

No. 12991

Supreme Court of Illinois

Fisher

vs.

People

State of Illinois
Sasalle County & Circuit Court, after
Term Term AD 1839.

I Madison E. Hollister judge of said Court,
do hereby Certify that the foregoing Transcript
of the Record in my opinion contains a full
& true history of the proceedings in said Cause.
so far as they appear of record in said Court.
August 8th 1839.

Madison E. Hollister,

Afterwards to wit on Tuesday July 26th 1859, the same being one of the days of the Term of said Court, the following order was entered of record in the words and figures following to wit:

"
 The People vs Wesley B Fisher } Indictment for Murder
 It is ordered by the Court that the
 Defendants Counsel have until Saturday
 next to prepare settle and file a bill of exceptions
 herein, the same to be filed there as of this day."

State of Illinois }
 LaSalle County } I John F. Nash Clerk
 of the Circuit Court in
 and for said County, do
 hereby Certify that the above and foregoing
 contains a full and complete copy of the
 proceedings had in the above entitled Court,
 wherein "The People vs" are plaintiffs, and
 "Wesley B. Fisher" is defendant, as appears
 of Record and among the files of my
 office. In Witness Whereof, I have hereunto
 set my hand and the Seal of said
 Court at Ottawa this 8th day of August
 A.D. 1859.
 John F. Nash Clerk
 per Giles Harrington depy

May 16th. 1860. I have taken the Points-
& Brief in People vs. Foster,
Oliver C. Gray.

8 P.D.
Fisher
3
People

8 P.D.

1860

1860

"State of Illinois }
In Saline County } ss

3 Pleas before the Honorable Madison E. Hollister Circuit Judge for the South Judicial District in and for said State; and the presiding judge of the Saline County Circuit Court, at a term of said court commenced and held at the Court House in Ottawa on the first Monday in the month of November the same being the first day of November in the year of our Lord one thousand eight hundred and fifty eight, and of the Independence of the United States of America the Eighty third.

Present

The Honorable Madison E. Hollister Presiding Judge
John F. Nash Clerk
Washington Bushnell State Attorney
Eli S. Waterman Sheriff "

Afterwards to wit: on Wednesday November 10th 1858 the same being one of the days of said ~~court~~ November term of said court the following proceedings were entered of record in the words and figures following to wit:

" This day the Grand jury also returned into open court an indictment as a true bill in the words and figures following to wit:

State of Illinois }

Saline County } ss

Of the November Term of the said Saline ~~Saline~~ County Circuit Court in the year of our Lord One Thousand eight hundred and fifty eight.

The Grand Jurors, chosen, selected and sworn in and for said County of Saline, do the same and by the authority of the People of the State of Illinois, upon their Oaths declare That Wesley B. Fisher late of said County on

eighteenth day of July in the year of Our Lord one thousand eight hundred and fifty eight, at and within said county not having the fear of God before his eyes, but being moved and seduced by the instigations of the Devil, on the day and year aforesaid feloniously with force and arms at Ottawa in the county aforesaid, on and upon one Clarissa Fisher in the Peace of God and the People aforesaid, then and there being found feloniously, wilfully, and of his Malice aforethought, did make an assault, and that the said Wesley B. Fisher, a certain Pistol of the value of five Dollars then and there loaded with gunpowder and divers leaden bullets, which pistol he the said Wesley B. Fisher in his right hand then and there had and bore to against and upon the said Clarissa Fisher, then and there feloniously, wilfully and of his malice aforethought, did shoot and discharge, and the said Wesley B. Fisher, with the leaden bullets aforesaid, out of the Pistol aforesaid, then and there, by force of the gunpowder and shot sent forth as aforesaid the said Clarissa Fisher, in and upon the left breast of her the said Clarissa Fisher, a little above the heart of her the said Clarissa Fisher then and there feloniously wilfully and of his malice aforethought did strike penetrate and wound giving to the said Clarissa Fisher then and there with the leaden bullets aforesaid, so as aforesaid, shot discharged and sent forth out of the Pistol aforesaid by the said Wesley B. Fisher in and upon the left breast of her the Clarissa Fisher a little above the heart of her the said Clarissa Fisher, one mortal wound of the depth of three inches and of the width of one inch, of which said mortal wound the said Clarissa Fisher on the day and year aforesaid did die,

And as the jurors aforesaid upon their Oaths aforesaid do say, that the said Wesley B. Fisher, the said Clarissa Fisher, in the manner and form aforesaid, feloniously, wilfully and of his malice aforethought

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did kill and murder, Contrary to the form of the
 Statute in such case made and provided, and against
 the Peace and dignity of the same people of the State of
 Illinois. And the jurors aforesaid upon their oaths
 aforesaid, in the name and by the Authority of the
 People aforesaid, do further present, That Wesley B.
 Fisher, late of said County, not having the fear of God
 before his eyes, but being moved and seduced by the
 instigations of the Devil, on the eighteenth day of July
 in the year of our Lord one thousand Eight hundred
 and fifty Eight, with force and arms and feloniously
 at the County aforesaid in and upon one Clarissa Fisher
 in the Peace of God, and the said people, then and
 there being feloniously, wilfully and of his malice
 aforethought, did make an assault, and that the
 said Wesley B. Fisher a certain pistol of the value
 of five Dollars, then and there loaded and charged
 with gun powder, and one leaden bullet, which pistol
 he the said Wesley B. Fisher in his right hand then
 and there had and held, to against and upon the said
 Clarissa Fisher then and there feloniously wilfully and
 of his malice aforethought, did shoot and discharge, and
 that the said Wesley B. Fisher with the leaden bullet afore-
 said, then and there by force of the gun powder and shot
 sent forth as aforesaid, the said Clarissa Fisher in and
 upon the left breast of her the said Clarissa Fisher,
 then and there feloniously wilfully and of his malice
 aforethought, did strike penetrate and wound, giving
 to the said Clarissa Fisher then and there with the
 leaden bullet aforesaid, so as aforesaid. Shot discharged
 and sent forth, out of the pistol aforesaid, by the said
 Wesley B. Fisher, in and upon the left breast of her
 the said Clarissa Fisher one mortal wound of the
 depth of four inches and of the breadth of two inches
 of which said mortal wound the said Clarissa

Said

Fisher from the said eighteenth day of July in the year aforesaid until the twentieth day of the same month of July, of the year aforesaid in the county aforesaid did languish and languishing did live, on which twentieth day of July in the year aforesaid the said Clarisa Fisher, at the county aforesaid of the said mortal wound died.

And so the Jurors aforesaid upon their Oaths aforesaid do say that the said Wesley, B. Fisher the said Clarisa Fisher, in manner and form aforesaid, feloniously, wilfully 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 and dignity of the same people of the State of Illinois

H. Bushnell

State Attorney

9th Circuit

(On the back of the Indictment are the endorsements following viz:

The People vs Wesley, B. Fisher - Indictment for murder - A True bill. - Isaac Abraham, Foreman
Witnesses

Harriet Raudall, Era Gardnier, Francis Warner, A. S. Brown, Mary Dyer, Ignatius Devraux, Mary Gardnier, Selley Castle, Sarah Warner, Margaret Randall, Geo M. Timney, J. J. Thompson, Christopher Ormsby, Thomas Howard, Geo. W. Brown, W. E. Brown, Stephen Nichols, Amasa Foster, S. E. Skinner, A. B. Smith, Wesley Brown, Geo Sherwood, Ignatius Devraux, Martha Raudall -

On the twenty second day of November AD 1858 the following affidavit was filed in the words & figures following, to wit:

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"State of Illinois } Circuit Court Third
 LaSalle County } November Term A.D.

