVEN BACK, THE RESORT WAS HAD TO THE BASEST TREACHERY AND DECEPTION TO EFFECT THEIR DESTRUCTION. UNDER A WHITE FLAG,—A FLAG OF TRUCE—THE PRISONER AT THE BAR, APPROACHED THE EMIGRANTS AND HAVING THERE MET A DELEGATION FROM THEM, THE FEARS OF THE EMIGRANTS BY SOME MEANS, WERE ALLAYED AND THEY GAVE UP THEIR ARMS, PUTTING THEM INTO WAGONS FROM THE ATTACKING PARTY, AND THEN BEING UNARMED, THEY PUT THEMSELVES UNDER THE PROTECTION OF THE WHITE MEN OF WHICH THE PRISONER, LEE, WAS ONE. YOU HAVE HEARD THE SICKENING DETAILS OF THE BLOODY AND FIENDISH WORK WHICH FOLLOWED. INDIANS AND WHITE MEN VIED WITH EACH OTHER IN THEIR EFFORTS AT WHOLESALE MURDERING OF OVER ONE HUNDRED AND TWENTY HUMAN BEINGS, MEN, WOMEN AND CHILDREN, WHO HAD BEEN DISARMED AND LURED FROM THEIR STRONGHOLD BEHIND THEIR WAGONS. YOU HAVE HEARD THE PART WHICH THE PRISONER PLAYED IN THIS DREAD TRAGEDY: HOW, IT WAS SAID, HE SHOT ONE PERSON WITH HIS GUN: HOW HE SHOT OTHERS WITH HIS PISTOL AND CUT THE THROAT OF ANOTHER AND TOLD AN INDIAN NOT TO SPARE A WOMAN’S LIFE, WHOM THE ^{[[4]]} SAVAGE ASKED TO HAVE SPARED.</p>
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IT IS FOR YOU TO SAY WHETHER FROM THE TESTIMONY THE WITNESS WHO GAVE THIS TESTIMONY SHOULD BE BELIEVED AND JOHN D. LEE OR JOHN D. LEE IS A MAN TO BE CONSIDERED INNOCENT IF THERE BE ANY GOOD REASON FOR DISBELIEVING TESTIMONY BEFORE YOU THEN THE THE DEFENDANT MIGHT BE INNOCENT AND IT IS FOR YOU UPON YOUR OATH TO SAY WHETHER ANY FACT IS PROVEN OR NOT UPON ANY PARTICULAR POINT [space] IF YOU BELIEVE THE TESTIMONY [space] BY ANY OF THE WITNESSES THERE IS NO [space]

TESTIMONY IS OVERWHELMING AND THE RN/[?] HERE REVEALS IT A FIENDISH CRUEL DISPLAY [space] WERE IT NOT FOR THE REQUIREMENTS OF JUSTICE [space],

—[?] OF 19 YEARS THE PERPETRATORS HAVE GONE UNPUNISHED THE/AND[?] DEFENSE HAS INTRODUCED NO WITNESSES OR EVIDENCE BUT REFER TO TESTIMONY FOR THE PROSECUTION AND[?] REASONS ^{[[32]]} TO SHAKE YOUR CONFIDENCE THAT

THESE WITNESSES UNWORTHY OF BELIEF AND MOST THAT COULD BE SAID ON THAT THAT THE[?] TESTIMONY OF A PORTION OF THE WITNESSES THOSE

IT IS FOR YOU TO SAY WHETHER THE WITNESSES WHO STATED THESE THINGS TOLD THE TRUTH; AND IT IS FOR YOU TO SAY WHETHER, FROM THE TESTIMONY, JOHN D. LEE, CAN BE CONSIDERED INNOCENT. IF THERE BE ANY GOOD REASON FOR DISBELIEVING THE TESTIMONY GIVEN BEFORE YOU, THEN THE DEFENDANT MAY BE INNOCENT, AND IT IS FOR YOU UPON YOUR OATH, TO SAY WHETHER ANY ALLEGED FACT IS PROVEN OR NOT. BUT IF YOU BELIEVE THE TESTIMONY DETAILED BY THE VARIOUS WITNESSES, THEN TRULY THERE IS NO ESCAPING THE CONCLUSION THAT THE PRISONER IS