1858

The People &c. }
 vs. }
 Wesley B. Fisher }

Indictment for murder

Wesley B. Fisher, being first
 duly sworn, on his oath
 says, that he has been indicted, at the present
 term of the court, by the Grand Jury in
 and for the County of LaSalle aforesaid,
 for the murder of Clarissa Fisher, and af-
 fiant further says, that he cannot
 safely proceed to trial upon said
 indictment, at the present term of this
 court, that he has but a few moments
 ago been served with a copy of the
 indictment in said cause, and
 that since the finding of said indict-
 ment he has not had time, nor will he
 during the present term of this court
 have sufficient time to prepare his defence
 in said cause, and he expects to be ready
 for trial by the next term of this court
 Witness present

Wesley B. Fisher
 made

Oliver C. Gray

Subscribed and sworn to before me

this 22nd day of November 1858

J. F. West Clerk

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State of Illinois Jp
LaSalle County Jp

Olin B. Gray, being first
duly sworn, on his oath says, that he is
the Attorney of said Wesley B. Fisher,
in the trial upon the foregoing indictment,
and that he has read the affidavit of said
Wesley B. Fisher herein, and this affiant
believes that the facts and matter set
forth in said affidavit are true, and
that said Fisher cannot with safety
or prudence proceed to trial upon said
indictment at the present Term of this
Court

Olin B. Gray

Subscribed and Sworn to before me
This 22^d day of November 1858
J. F. Nash Clk "

(Filed November 22^d 1858
J. F. Nash Clk)

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Afterwards to wit on Monday November 22nd 1858
the same being one of the days of the November term of
said Court the following proceedings were entered of record
in the words and figures following to wit:

"The People vs
Nesley B. Fisher } Indictment for murder. 10.01

This day the People come
by the State Attorney, and the defendant
in his own proper person as well as by O. L. Gray his Attor-
ney. The Clerk of this court now furnishes the defendant
with a copy of the Indictment and a list of the names
of the petit jury after which the defendants attorney moves
the court to quash the indictment herein, which motion
is overruled by the court. The said defendant is now
arraigned at the bar and the Indictment read to him
by the clerk and by the court is enquired of ^{and} concerning
the premises how he would acquit himself herein,
for a plea says he is not guilty in manner and form
as charged in the Indictment - "

Afterwards to wit: on Monday ^{the 14th of Feb} the same being one
of the days of the February term of said Court ^{for the year 1859} the
following order was entered of record in the words and
figures following to wit:

"The People vs
Nesley B. Fisher } Indictment for Murder

This day comes the defendant comes by
Messrs Gray and Kloss his Attorneys, who present to the
court an affidavit for this purpose and moves the
court to continue this cause until the next term of

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That he also expects to be able to prove by said Sherwood, that he heard the said Clarissa make a bargain to sleep with, and have sexual intercourse with her, with a man unknown to affiant, a few days before the death of said Clarissa; That said Sherwood communicated all of said facts to affiant just before the death of said Clarissa; that affiant does not know of any other witnesses by whom he can prove the above facts.

Affiant further swears that Robert Erans is a material witness for him, by whom he expects to prove, That in April and May A.D. 1858, said Sherwood repeatedly had sexual intercourse connection with said Clarissa, in absence of defendant affiant on business, and that said facts were communicated to affiant just before the death of said Clarissa: and affiant does not know of any other witnesses by whom he can prove said facts: That about the time of the death of said Clarissa, The said Erans left this County and went away leaving this State. That affiant has made, since the finding of this indictment diligent inquiry so far as he has been able, being confined in jail all the time to ascertain the residence of said Erans so as to obtain his personal ~~appearance~~ attendance, or his deposition in this cause, but has not been able to ascertain the exact place of his residence. That affiant ^{has} learned within a few days past that said Erans is somewhere in Canada. That since the said information has come to the knowledge of affiant he has not been able to find out his exact place of residence so as to procure his personal attendance at the present term of this Court, but expects to find be able to find out his residence in Canada so as to procure it, or his deposition by the next term of this Court. Affiant further says, that George M. Jones is a material witness for him, in the trial of this cause, by whom he expects to prove and he is the only witness by whom he can prove that in the summer of 1858, The said Jones, at the house of Mrs Randall

had carnal intercourse with said Clarissa; That said Jones
 left this state about the middle of October last: That since the
 finding of the indictment in this case, Affiant has made as
 diligent inquiry as he was able, being confined in jail all
 the time since, to ascertain the residence of said Jones,
 and has only found out within the past few days that said
 Jones now resides in Memphis in the state of Tennessee; That
 said facts which he expects to prove by said Jones were
 communicated to affiant first before the death of said Clarissa.
 That he expects to ~~prove~~ be able to procure either the personal
 attendance or deposition of said Jones, before the next term
 of this court, That affiant is advised by his counsel, and
 believes, that he cannot safely proceed to trial without
 the testimony of all of said witnesses. Affiant further
 swears, That Charles Ryan is a material witness for him
 by whom he expects to prove that about ~~three~~ two weeks
 previous to the death of said Clarissa, That affiant sold
 to said Ryan a revolver which affiant had long previously
 been in the habit of carrying on his person, while in
 the employment of Judge Eaton in the Telegraph
 business, in repairing, between Centralia and Cairn in
 the winter of 1857-1858 and while running a canal
 boat: The fact of his so carrying arms, he expects to be
 able to prove by other witnesses, and also by other witnesses
 to prove that he bought the pistol said to be discharged by
 affiant at said Clarissa on Tuesday before said occurrence
 which took place, on Sunday July 18th 1858. That affiant
 has no other witness to prove said fact of said sale. That
 before the arrest of affiant, said Ryan a brick-layer by
 trade left this County for St Louis: that affiant is informed
 that said Ryan before the finding of the indictment in this
 case, left St Louis for Central America: That affiant has
 not had time since learning the above fact to obtain
 his attendance or his deposition at the present term
 of this court, but expects to be able to procure one or

11 the other before the next term of this court. That he has not as yet ascertained the exact place of residence in Central America, but believes he can find out: And affiant further says that this affidavit is not made for delay but for the purpose of justice. And that affiant may have a fair and impartial trial.