GUILTY. THE TESTIMONY IS OVERWHELMING. AND THE HUMAN HEART REVOLTS AT THE FIENDISH CRUELTY DISPLAYED, AND WERE IT NOT FOR THE REQUIREMENTS OF JUSTICE, IT SHOULD FOREVER BE SHELTERED IN OBLIVION. BUT IT WAS TOO HORRIBLE A DEED TO SLUMBER FOREVER, ALTHOUGH FOR NINETEEN YEARS, THE PERPETRATORS HAVE GONE UNPUNISHED. THE DEFENCE HAS INTRODUCED NO WITNESSES OR EVIDENCE TO REFUTE THE TESTIMONY FOR THE PROSECUTION, BUT RESTS THE WHOLE CASE UPON THE HOPE TO SHAKE YOUR CONFIDENCE IN THE WITNESSES FOR THE PROSECUTION. WERE THOSE WITNESSES UNWORTHY OF BELIEF? THE MOST ^{[[5]]} THAT COULD BE SAID IS THAT THE TESTIMONY OF A PORTION OF THE WITNESSES, THOSE

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<p>WHO WERE [space] SHOULD BE TAKEN WITH GREAT CAUTION IF UNCORROBORATED ON ANY MATERIAL POINT OF THE EVIDENCE WERE SUCH PARTIES UNWORTHY OF BELIEF THE LAW WOULD NOT ALLOW THEM TO BE PUT UPON THE WITNESS STAND AND ADMISSION OF ACCOMPLICES IS FULLY JUSTIFIED BY THE NECESSITIES OF THE CASE</p> <p>WHO ALONE WHICH TOOK PLACE UPON THAT BLOODY FIELD [space]</p> <p>FOR THEIR <i>NOTIFICATION</i>[?] YOU ARE TO WEIGH THEIR TESTIMONY AND SIFT THE TRUTH THEREFROM [space] ACCOMPLICES ARE NOT TO BE DISPELLED SIMPLY BECAUSE THEY ARE ACCOMPLICES <i>BUT/AND</i>[?] YOU ——— BEING FOUND</p> <p>CORROBORATED ON <i>NO/ANY</i>[?] MATERIAL POINT BY OTHER WITNESSES THEIR TESTIMONY ENTIRELY <i>SUSPICIOUS</i>[?] TO <i>WARRANT</i>[?] [space]</p> <p>IN REGARD TO THE ADMISSION SAID TO HAVE MADE BY THE PRISONER THE RULE OF LAW IS IF THE CORPUS DELICTI HAS BEEN PROVEN THEN ANY VOLUNTARY ADMISSION MADE BY THE PRISONER IS ADMISSIBLE AGAINST HIM AND IS RECOGNIZED AS STRONG</p>	<p>WHO WERE PARTICIPANTS IN THE MASSACRE, SHOULD BE TAKEN WITH GREAT CAUTION, IF UNCORROBORATED IN ANY MATERIAL POINT BY OTHER EVIDENCE. WERE SUCH PARTIES UNWORTHY OF BELIEF, THE LAW WOULD NOT ALLOW THEM TO BE PUT UPON THE WITNESS-STAND. THE ADMISSION OF ACCOMPLICES IS FULLY JUSTIFIED BY THE NECESSITY OF THE CASE, AND THERE WAS NOT AND COULD NOT HAVE BEEN ANY OBJECTION TO THEIR INTRODUCTION. WHO ELSE COULD TELL WHAT TOOK PLACE UPON THAT BLOODY FIELD BUT THOSE WHO WERE PRESENT, WILLING OR UNWILLING? AFTER THEIR INTRODUCTION, YOU ARE TO WEIGH THEIR TESTIMONY AND SIFT THE TRUTH THEREFROM. ACCOMPLICES ARE NOT TO BE DISBELIEVED, SIMPLY BECAUSE THEY WERE ACCOMPLICES, BUT YOU ARE TO WEIGH THEIR TESTIMONY IN CONNECTION WITH THE OTHER EVIDENCE, AND BEING CORROBORATED IN ANY MATERIAL POINT BY OTHER EVIDENCE, THEIR TESTIMONY IS ENTIRELY SUFFICIENT TO WARRANT A VERDICT IN ACCORDANCE THEREWITH. IN REGARD TO ADMISSIONS SAID TO HAVE BEEN MADE BY THE PRISONER, THE RULE OF LAW ^{[[6]]} IS THAT IF THE <u>CORPUS-DELICTI</u>, THE MASSACRE ITSELF, HAS BEEN PROVEN, THEN ANY VOLUNTARY ADMISSIONS MADE BY THE PRISONER IN REGARD TO HIS GUILT IS ADMISSIBLE AGAINST HIM, AND IS RECOGNIZED AS STRONG</p>