Wesley, B. Fisher

Subscribed and sworn to before me
this 14th day of February A.D. 1859

J. F. Nash ~~clerk~~
pr C. H. Hoot Depty

Joseph C. Glover and Oliver C. Gray, being first duly sworn, on their respective oaths say; that they are counsel for said Wesley, B. Fisher, in the foregoing named trial: that the testimony which said ~~Wesley B. Fisher~~ Fisher in his foregoing affidavit swears he expects to be able to prove by the absent witnesses therein named in their opinion is material for his defense

J. C. Glover
Oliver C. Gray,

Subscribed and sworn to
before me this 14th day of
February 1859 of F. Nash Clerk "

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Afterwards to wit: on Tuesday June 21st 1859 the same being one of the days of the June term of said court the following order was entered of record in the words and figures following to wit:

"The People vs

vs

Wesley B. Fisher

} Indictment for Murder

} This day the Court assign Messrs. J. A. Glover
Chas. Gray and D. L. Hough as counsel for the
defendant. "

Afterwards to wit on Wednesday June 22nd, ¹⁸⁵⁹ the same being one of the days of the June term of said court the following motion was entered of record in the words and figures following to wit:

"The People vs

vs

Wesley B. Fisher

} Indictment for Murder

} This day the People come by the States Attorney
and the defendant in his own proper person, as
well as by Gray, Glover & Hough his Attorneys, who move the
court to continue this cause, which motion is overruled
by the court "

And on June 23, 1859 the same being
one of the days of June term of said court-
for the Year 1859. the following affidavit was
filed in the records & figures following to wit:

The people of the State
of Illinois

vs

Wesley B Fisher

Lasalle County Circuit
Court June Term AD 1857

State of Illinois
Lasalle County

Wesley B Fisher the
defendant in the above entitled cause
being first duly sworn on oath deposeseth
and says that all the facts set forth
in the ^{several} ~~affidavits~~ ^{filed} by him hereto-
fore ~~made~~ ^{made} in this cause, ^{are} ~~and~~ still
subsisting facts and in full force at
the present time and affiant asks
that said affidavits and each of
them may be taken in connection with
the ^{is} ~~that~~ ^{and} affidavit, constitute a part
thereof and affiant further says
that the witnesses in said affi-
davits mentioned, ^{are} ~~and~~ as affiant
has been informed and verily
believes still absent and beyond
the reach of the process of this
court and have been so absent
at all times since the ~~last~~
affidavit was filed by affiant
in this cause and affiant.

further says that during the
whole time since the indictment

in this cause was found against
 affiant he had been and now
 is closely confined to the Jail
 of said County of ~~Mad~~ ^{Mad} ~~all~~ ^{all} that
 affiant is poor and ~~utterly~~ ^{utterly} destitute
 of pecuniary means of his own, and
 until yesterday had been utterly
 unable to procure pecuniary aid
 from others with which to prosecute
~~his~~ defense in this cause. That
 affiant verily believes he has a just
 and valid defense to the charge
 preferred against him of which
 defense he cannot avail himself
 without the liberal expenditure of
 money to procure the attendance
 of witnesses whose attendance can
 not be compelled and affiant
 further says that on yesterday
 the requisite pecuniary aid was
 placed at his disposal and by
 the means thereof he expects to be
 able to procure the attendance of
 witnesses necessary for his defense by
 the next term of this Court and
 to be ready for the trial of this
 cause at that time and that
 if he is forced to a trial at this time

17. he has reason to fear and does fear it will be at the sacrifice of his life and affiant further says that Mulford Martin and William Watt are material witnesses for ~~the~~ affiant on the trial of said cause without whose testimony he cannot safely proceed to the trial of the same that at the last term of this Court said witnesses resided in Ottawa and affiant could have secured their attendance as witnesses in his behalf at that time. That since the last term of this Court both of said witnesses as affiant is informed and believes have removed from the State of Illinois and are now residing beyond the reach of the process of this Court. the said Watt in St Louis & the said Martin in Kansas or Nebraska that affiant hopes and expects to be able to ^{obtain} ~~attend~~ their testimony in his behalf by the next term of this Court and to prove by said testimony acts of infidelity at several times on the part of

Clarissa Fisher after her marriage
 with affiant and shortly before
 her death a knowledge of which
 was only communicated to affiant
 just previous to the death of said
 Clarissa and affiant knows of no
 other ^{witness} by whom the ^{me} said facts can be
 established, and affiant further says
 that this affidavit is not made
 for purposes of delay. merely but
 that the truth may be elicited
 justice and rights prevail and conseq-
 uences fatal to affiant be averted

Subscribed and sworn W. B. Fisher
 to before me this 28th
 June A.D. 1859
 J. F. Nash Clerk

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State of Illinois
Madison County

Joseph O Glover
David J. Houghland
Oliver C Gray

being first duly sworn on their
respective oaths say that they
are of counsel for ^{the} said
Wesley B Fisher that they
believe that said Fisher is not
ready for trial at the
present term of this Court and
that this is without any fault
upon the part of said Fisher or
his Counsel and that they
believe the evidence in the fore-
going affidavit of Fisher to be
material to his proper defence and
that said evidence cannot be
~~procured~~ ^{procured} fully at the present
term of this Court

Subscribed and sworn to before me this
23rd June AD 1857

J O Glover
Oliver C Gray
D J Hough

J F Nash CLK

Filed June 23rd 1857

J F Nash CLK

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Afterwards to wit: on Wednesday June 29¹⁸⁵⁹, the same being one of the days of the same term of said court the following order was entered of record in the words and figures following to wit:

The People &c

vs

Indictment for Murder

Wesley B. Fisher

This day the People come by the States Attorney & W. H. S. Wallace and the defendant in his own proper person as well as by A. C. Gray, J. C. Glover & D. L. Hough his Attorneys and is furnished with a list of the names of the petit jury, and after due deliberation, A. D. Betterfield & Phineas B. Root are selected as two of the jurors to try this case & at the adjournment of court they are placed in charge of an officer duly sworn for that purpose, And it appearing to the court that the regular panel of jurors has been exhausted in this case, the Sheriff is directed to summon twenty four good and lawful men of the county to serve as talismen, and return them into court to-morrow morning at nine o'clock "

Afterwards to wit on Thursday the 30th June 1859 the same being one of the days of the same term the following order was entered of record in the words and figures following to wit:

The People &c

vs

Indictment for Murder

Wesley B. Fisher

This day the People again come by W. B. Bushnell & W. H. S. Wallace their attorneys and the defendant by A. C. Gray & D. L. Hough in his own proper person as well as by A. C. Gray, J. C. Glover & D. L. Hough his Attorneys. — Together with the two jurors selected herein^{on} yesterday and is furnished with a list of the ^{names of the} talis jurors summons for this day and after further deliberation two other jurors are selected by the People and the defendant to wit: John Ashaw Tullis and Charles P. Young and at the adjournment of court the said

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Four jurors so selected are placed in charge of an officer duly sworn for this purpose. And it ~~appearing~~ appearing to the court that the twenty four tatesmen summoned and returned by the sherriff on the opening of court this morning have been exhausted, the Sheriff is directed to summon twenty four other good and lawful men of the county as tatesmen and return them into court tomorrow morning at nine o'clock "

Afterwards to wit on Friday July 1st 1859 the same being one of the days of the June term of said court the following order was entered of record in the words and figures following to wit:

The People vs

vs

Wesley B. Fisher

Indictment for Murder

This day, again ~~come~~ the People again come by Bershnell & Wallace their attorneys and the defendant in his own proper person as well as by Gray, Glover & Hough his Attorneys together with the jurors heretofore selected herein - and the defendant is furnished with a list of the names of the tates jurors ^{for this day} summoned and after due deliberation the People and Defendant, select ^{from the tatesmen of yesterday} William P. Christman and James Dalgymple as two jurors in this case, and at the adjournment of court the six jurors chosen in this case are placed in charge of an officer duly sworn for this purpose.

And it appearing to the court that the twenty four tatesmen summoned and returned by the Sheriff on the opening of court this morning have all been called and exhausted, the Sheriff is directed to summon twenty four other good and lawful men of the county as tates men and return them into court at nine o'clock tomorrow morning "

And afterwards to wit: on July 1. 1859 the same
being one of the days of the June Term 1859 of
said Court: defendant filed a Bill of Exceptions
in the words and figures following. & wit:

25-

The people of the State of Illinois }

vs,

Wesley B. Fisher

Indictment for murder

Be it remembered that Solomon J. Hillard was called as a juror to try this cause and was duly sworn to answer questions touching his competency as a juror. The Juror was asked by the prosecutor if he had an opinion as to the guilt or innocence of the defendant that would require evidence to remove, he answered that he had a faint opinion of the guilt or innocence of the prisoner, and that it would require some evidence to remove the impressions on his mind but that he had no fixed opinion that he had heard some of the circumstances related, but the persons relating them, were strangers to the Juror, and that he did not know whether the statements which he had heard were true or not. The State accepted the Juror. The Juror was then asked by the counsel for the

prisoner the following questions—
 Have you now an opinion as to whether
 the woman named in the indictment was
 killed in Lasalle County or not? He
 answered I have— the Counsel for the
 prisoner then asked the Juror the
 following question is that opinion so fixed
 that it would require proof to unfix it? the
 Juror answered, it is, the Counsel for the prisoner
 then asked the following question. Have you
now an opinion as to whether the defendant
 was guilty of the killing or not? the Juror
 answered, I have formed from what I have
 heard and which I have no reason to dis-
 believe and that opinion is also so fixed
 as to require some proof to unfix it the
 Counsel for the prisoner then asked the
 Juror the following question. Have you
 now an opinion as to whether the killing
 was done with a pistol, such as would
 require evidence to remove? the Juror
 answered, I have and that opinion is
 fixed so as to require proof to remove it. the
 prisoners Counsel then challenged the
 Juror for cause, after which the Prosecutor
 asked the Juror the following question. Did you not
 get this opinion from conversing with strangers or people
 that you did not know and did not know whether

to believe or not? The Juror answered my opinion was formed from what I heard from strangers, and I did not know whether they were true or not - the Court then asked the Juror the following question Is the opinion ~~that~~ you say you have on the question whether or not Mrs Fisher was killed by the prisoner in this County and with a pistol founded upon your belief of the truth or what you have heard or does it depend upon the question whether this information shall turn out to be true the Juror answered that if it turns out to be true then this is his opinion. the Juror further stated that his opinion was slight that he had no confidence in what he had heard as the persons from whom he derived his information were strangers to him the Court decided the Juror competent the Counsel for the prisoner then proposed to examine the Juror further touching his competency in reference to the question as to his opinion, which was refused by the Court to which ruling of the Court in so refusing, the Counsel for the prisoner then and there excepted, the Court then overruled the defendants challenge for cause

and ruled that it was only a ground for preemptory challenge to which ruling of the Court the defendant by his counsel then and there excepted. The defendant thereupon challenged the Juror preemptorily and prayed the Court to sign and seal this bill of exceptions which is accordingly done in open Court.

M E Hollister (Seal)

(Filed July 1 1859
J F Nash Clk)

1859

Afterwards to wit on Saturday July 2nd the same being one of the days of the June term of said Court the following further order was entered of record in the words and figures following to wit:

" The People &c }
 as } Indictment for Murder
 Wesley B. Fisher } This day the People again come by Bushnell
 & Wallace their attorneys and the defendant
 in his own proper person as well as by Bray & Glover his attorneys
 together with the jurors ^{heretofore} selected herein, and the defendant
 is furnished with a list of the names of the ~~persons~~ tales jurors
 summoned for this morning and after due deliberation the
 People and Defendant select from the tales men returned this
 morning David Davis as a juror in this case, and at the adjournment of court at noon of this day the sworn jurors chosen in
 this case are placed in charge of an officer duly sworn for
 this purpose.

And it appearing to the court that the twenty four
 tales men summoned and returned by the Sheriff on the
 opening of court this morning have all been called and
 exhausted, the Sheriff is directed to summon twenty four
 other good and lawful men of the county as tales men
 and return them into court at two o'clock this afternoon.

And now at two o'clock in the afternoon
 of this day the court being in session the following order
 was entered of record in the words & figures following to wit:

31 "The People vs

Meely, B. Fisher

} Indictment for Murder

} This day the People again come by
} Kinsnell & Wallace their Attorneys and

the defendant in his own proper person as well as by Gray & Glover his Attorneys together with the jurors that have been selected in this cause and the defendant is furnished with a list of the talis jurors summoned and returned into court at two o'clock this afternoon. And after due deliberation the People and defendant select from the tales men so returned as aforesaid Saponan Rauh as a juror in this case who together with the other ^{jurors} ~~jurors~~ selected in this case are placed in charge of an officer duly sworn for this purpose.

And it appearing to the court that the twenty four talesmen so summoned as aforesaid have all been passed upon and the same exhausted, the Sheriff is directed to summon instantler other twenty four good and lawful men of the county to serve as tales jurors "

Afterwards to wit: on the Tuesday July 5th 1889 the same being one of the days of the same term of said court the following order was entered of record in the words and figures following to wit:

"The People

as

Wesley B Fisher

} Indictment for Murder

} This day the People again come by Benchels & Wallace their Attorneys

and the Defendant in his own proper person by Gray & Glover his Attorneys as well as in his own proper person together with the eight jurors that have been selected herein And the Defendant is furnished with a list of the names of the tales jurors summoned and returned in to court this morning. And after due deliberation the People and the Defendant select from the tales men so returned as aforesaid, George, C. Gale, and Perry, H. Smith as two other jurors to try this cause, who together with the other jurors chosen in this case are placed in charge of an officer duly sworn for this purpose.

And it appearing to the court that the twenty four tales men so summoned as aforesaid have all been passed upon and the same exhausted, The Sheriff is directed to summon instantler other twenty four good and lawful men of the county and return them into court at one and a half past o'clock this afternoon. "

And the court bring now in session again at one and a half o'clock this afternoon the following order was entered of record in the words and figures following to wit:

35-

"The People vs

as

Wesley B Fisher

Indictment for Murder

And now this afternoon again come the People by Benchwell and Wallace their Attorneys And the Defendant in his own proper person as well as by Gray & Glover his Attorneys together with the ten jurors selected in this case and the defendant is also furnished with a list of the names of the twenty four tales men last summoned. From among whom the People and the Defendant selects A. A. Fisher as one other juror in this case, and now the eleven ~~jurors~~ selected jurors are placed in charge of an officer duly sworn for ~~the~~^{this} purpose -

And it appearing to the court that the twenty four tales jurors last summoned had all been passed upon and that there are not jurors enough yet chosen in this case to make up the twelve necessary, the sheriff is directed to summon instantler other twenty four good and lawful men of the county as tales men and return them into court tomorrow morning at ten o'clock "

11

Afterwards to wit on Wednesday July 6th 1859 the same being one of the days of the June term of said court the following further was entered of record in the words and figures following to wit:

The People &c

vs

Nesley, B. Fisher

Indictment for Murder

This day the People again come by Bushnell & Wallace their Attorneys and the Defendant in his own proper person as well as by Gray-Klover & Arough his Attorneys together with the eleven jurors that have been selected herein, and the defendant is furnished with a list of the names of the tales jurors returned by order of the Sheriff this morning, and now the People and the Defendant select Louis Soule as the twelfth juror in this case, and now come again the following jurors of a jury to wit: A. D. Butterfield - Phineas B. Rust - Johnathan Tuleis - Charles L. Young - William P. Christman - James Galymple - David Davis - Sepman Rough - George C. Yale - Perry A. Smith - A. A. Fisher - and Louis Soule, who are duly elected tried and sworn to well and truly try the issues herein according to the law and the evidence, and after hearing a part of the testimony the further hearing of this cause is postponed until the coming in of the court tomorrow morning, The said jury are now placed in the hand charge of an officer duly sworn for this purpose -"

39

Afterwards to wit: On Thursday July 7th, ¹⁸⁵⁹ the same being one of the days of the June term A.D. 1859 of the said Court the following order was entered of record in the words and figures following to wit:

"The People vs.

vs.