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<p>EVIDENCE OF HIS GUILT</p> <p>EVEN ~ [space] <i>IF THIS[?]</i> [space] HAD NOT OTHERWISE BEEN PROVEN THAT THE MASSACRE THIS HAD NOT BEEN PROVEN ANY ADMISSION THAT THE PRISONER MAY HAVE MADE THAT THERE HAD BEEN SUCH A KILLING AND THAT HE HAD PARTICIPATED WOULD OF COURSE BE BUT WEAK TESTIMONY AND WOULD NOT WARRANT A CONVICTION UPON SUCH ADMISSIONS ALONE IT IS VERY ^{[[33]]} DIFFERENT THING WHERE THE KILLING IS SHOWN</p> <p>AND FACT THAT THE MASSACRE OCCURRED IS NOT DISPUTED AND AND HENCE ANY ADMISSION THE PRISONER COULD HAVE MADE IN REGARD TO HIS PARTICIPATION THEREON IS RECOGNIZED IN LAW [space] IT IS HARDLY NECESSARY FOR ME TO SAY THAT YOU HAVE NOTHING TO DO WITH THE GUILT OR INNOCENCE OF ANY OTHER PERSON EXCEPT [space]</p> <p>IT IS NO CONCERN OF THE JURY WHETHER THE OTHER PARTIES INDICTED BE EVER BROUGHT TO JUSTICE OR NOT YOU HAVE ONLY TO DO WITH THE CASE BEFORE YOU THE CHARGE IN THIS CASE IS MURDER IN THE FIRST DEGREE AND IT IS [space] TO CONSTITUTE MURDER THE KILLING MUST HAVE BEEN WITH MALICE AFORETHOUGHT [space]</p>	<p>EVIDENCE OF HIS GUILT AND FULLY SUFFICIENT TO WARRANT A CONVICTION THEREON, EVEN IF HIS ACTUAL PARTICIPATION HAD NOT OTHERWISE BEEN PROVEN. IF THE MASSACRE ITSELF HAD NOT BEEN PROVEN, ANY ADMISSIONS THAT THE PRISONER MIGHT HAVE MADE, THAT THERE HAD BEEN SUCH A KILLING AND THAT HE WAS A PARTICIPANT, WOULD, OF COURSE, BE BUT WEAK TESTIMONY AND WOULD NOT WARRANT A CONVICTION UPON SUCH ADMISSIONS ALONE. BUT IT IS A VERY DIFFERENT THING WHERE THE KILLING IS SHOWN, AS IN THIS CASE, BY OTHER TESTIMONY. THE FACT THAT THE MASSACRE OCCURRED IS NOT DISPUTED; AND HENCE ANY ADMISSIONS THE PRISONER MIGHT HAVE MADE IN REGARD TO HIS PARTICIPATION THEREIN IS RECOGNIZED IN LAW AS STRONG EVIDENCE AGAINST THE HIM. IT IS HARDLY NECESSARY FOR ME TO SAY THAT YOU HAVE NOTHING TO DO WITH THE GUILT OR INNOCENSE OF ANY OTHER PERSON THAN THE PRISONER AT THE BAR. ^{[[7]]} HE ALONE IS ON TRIAL, AND IT IS NO CONCERN OF THIS JURY WHETHER THE OTHER PARTIES INDICTED BE EVER BROUGHT TO JUSTICE OR NOT. YOU HAVE ALONE TO DO WITH THIS CASE. THE CHARGE IN THIS CASE IS MURDER IN THE FIRST DEGREE. BUT IT IS NOT EVERY KILLING OF A HUMAN BEING THAT IS MURDER. TO CONSTITUTE MURDER, THE KILLING MUST HAVE BEEN WITH MALICE AFORETHOUGHT,</p>