Indictment for Murder

Nesley, B. Fisher

This day the people again come by Bustnell & Wallace their attorneys, and the defendant

in his own proper person as well as by Gray, Glover & Hough his attorneys also the jury sworn herein, and after hearing a part of the evidence the further hearing of this cause is postponed until the coming in of the court to morrow morning - Officers are now duly sworn to take charge of the jury herein -"

41

Afterwards to wit on Saturday July 9th ¹⁸⁵⁷ the same being one of the days of the June Term A.D. 1857 of said Court the following further proceedings were entered of record in the words and figures following to wit:

The People &c

as

vs
Nesley B Fisher

} Indictment for Murder.

} This day again come the people by the
States Attorney & N. H. S. Wallace and the

Defendant in his own proper person as well as by Gray, Brown & Hough his Attorneys, together with the jury sworn herein; and after hearing the a part of the testimony, the further hearing of this cause is postponed until nine o'clock next Monday Morning. The jury are now placed in charge of officers duly sworn for that purpose."

43

Afterwards to wit on Monday July 11th 1859 the same being one of the days of the June Term A.D. 1859 of said court the following further proceedings were entered of record in the words and figures following to wit:

The People &c

vs

Wesley B Fisher

} Indictment for Murder

} This day the People again come by

} Bushnell and Wallace their Attorneys and

the defendant in his own proper person as well as by Gray & Hough his Attorneys together with the jury sworn herein, and after hearing a part of the evidence the further hearing of this cause is postponed until the ~~fourth~~ coming in of the court to morrow morning -

The jury are now placed in charge of an officer duly sworn for this purpose -"

45 Afterwards to wit on Tuesday July 12th ¹⁸⁵⁹ the same being one of the days of the Term Comm. A.D. 1859 of the said court the following proceedings were entered of record in the words and figures following to wit:

The People &c

vs

Wesley B. Fisher

} Indictment for Murder
 } This day the People again come by
 } Bushnell & Wallace their attorneys and
 the Defendant in his own proper person as well as by Gray
 & Hough his attorney. Together with the jury sworn herein.
 and after hearing a part of the evidence, the further hearing
 of this cause is postponed until the coming in of the court to
 morrow afternoon.

The jury are now placed in charge of officers duly
 sworn for this purpose."

47 Afterwards to wit on Wednesday July 13th ¹⁸⁵⁷ the same being one of the days of the June Term A.D. 1857 the following further proceedings were entered of record in the words and figures following to wit:

" The People &c }
 as } Indictment for Murder
 Wesley B. Fisher } This day the People again come by
 Bucknell & Wallace their Attorneys and
 the Defendant in his own proper person as well as by Gray
 & Gough his attorneys together with the jury sworn herein
 and after hearing a part of the testimony the further hearing
 of this cause is postponed until the coming in of the court
 tomorrow morning. The jury are now placed in charge
 of an officer duly sworn for this purpose."

And afterwards to wit: on July 13th 1857, the same being one of the days of the June Term 1857 of said Court. Defendant filed a Bill of Exceptions in the words & figures following, to wit:

State of Illinois }
 La Salle County Ill }

People &c } Indictment for
 vs } Murder
 Wesley B Fisher }

The defendant on the trial called Maria Sudd as a witness who was sworn, and asked the witness the following question - State whether or not you had any conversation with Clarisa Fisher, after her marriage with the defendant, if so state the time and place that the conversation occurred as near as you can remember, and what she said at that time? Dutton objected to by the Counsel for the state, The Court sustained the objection, and the Prisoners Counsel then and there excepted The following question was then put by the prisoner, State whether or not in that conversation Clarisa Fisher did or did not state to you that her husband was absent from town, and that she intended to sleep with what men she pleased? The Counsel for ^{the} state waived objection on the ground of the question being leading but

objected on the ground of Competency
 The Court sustained the objection, and
 the Plaintiff then and there excepted,
 The following question was asked by
 the prisoners Counsel - State whether or
 not at any time when Clarisa Fisher
 was boarding with Mrs Warner and after
 her marriage with the prisoner you
 saw the said Clarisa in company
 with A man other than her husband
 and in his absence from town, in Mike
 Hornhalls Saloon, drinking liquor dress-
 ed in mens clothes and whether after-
 wards on the same evening you did
 or did not see her walking the pub-
 lic streets in Ottawa dressed in mens
 clothes. The Counsel for the state objected
 to the question, ~~The~~ Court sustained the
 objection. And the Counsel for the Pris-
 oner then and there excepted - and
 prayed the Court to sign and seal this
 Bill of exceptions which is done
 according by in open Court
 W E Hollister *Secy*

(Filed July 13th 1859
 J. F. Nash clk.)

And on July 13th 1859 the defendant-
~~filed a Bill of exceptions in the words and~~
~~figures following. To wit:-~~

The People vs } Indictment for Murder
 Wesley B. Fisher }

Be it remembered that
 on the trial of this Cause, the defendant
 called Mary Ford as A witness who was
 sworn, and offered to prove by said witness
 that she was well acquainted with Clarisa
 Fisher, that after the marriage of Clarisa
 Fisher, with the defendant, the witness saw
 the said Clarisa, dressed in ones clothes
 with A man other than her husband, in
 A public drinking saloon of Michael Form-
 halls in this City of Ottawa drinking liquor
 and smoking cigars that her husband
 Wesley B Fisher was absent from the City
 at said time, And that at said time
 the said Clarisa Fisher was boarding at
 No² Warners, and that A knowledge of these
 facts was brought home to Fisher
 before the killing of said Clarisa Fisher
 The Court refused to ^{let} the testimony go to
 the Jury, the same being objected to by
 the Counsel for the state, and to the de-
 cision of the Court in that behalf, the Coun-
 sel for the prisoner then and there excep-
 ted and prayed the Court to sign
 and seal this bill of exceptions which

512 was according Done in open Court
M C Hollister Esq

(Filed July 13th 1859
J. H. West lclty)

And on July 13, 1859 the same being
one of the days of the June Term 1859 of
said Court, the defendant filed a
Bill of Exceptions in the words and
figures following to wit:

53 State of Illinois
Wasalle County }

Be it remembered that
on the trial of this cause the
defendant called George C Hooker
as a witness who was sworn - the
defendant asked the witness if he
was in the house of Mrs Martha
Randall on the night previous to
the day upon which Clarissa
Fisher was killed? He answered
I think I was not. the defendants
counsel ^{then} asked the witness if he
was willing to swear that he was
not in that house on that night.
the counsel for the State objected -
the Court ^{sustained} ~~questioned~~ the objection
the defendant then and there
excepted - the defendant then
asked the witness the following
question State whether or not
you ever had sexual connection
with Clarissa B Fisher after her
marriage with Wesley B Fisher
and if yea, state at what time
The plaintiffs counsel objected -
the Court sustained the objection
and instructed the witness not to

574 answer unless the sexual connection took place on the night previous to the killing the witness answered that he had not had sexual intercourse with Clarissa Fisher on that night or the next morning. The counsel for the prisoner then asked the last question as above stated —

the counsel for the State objected. The court sustained the objection and to the decision of the court in that behalf the prisoners counsel then and there excepted. The witness in answer to a question put by the prisoner stated that he was at Mrs Randall's house when Clarissa Fisher was there after her marriage and after she left Mr ~~Phillips~~^{erley's} — I think I was there once after that and before she was killed.

The counsel for the prisoner then offered to prove by said witness that he had had sexual intercourse with said Clarissa after her marriage with the prisoner on several occasions, ~~so~~ and within a few days of the killing, and that the witness is unable to state the

55- time precisely - the prisoners
counsel then asked the witness,
state whether or not you are able
to fix any time precisely of any
such connection - The plaintiffs
counsel objected, the Court
sustained ~~the~~ ^{and} objection, the
prisoners Counsel then and there
excepted and prayed the Court
to sign and seal this Bill
of exceptions, which is according-
ly done in open Court -

M. E. Hollister *Clerk*

(Filed July 15/889
J. F. Nash *Clerk*)

57

Afterwards to wit on Thursday July 14th 1859 the same being one of the days of the same term of said court the following proceedings were entered of record in the words and figures following to wit:

The People vs Wesley B. Fisher } Indictment for Murder
This day the people again come by Bushnell & Wallace their Attorneys, and the Defendant in his own proper person as well as by Gray & Hough his Attorneys together with the jury sworn herein, and after hearing a part of the record testimony, the further hearing of this cause is postponed until the coming in of the court to morrow morning -
The jury are now placed in charge of officers duly sworn for this purpose "

And on July 14th 1859. the same being
one of the days of said June Term 1859 of
said Court. the following Bill of Exceptions
was filed by said defendant in the words
and figures following, to wit:

People &c

vs

Wesley B Fisher

Indictment for Murder

Be it remembered that on the trial of this Cause, the defendant called Stephen Nicholson as a witness who was sworn, and offered to prove by said witness that during the time, from the marriage of Fisher with Clarissa Fisher and up to the time of the killing Fisher was in town off and on, sometimes in town and sometimes absent on business and was likely to hear of the misconduct of his wife. The Court refused to let the evidence go to the Jury, on the ground that it was not competent to prove in this way, and that this evidence did not tend to prove that these acts of misconduct on the part of his wife if any such existed, came to the knowledge of Fisher, but that it must be proved that these acts of misconduct if any existed, were communicated directly to Fisher with a view to show the effect produced thereby on his mind or feelings. To this decision of the Court, the defendant then and there excepted and prayed the Court to sign and seal this Bill of exceptions, which

80 is accordingly done in open Court
W E Hollister Esq

(Filed July 14th 1859
J. J. Nashelka)

And on the 14th day of July 1859, the
same being one of the days of the
June term of said Court for the Year
1859, the following Bill of Exceptions
was filed in the records and figures
following. To-wit:

61

People &c

vs

Wesley B Fisher

{ Indictment for Murder

Be it remembered that on the trial of this Cause the Counsel for the Prisoner offered in evidence the following medical books, to wit, Chittys Medical Jurisprudence, Shelford on Lunacy, Becks Medical Jurisprudence, Taylors Medical Jurisprudence, and Whartons Medical Jurisprudence for the purpose of ascertaining or throwing light on the indications or symptoms of insanity the Court refused to admit them in evidence and the defendant then and then excepted and Prayed the Court to sign and set this bill of exceptions, which is accordingly done in open Court

M C Hollister Clerk

(Filed July 14 " 1857
J. F. Wash. Clerk)

And on July 14th 1857. the same being
one of the days of said June Term 1857
the following Bill of Exceptions was
filed in the record and signed following
to wit:

63

"People & c
 vs
 Wesley B Fisher } Indictment for Murder

Be it remembered on the trial of this cause the defendant called George Sherwood as a witness who was sworn and offered to prove by said witness that whilst Clarisa Fisher was boarding with Mrs Warner after her marriage with Fisher, that the witness and said Clarisa were at the house of her mother Mrs Randall at night, and while they were so there, that Fisher came to the house, and enquired for his wife, and was told by Mrs Randall, that Clarisa was not there in the hearing of Clarisa, and the witness and that at said time said Clarisa and the witness were secreted in the house, out of the sight of Fisher, that Fisher went away to his boarding place at Mrs Warners, went to bed, and that several hours afterwards and late in the night, that Clarisa went with the witness to Mrs Warners, Counsel for the State objected, The Court sustained the objection, on the ground that the truth of these facts was wholly imme-

trial - that it was only competent for the prisoner to show that these facts was communicated to the prisoner before the killing with the view of showing what effect the communication produced upon him. The defendant then and there excepted to the ruling of the Court. The prisoners Counsel then put the following question to the witness State whether or not you ever communicated prior to the killing to the prisoner the foregoing facts and circumstances which occurred at Mrs Paudalls house on the night in question, when Fisher came to inquire for his wife. The Court overruled the question and refused to let the witness answer the question. The defendant then and there excepted to the decision of the Court in that behalf and prayed the Court to sign and seal this bill of exceptions which is accordingly done in open Court.

The Court told the prisoners Counsel that any communications made to him, prior to the killing in regard to the misconduct of dec^t with the witness or with any person might be given in testimony not as evidence of the existence of such acts of misconduct.

Q5- but for the purpose of showing what
effect such communications had upon
him at the time

W C Hollister. Closed "

(Filed July 14th 1859
J. F. Nash clk.)

And on July 14, 1859 the same being
one of the days of said June Term 1859
the following Bill of Captains was
filed in the words and figures following
to wit:-

"The People &c
vs
Wesley B Fisher } Indictment for Murder

Be it remembered
that on the trial of this Cause, the def-
endant Called Solomon Sherwood
as A witness and offered to prove by said
witness, that after the marriage of
Clarisa Fisher with the prisoner and before
the killing reports of the gross misconduct
of said Clarisa were afloat in Ottawa
that it was A subject talked about a-
mongst her acquaintances and Fishers
acquaintances after the marriage and
before the killing, the Court refused to
admit the evidence, and to the decis-
ion of the Court in that behalf the pris-
oners counsel then and there excepted
and prayed the Court to sign and seal
this Bill of exceptions which is accord-
ingly done in open Court

M E Hollister Clerk

(Filed July 14th 1859
J. F. McCall)

On July 14, 1859, the same being on
the day of said June Term 1859 of said
court, the following Bill of Exceptions
was filed, in the words and figures
following, to wit:

The People &c

v.s.