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<p><i>THERE/EITHER</i>[?] [<i>space</i>] MALICE IS A WRONGFUL ACT DONE INTENTIONALLY AND <i>WITHOUT</i>[?] GOOD CAUSE OR EXCUSE MALICE IS AN ANCIENT INGREDIENT IN A KILLING TO CONSTITUTE THE CRIME OF MURDER BUT IT NEED NOT BE EXPRESSED BUT MAY BE IMPLIED FROM THE ACTS DONE OR THE GENERAL COURSE <i>AND</i>[?] [<i>space</i>] ACTS OF THE PARTY [<i>space</i>]</p> <p>DRAWN FROM THE FACTS CIRCUMSTANCES CONNECTED WITH THE KILLING AND WHICH INDICATE THE DISPOSITION AND STATE OF MIND</p> <p>IF THE KILLING ALLEGED WAS DONE BY OR PARTICIPATED IN BY THE PRISONER AND DONE WITH MALICE AFORETHOUGHT AND WAS WILLFUL HE IS GUILTY OF MURDER IN THE FIRST DEGREE AND IT IS YOUR DUTY SO TO FIND AND <i>UPON OATH</i>[?] FOR YOU CAN'T FIND HIM GUILTY OF LESS CRIME BUT YOU MUST IN A VERDICT BRING IN A VERDICT OF MURDER IN THE FIRST DEGREE ^{[[34]]} IF HOWEVER YOU FIND FROM THE EVIDENCE THAT THE KILLING WAS WITHOUT MALICE DONE WILLFULLY DELIBERATELY AND AND PREMEDITATEDLY [<i>space</i>]</p> <p>IF THAT KILLING WAS UNLAWFUL BUT THERE WAS NO MALICE THE CRIME</p>	<p>EITHER EXPRESSED OR IMPLIED. MALICE IS A WRONGFUL ACT DONE INTENTIONALLY AND WITHOUT GOOD CAUSE OR EXCUSE. MALICE IS AN ESSENTIAL INGREDIENT IN THE KILLING TO CONSTITUTE THE CRIME OF MURDER, YET IT NEED NOT BE EXPRESSED, BUT MAY BE IMPLIED FROM THE ACTS DONE AND THE GENERAL COURSE AND CONDUCT OF THE PARTY. IN MOST CASES MALICE IS NOT SUSCEPTIBLE OF DIRECT PROOF BUT MAY BE ESTABLISHED FROM INFERENCES MORE OR LESS STRONG TO BE DRAWN FROM THE FACTS AND CIRCUMSTANCES CONNECTED WITH THE KILLING AND WHICH INDICATE THE DISPOSITION OR STATE OF MIND WITH WHICH THE KILLING WAS DONE. IF THE KILLING ALLEGED WAS DONE OR PARTICIPATED IN BY THE PRISONER, AND DONE WITH ^{[[8]]} MALICE AFORETHOUGHT AND WAS WILFUL, DELIBERATE AND PREMEDITATED, HE IS GUILTY OF MURDER IN THE FIRST DEGREE, AND IT IS YOUR DUTY TO SO FIND, AND UPON YOUR OATH YOU CANNOT THEN FIND HIM GUILTY OF A LESSER CRIME, BUT YOU MUST BRING IN A VERDICT OF MURDER IN THE FIRST DEGREE. IF, HOWEVER, YOU FIND FROM THE EVIDENCE THAT THE KILLING WAS WITH MALICE AFORETHOUGHT, EITHER EXPRESS OR IMPLIED, BUT NOT WILFUL, DELIBERATE AND PREMEDITATED, IT WOULD BE MURDER IN THE SECOND DEGREE. AND IF THE KILLING WAS UNLAWFUL, BUT THERE WAS NO MALICE, THE CRIME</p>
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<p>WOULD BE MANSLAUGHTER IF THE KILLING WAS BY THE PRISONER OR IF HE PARTICIPATED AND IT WAS WITH MALICE AFORETHOUGHT YOU CAN'T SAY IT IS SIMPLY MANSLAUGHTER AND IF YOU FIND FROM THE EVIDENCE THAT THERE WAS MALICE AFORETHOUGHT AND ALSO THAT IT WAS WILLFUL DELIBERATE AND PREMEDITATED YOU CAN NOT SAY IT WAS MURDER IN THE FIRST SECOND DEGREE BUT YOUR VERDICT MUST BE MURDER IN THE FIRST DEGREE IT WOULD BE EITHER TO THAT DEGREE OF NONE AT ALL OR JUSTIFIABLE OR EXCUSABLE HOMICIDE TO BE JUSTIFIABLE HOMICIDE IT MUST HAVE FIRST ARISEN FROM AN UNAVOIDABLE NECESSITY [space]</p> <p>WITHOUT ANY BLAME AS FOR EXAMPLE <i>AND/THE</i>[?] [space] <i>AND AS</i>[?] [space]</p> <p>AND SECOND IT MUST HAVE BEEN COMMITTED FOR THE ADVANCEMENT OF PUBLIC JUSTICE [space] OFFICER IN THE DISCHARGE OF [space] WHO KILLS ASSAILANT IS EXCUSABLE HOMICIDE <i>AGAIN/KM</i>[?] [space] FIRST ONE</p> <p>A MISADVENTURE [space] WHEN WHERE ONE DOING A LAWFUL ACT</p>	<p>WOULD BE MANSLAUGHTER. IN OTHER WORDS IF THE KILLING WAS BY THE PRISONER, OR IF HE PARTICIPATED THEREIN, AND WAS WITH MALICE AFORETHOUGHT, YOU CANNOT SAY IT WAS SIMPLY MANSLAUGHTER, BUT IT IS OF A HIGHER GRADE OF OFFENSE; AND IF YOU FIND FROM THE EVIDENCE, THAT THERE WAS MALICE AFORETHOUGHT, AND WAS WILFUL, DELIBERATE AND PREMEDITATED, YOU CANNOT SAY IT WAS MURDER IN THE SECOND DEGREE, BUT YOUR VERDICT MUST BE MURDER ^{[[9]]} IN THE FIRST DEGREE. IT WOULD BE EITHER OF THAT DEGREE OR NO CRIME AT ALL, BUT JUSTIFIABLE OR EXCUSABLE HOMICIDE. TO BE JUSTIFIABLE HOMICIDE, IT MUST HAVE, FIRST, ARISEN FROM UNAVOIDABLE NECESSITY WITHOUT ANY WILL, INTENTION OR DESIRE IN THE PARTY KILLING, AND THEREFORE WITHOUT BLAME, AS FOR EXAMPLE THE EXECUTION ACCORDING TO LAW, OF A CRIMINAL WHO HAS BEEN LAWFULLY SENTENCED TO DEATH; OR, SECOND, IT MUST HAVE BEEN COMMITTED FOR THE ADVANCEMENT OF PUBLIC JUSTICE,—FOR EXAMPLE, IF AN OFFICER IN THE DISCHARGE OF HIS DUTIES, IS ASSAULTED AND RESISTED AND SHOULD KILL HIS ASSAILANT. EXCUSABLE HOMICIDE CAN ONLY EXIST IN TWO WAYS; FIRST, WHEN THE ACT WAS WHAT WAS CALLED A MISADVENTURE, THAT IS, WHERE IN DOING A LAWFUL ACT, THE PARTY WITHOUT ANY INTENT</p>
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<p>UNFORTUNATELY KILLS ANOTHER AND SECOND WHEN A PARTY ACTING IN SELF DEFENSE KILLS HIS ASSAILANT WAS THERE ANYTHING WHATEVER TO SHOW THAT THE KILLING WAS JUSTIFIABLE OR EXCUSABLE WAS THERE ANY UNAVOIDABLE NECESSITY SHOWN WAS THERE ANYTHING TO SHOW THAT THE KILLING WAS WITHOUT <i>REAL/WELL</i>[?] INTENTION OR DESIRE OR ANYTHING WHATEVER SUPPOSED TO MAKE THE KILLING EXCUSABLE [<i>space</i>]</p> <p><i>[[35]]</i> ONLY IF THEY WHO DID THE KILLING WERE ACTING IN DEFENSE OF THEMSELVES THEIR FAMILIES OR THEIR PROPERTY IN ARRIVING AT THE GUILT OR INNOCENCE OF THE DEFENDANT IT IS NOT NECESSARY TO [<i>space</i>]</p> <p>IT IS SUFFICIENT IF THE KILLING OF ONE HUMAN BEING NOR IS IT NECESSARY THAT THE NAME