Wesley B. Fisher

vs

Indictment for Murder

State of Illinois, LaSalle County, p.

Be It remembered that on the trial of this cause the defendant called George H. West as a witness, who was sworn, the following questions was put by the Council for the prisoner - State whether or not, during the time Claressa Fisher was boarding with Mrs. Warrens, and after her marriage with the prisoner, you ever saw her at the drinking saloon of Harry Hodges, dressed in men's clothes, drinking liquor and smoking a cigar, in company with any other man than her husband, and while he was absent from town? The Council for the State objected to the question - The Court sustained the objection - and the plaintiff then and there excepted to the opinion of the Court in that behalf. The prisoner then put the following question - State whether or not you ever saw her, so dressed in men's clothes, going into or coming out of Mrs. Warren's house, whilst Mrs. Warren was at home, and after the marriage with the prisoner -

The Counsel for the State objected -
 The Court sustained the objection -
 and the defendant then came there
 excepted - The prisoner then put
 the following questions - State whether
 you was ever in the Mrs. Warner house,
 when Claressa was being dressed
 or was dressed in mens cloths -
 And that when she went out of
 the house - Mrs. Warner being in
 the house? The State objected - The
 Court sustained the objection, and
 the defendant then came there
 excepted - The prisoner then put
 this question - State whether or not
 you ever had sexual intercourse with
 Claressa Fisher after her marriage
 with the prisoner? - The State objected,
 The Court sustained the objection,
 unless the prisoner confessed the
 adulterous act to the night
 previous to the killing, or the morning
 of the day she was killed - The prisoner
 excepted to the decision of the Court,
 in that behalf -

The prisoner called Henry West as
 a witness, who was asked by the prisoner
 State whether or not you ever had sexual

connection with Clarissa Fisher, after
 her marriage with the prisoner
 and on the night previous to the
 killing? The People Counsel objected
 to the witness answering ^{the question} except the
 latter branch of it, to which the witness
 answered No. And the Court refused
 to let the witness answer the first ^{branch} part
 of question, and to the decision of
 the Court in that behalf, the prisoner
 Counsel then and there objected.
 The Counsel for the prisoner ^{then} asked same
 question as a whole, and the Court refused
 to let the witness answer the question,
 and ^{to} the decision of the Court in that
 behalf the prisoner Counsel then
 and there ~~objected~~ excepted. The prisoner's
 Counsel then asked this question - If you
 had sexual ~~connection~~ with Clarissa
 Fisher, after her marriage with the
 prisoner - State how recently it was
 before her death - The Court refused to
 let the witness answer the question -
 and to the decision of the Court in that
 behalf, the prisoner then and there ~~excepted~~.
 The prisoner in this connection offered
 to show that the knowledge of all these
 facts involve in this bill of exceptions

was brought home to the knowledge of the prisoner before the killing -
 The defendant called Thomas Howard and asked the following questions - State whether you ever had sexual intercourse with Lauretta Fisher after her marriage with the prisoner - The States Counsel objected - The Court sustained the objection and limited the inquiry to the night ^{and morning} previous to the killing ~~and the previous day and even excepted~~
 The prisoners Counsel then and there prayed the Court to sign and seal this Bill of exceptions, which is accordingly done in open Court. The witness answered in the negative of the question as modified by the Court.

M. E. Hollister 

~~The~~
 150
 Wesley B. Fisher
 Bill of Exceptions

(Filed July 14th 1859
 J F Norton Clerk)

On July 14. 1859. the same being one of the days of said June Term 1859 of said Court: a Bill of exceptions was filed in the words & figures following: -

State of Illinois La Salle County }

The People vs { Indictment for Murder

Wisley B Fisher } Be it remembered that on
the trial of this Cause the
defendant called Ann Noyell as a
witness who was sworn and the defend-
ant offered to prove by said witness
that she was living in the house of Mrs
Warner, on a certain night some time
previous to the killing, When Fisher was there
that on that night Fishers wife Clarisa
went down to Mrs Randalls with George
Sherwood - that whilst they were in said
house Fisher came to the house and en-
quired of Mrs Randall if his wife was
there and she replied that she was
not, and that at said time her mother
had previously secreted her and said
Sherwood, that these facts were made
known to exist, that on the next morn-
ing, Clarisa told these facts to the
witness, and stated that she had fooled
Fisher nicely and had not come to
Fishers bed untill very late that night
having come there with Sherwood, that
Witness replied, That she (meaning Clarisa)

being a married woman it was nothing to brag of - but that she ought to be ashamed of such Conduct - The Counsel for the state objected to the evidence, The Court sustained the objection, and to this decision of the Court the defendant then and there excepted and prayed the Court to sign and seal this Bill of Exceptions which is accordingly done in open Court

M E Hollister Esq,

(Filed July 14th 1859 J. F. Nash Clerk)

75

Afterwards to wit: on Friday July 15th 1859 the same
 being one of the days of the same term of said Court
 the following proceedings were entered of Record in the
 words and figures following to wit:

"

The People vs

vs

Wesley B. Fisher

Indictment for Murder

This day the People again come by
 Bushnell and Wallace their attorneys

and the Defendant by in his own proper person as well as
 by Gray & Keough his attorneys together with the jury sworn
 herein, and after hearing the balance of the evidence the
 further hearing of this cause is postponed until the coming
 in of the Court to morrow morning.

The jury are now placed in the charge of officers
 duly sworn for this purpose."

And on July 15, 1859. the same being
one of the days of said term 1859 of
said court. A Bill of Exceptions was
filed in the words & figures following to wit

The People v C
 vs
 Wesley B Fisher } Indictment for Murder

Be it remembered that on the trial of this Cause, the state called D^r Gordonick, and examined him in Chief. The defendant then Cross-examined the witness, and for the purpose of ascertaining the foundation of the opinion of the witness given on the state of the defendant's mind, asked the witness the following question, Was not suicide or an attempt at suicide by the killer immediately after the killing, A marked indication of insanity at the time of the killing. The witness ^{answered} - It is so considered by me and yet it would depend on other ^{circumstances} ^{there is not one indication, but what would depend on other circumstances}. The defendant then asked the witness the following question, (You have heard the testimony of Devereaux detailed to you by the Counsel for the state, which was that immediately after the killing, the prisoner ^{rushed} ~~hastened~~ to the Canal, threw his pistol in, then jumped into the water, and was under water two or three minutes, and when he came up he came ashore was taken hold of by the collar by Devereaux

that he talked right a long, and kept talking, and that Devereux could not understand what he said except, let me go, and I will go to Jail myself - talking this hypothesis to be true you will answer whether or not in forming the opinion you have expressed on the state of mind of the prisoner at that time, you considered that this was an attempt at suicide or not? The Court overruled the question and would not permit the witness to answer the question and to the decision of the Court in that behalf, the defendant then and there excepted and prayed the Court to sign and seal this Bill of exceptions which is accordingly done in open Court,

M E Hollister Esq.