OR NAMES OF THEM KILLED SHOULD BE SHOWN IN THE GENERAL RULE [<i>space</i>] BEFORE YOU CAN FIND THE DEFENDANT GUILTY YOU MUST BELIEVE FROM THE EVIDENCE BEYOND A REASONABLE DOUBT THAT THE PRISONER IS GUILTY AND TAKING THE WHOLE EVIDENCE TOGETHER IT MUST EXCLUDE [<i>space</i>]</p>	<p>TO HURT, UNFORTUNATELY KILLS ANOTHER; AND, SECOND, WHEN A PARTY ACTING IN SELF DEFENSE, KILL HIS ASSAILANT. THE QUESTIONS THEN ARISE: WAS THERE ANYTHING WHATEVER TO SHOW THAT THE KILLING WAS EITHER JUSTIFIABLE OR EXCUSABLE? WAS THERE ANY “UNAVOIDABLE NECESSITY”, SHOWN? WAS THERE ANYTHING TO <i>[[10]]</i> SHOW THAT THE KILLING WAS WITHOUT WILL, INTENTION OR DESIRE? AND NOTHING WHATEVER APPEARS TO MAKE THE KILLING EXCUSABLE HOMICIDE. THERE IS NO EVIDENCE TO SHOW THAT THE ASSAILANTS WERE DOING A LAWFUL ACT WHEN THE KILLING WAS OCCURRED; NOR THAT THEY WHO DID THE KILLING WERE ACTING IN DEFENSE OF THEMSELVES, THEIR <FAMILIES> FRIENDS OR THEIR OR PROPERTY. IN ARRIVING AT THE GUILT OR INNOCENCE OF THE DEFENDANT, IT IS NOT NECESSARY TO PROVE THAT A GREAT NUMBER OF PERSONS WERE KILLED. IT IS SUFFICIENT IS THE KILLING OF ONE HUMAN BEING HAS BEEN PROVEN. NOR IS IT NECESSARY THAT THE NAME OR NAMES OF THOSE KILLED SHOULD BE SHOWN. BEFORE YOU CAN FIND THE DEFENDANT GUILTY, YOU MUST BELIEVE FROM THE EVIDENCE BEYOND A REASONABLE DOUBT THAT THE PRISONER IS GUILTY, AND TAKING THE WHOLE EVIDENCE TOGETHER, IT MUST EXCLUDE EVERY OTHER</p>
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<p>BEYOND PROOF POSSIBILITY OF DOUBT [space] BUT THAT YOU HAVE AN ABIDING CONVICTION IN YOUR MIND TO A MORAL CERTAINTY THAT THE PRISONER IS GUILTY [space] READ TO YOU INSTRUCTION ON THE PART OF THE PROSECUTION AND GIVEN BY THE COURT A <i>WILLFUL</i>[?] AND DELIBERATE ADMISSION OF THE DEFENDANT MADE ABOUT THE COMMISSION OF THE OFFENSE MAY BE TAKEN BY THE JURY AS <i>EVIDENCE</i>[?] OF HIS GUILT [space] THE JURY MAY AND SHOULD CONSIDER THE CIRCUMSTANCES SURROUNDING THE DEFENDANT AND UNDER WHICH THE ALLEGED OFFENSES WERE MADE AND IF THE JURY BELIEVE [space] THE SAID OFFENSES THEY WOULD BE WARRANTED IN ACTING UPON THEM AS EVIDENCE OF GUILT THE CORPUS DELICTI HAVING BEEN PROVEN BY OTHER EVIDENCE AND [space] I WILL NOW READ THE INSTRUCTION <i>WHICH/ARE</i>[?] <i>SND</i>[?] OF <i>ATTORNEYS</i>[?] [space] GIVEN BY THE COURT [space] FIRST [space] THE JURY ARE THE SOLE JUDGES OF THE CREDIBILITY OF THE WITNESSES WHO HAVE ^{[[36]]} TESTIFIED IN THIS CASE [space] ALTHOUGH THE JURY MAY BE SATISFIED THAT THE OFFENSE CHARGED IN THE INDICTMENT HAS BEEN COMMITTED YET IF THEY</p>	<p>HYPOTHESIS BUT THE GUILT OF THE PRISONER. PROOF BEYOND THE POSSIBILITY OF DOUBT IS NOT REQUIRED, BUT THAT YOU HAVE AN ABIDING CONVICTION IN YOUR MINDS ^{[[11]]} TO A MORAL CERTAINTY THAT THE PRISON PRISONER IS GUILTY. I WILL NOW READ THE INSTRUCTIONS ASKED ON THE PART OF THE PROSECUTION AND GIVEN BY THE COURT. “THE VOLUNTARY AND DELIBERATE ADMISSIONS OR CONFESSIONS OF THE DEFENDANT, MADE AFTER THE COMMISSION OF THE OFFENSE, MAY BE TAKEN BY THE JURY AS EVIDENCE OF HIS GUILT—THE JURY MAY AND SHOULD CONSIDER THE CIRCUMSTANCES SURROUNDING THE DEFENDANT UNDER WHICH THE ALLEGED CONFESSIONS WERE MADE, AND IF THE JURY BELIEVE THE SAID CONFESSIONS, THEY WOULD BE WARRANTED IN ACTING UPON THEM AS EVIDENCE OF GUILT, THE <u>CORPUS-DELICTI</u> BEING PROVEN BY OTHER EVIDENCE”. AND I WILL NOW READ THE INSTRUCTIONS ASKED IN BEHALF OF THE DEFENDANT AND [ASSENTED TO]⁷⁸⁹ ASSENTED TO BY THE PROSECUTION AND GIVEN BY THE COURT:— I “THE JURY ARE THE SOLE JUDGES OF THE CREDIBILITY OF THE WITNESSES WHO HAVE TESTIFIED IN THIS CASE.” II. ALTHOUGH THE JURY MAY BE SATISFIED ^{[[12]]} THAT THE OFFENSE CHARGED IN THE INDICTMENT HAS BEEN COMMITTED, YET IF THEY</p>
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789. It appears that the strikethrough words are written over undecipherable words.

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<p>FIND THAT THE WITNESSES IN THIS CASE WERE ACCOMPLICES</p> <p>THEY CAN'T FIND A [space] UNLESS [space]</p> <p>HAVE SUCH OTHER EVIDENCE AS SHALL TEND TO CONNECT THE DEFENDANT WITH THE COMMISSION OF THE OFFENSE AND SUCH CORROBORATION WILL BE INSUFFICIENT IF IT MERELY SHOWS [space]</p> <p>BUT THEY MUST CONNECT THE DEFENDANT WITH THE CRIME CHARGED IN THE INDICTMENT</p> <p>IF THE JURY BELIEVE FROM THE EVIDENCE THAT THERE HAS BEEN A CONSPIRACY AMONG THE WITNESSES OR ANY OTHER PERSON OR PERSONS HAVE/IF[?] THE CRIME BY THE CONVICTION OF THE DEFENDANT ALONE IT IS A MATTER THAT THE JURY MAY TAKE INTO CONSIDERATION FOR THE PURPOSE OF DETERMINING CREDIBILITY OF THE WITNESSES [space] IN THIS CASE THE JURY ARE INSTRUCTED THAT THEY MAY FIND MURDER FIRST DEGREE [space] SECOND [space] MANSLAUGHTER OR NOT GUILTY AS THEY SHALL THINK WARRANTED BY THE TESTIMONY [space] NOW GENTLEMEN I HAVE DISCHARGED MY DUTY TO YOU IN THIS CASE AND IT RESTS THEN/WITHIN[?] YOU TO</p>	<p>FIND THAT THE WITNESSES IN THIS CASE WERE ACCOMPLICES IN THE COMMISSION OF THE OFFENSE THEY CANNOT FIND THE DEFENDANT GUILTY, UNLESS THOSE WITNESSES BE CORROBORATED BY SUCH OTHER EVIDENCE AS SHALL TEND TO CONNECT THE DEFENDANT WITH THE COMMISSION OF THE OFFENSE. AND SUCH CORROBORATION WILL BE INSUFFICIENT IF IT MERELY SHOWS THE COMMISSION OF THE OFFENSE OR THE CIRCUMSTANCES OF SUCH COMMISSION BUT THEY MUST CONNECT THE DEFENDANT WITH THE CRIME CHARGED IN THE INDICTMENT.”</p> <p>III. “IF THE JURY BELIEVE FROM THE EVIDENCE, THAT THERE HAS BEEN A CONSPIRACY AMONGST THE WITNESSES FOR THE PROSECUTION, TO SHIELD THEMSELVES, OR ANY OTHER PERSON OR PERSONS FROM PUNISHMENT FOR THE COMMISSION OF THE CRIME CHARGED IN THE INDICTMENT, BY THE CONVICTION OF THE DEFENDANT ALONE—IT IS A MATTER FOR THAT THE JURY MAY TAKE INTO CONSIDERATION FOR THE PURPOSE OF DETERMINING THE CREDIBILITY OF THE WITNESSES.”</p> <p>IV. “IN THIS CASE THE JURY ARE INSTRUCTED THAT THEY MAY FIND A VERDICT OF MURDER ^{[[13]]} IN THE FIRST DEGREE OR MURDER IN THE SECOND DEGREE OR MANSLAUGHTER, OR NOT GUILTY, AS THEY SHALL THINK WARRANTED BY THE TESTIMONY.”</p> <p>NOW, GENTLEMEN, I HAVE DISCHARGED MY DUTY TO YOU IN THIS CASE, AND IT RESTS WITH YOU TO</p>
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<p><i>PUT/HOPE</i>[?] [<i>space</i>]</p> <p>IT IS TO BE HOPED THAT YOU ARE PREPARED TO SHOW YOUR MANHOOD AND GIVE YOUR VERDICT IN ACCORDANCE WITH THE EVIDENCE WITHOUT REGARD TO [<i>space</i>] YOUR DUTY IS NOT ONLY TO THE PRISONER AT THE BAR [<i>space</i>] BUT ALSO</p> <p>YOUR ACTION WILL BE LOOKED TO WITH GREAT INTEREST BOTH FAR AND NEAR AND ANY [<i>space</i>] —[?] L[?] [<i>space</i>]</p> <p><i>[[37]]</i>⁷⁹⁰ I BELIEVE [<i>space</i>] DEFENSE COUNSEL EXCEPT TO THE CHARGE OF THE COURT [<i>space</i>] 20[?] BY 12 O'CLOCK</p>	<p>SAY, UPON YOUR OATHS, WHETHER THE DEFENDANT BE GUILTY OR NOT. IT IS TO BE HOPED THAT YOU ARE ABLE TO SHOW YOUR MANHOOD AND GIVE YOUR VERDICT IN ACCORDANCE WITH THE EVIDENCE, WITHOUT REGARD TO ANY OUTSIDE INFLUENCE. YOUR DUTY IS NOT ONLY TO THE PRISONER AT THE BAR BUT ALSO TO THE PEOPLE AND YOUR OWN CONSCIENCES.</p> <p>YOUR ACTION WILL BE LOOKED TO WITH GREAT INTEREST BOTH FAR AND NEAR, AND IT BEHOOVES YOU AS HONEST MEN TO ACT CANDIDLY, FEARLESSLY, CAREFULLY AND CONSCIENTIOUSLY.</p> <p>JACOB S. BOREMAN, JUDGE. <i>[clerical notes]</i> SECOND DISTRICT COURT. SEPTEMBER 1876 106 PEOPLE &^c VS.} JOHN D. LEE, IMPLEADED &^c CHARGE OF THE COURT TO THE JURY. FILED OCT. 6, 1876, JAMES R. WILKINS, CLERK</p>
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790. Page 37 is torn, with only one-third of the page remaining. At least five pages were torn out of the back of the notebook. Two of the pages were included in the collection, but none of them contain pertinent information; most of it is essentially doodling. A stamp has been placed on the back cover of the notebook: **THE MARION ENTERPRISE** —[?] **YOUNG &** —[?] **CERT. AGENTS.**