(Filed July 15th 1859
J. F. Nash Clerk)

On July 15, 1859, the same being one
of the days of the June Term of said Court
for the Year 1859, a Bill of Receptions
was filed in the records and signed follow-
ing to wit:

81 "People &c
 vs
 Wesley B Fisher } Indictment for
 Murder

Be it remembered that on the trial of
 this case, the People introduced David
 Strawn as A witness. The Court de-
 cided that the witness might answer
 as to the conduct of Fisher in 1850,
 that he was a profane man in answer
 to A question of the Peoples Counsel
 as to the conduct of the Witness at that
 time, the Counsel for the prisoner objecting
 to this decision of the Court the defendants
 Counsel then and there excepted and asked
 the Court to sign and seal this bill
 of exceptions which is accordingly
 done in open Court

W E Hollister *W. E. Hollister*

(Filed July 15th 1859
 J. F. West clerk)

83

Afterwards to wit: on Saturday July 16th 1859, the same being one of the days of the June Term of said court the following proceedings were entered of record in the words and figures following to wit:

"

The People vs

as

Wesley B. Fisher

}

Indictment for Murder

}

This day the People again come by Boushnell & Wallace their Attorneys

and the Defendants by Elmer Gray & Kough his Attorneys as well as in his own proper person, together with the jury sworn herein and after hearing a part of the arguments of counsel, the further hearing of this cause is postponed until the coming in of the court next Monday morning

The jury are now placed in charge of officers duly sworn for this purpose."

85-

Afterwards to wit: on Monday July 18th 1859 the same being one of the days of the same term of said court the following proceedings were entered of record in the words and figures following to wit:

"
 The People vs }
 Wesley B Fisher } Indictment for Murder
 Bushnell & Wallace his Attorneys, and the }
 Defendant in his own proper person as well as by Gray —
 Glover & Thurgk his Attorneys together with the jury sworn
 herein. And after hearing a part of the argument of counsel
 the further hearing of this cause is postponed until the
 coming in of the court tomorrow morning —
 The jury are now placed in charge of Officers duly sworn
 for this purpose "

87

Afterwards to wit; on Tuesday July 19th 1859 the same being one of the days of the June Term of said court the following proceedings were entered of record in the words and figures following to wit:

"The People &c }

vs

Wesley, B. Fisher

} Indictment for Murder

} This day the People again come by Bushnell
and Wallace their Attorneys and the defendant
by in his own proper person as well as by Gray Glover through
his Attorneys. Together with the jury sworn herein, and after
hearing the balance of the arguments of Counsel, the jury
retire in charge of sworn officers to deliberate on their
verdict."

And on July 23, 1859, the same being one of the days of the June Term of said Court for the Year 1859, the following instructions were filed in the words and figures following to wit:-

"The People &

Wesley B Fisher

Peoples instructions

1st Murder is the unlawfull Killing of a human being in the peace of the people with malice aforethought.

The malice may be either express or implied.

Express malice is that deliberate purpose unlawfully to take away the life of a human being which is manifested by external circumstances capable of proof.

Malice is implied in every unlawfull homicide where no considerable provocation appears or where all the circumstances of the killing show an abandoned and malignant heart.

When one person is shown to have intentionally and unlawfully killed another the law presumes malice and adjudges the killing to be murder unless the accompanying circumstances of the killing show something which mitigates justifies or excuses the killing - And the killing being shown the law throws on the accused the burden of proving circumstances of mitigation justification or excuse.

Given

2nd

Manslaughter is the unlawfull killing of A human being without Malice expressed or implied & without any mixture of deliberation whatever

When A killing is shown in order to reduce the character of the offence from murder to manslaughter there must appear to be A serious & highly provoking injury and an irresistible passion caused thereby and the killing must be the result of this irresistible passion. and if there appears to be an interval between the provocation & the killing sufficient for the voice of reason & humanity to be heard or if the circumstances evince deliberation the killing shall be attributed to revenge and punished as murder

3rd

If the jury believe from the evidence that Wesley B Fisher the prisoner at the bar intentionally killed Clarassa Fisher by shooting her with A pistol in July 1858 and within this County then it is the duty of the Jury to find him guilty of murder unless the proof in the case show that the killing was only manslaughter or justifiable or excusable homicide or unless the proofs in the case show to the satisfaction of the Jury that at the time the prisoner did the killing he was insane

4th
93

Gurran

The law presumes every man to be sane until the contrary is shown - and when insanity is set up as a defence by a person accused of crime the Jury should be satisfied from all the proofs in the case that at the time of the Commission of the Crime his mind was so far affected with insanity as to render him incapable of distinguishing between right & wrong in respect of the killing or if he were conscious of the act he was doing and knew its consequences he was in consequence of his insanity wrought up to a frenzy which rendered him unable to control his actions or direct his movements

5th

Gurran

On arriving at the conclusion whether the prisoner was sane or insane at the time of the killing the Jury should begin with the presumption of the prisoners sanity, and take into account all the evidence in the case of his previous history habits and conduct, the circumstances immediately connected with the act of killing and his subsequent conduct and deportment and unless the evidence preponderates in favor of his insanity at the time of the act the Jury cannot excuse the prisoner on the plea of insanity -

94 6th

GIVEN

Even if there should be evidence tending to show that the prisoner was insane or affected with insanity previous to the act of killing yet the question for the Jury on this point is whether he was insane at the time of the act complained of and unless the Jury are satisfied from all the proof in the case that the prisoner was insane at the time of the act of killing they should not excuse him on that ground

7th

X. GIVEN

Before the jury can be justified in rendering a verdict of acquittal on the ground of moral insanity they must be satisfied by clear and undoubted proof, that the accused was acting under an uncontrollable impulse - A frenzy which rendered him unable to control his actions or direct his movements - and not in a spirit of revenge for real or imagined wrong

8th

GIVEN

If the Jury believe from all the evidence that the circumstances and conduct of the Prisoner relied upon as tending to indicate insanity are such as might be exhibited by a sane man under like circumstances, then the jury should consider whether this facts indicate insanity or not

95 9th The prosecution are not bound to prove that the defendant was sane at the time of the act complained of - and if the whole evidence in the case should leave it doubtful in the minds of the jury whether the prisoner was sane or insane at the time they should not in that case excuse the prisoner on the ground of insanity

10th If the jury find the defendant guilty of murder the form of their verdict will be, we the jury find the defendant guilty in manner and form as charged in the indictment

11th The declarations and statements of the prisoner made to Nicholson the night before the killing are not evidence of the truth of the facts stated but are admitted only as evidence of the state of the prisoners mind at the time.

(Filed July 23rd 1859
J. F. Nask Clerk)

On July 23, 1857, the same being one of the
days of said June Term of said Court for
the year 1857 the following instructions
were ~~given~~ in the words and figures follow-
ing. To-wit:

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The People v. c
 Wesley B Fisher } Indictment for Murder

Instructions asked by the prisoner
 1st Crime by the Statute of this State is declared
 to be A joint operation of act and intention
 or criminal negligence, and whether there was
 or was not intention on the part of the prisoner
 to commit the act complained of, must be
 determined by all the facts and circumstances
 connected with this case and the condition of
 his mind at the time of the killing, and if
 the Jury believe from the evidence, that at the
 time of the killing, the mind of the prisoner was affected
 with insanity, there could not have been such
 A joint operation of act and intention as
 would in the eye of the law make him guilty
 of the crime of murder

~~See qualification~~
 given

Of the Jury believe from all the evidence that ^{at} the time of the killing, the prisoner was affected with insanity to such an extent that for the time being it overwhelmed his reason and judgment in reference to that particular act - that the insanity at the time was such as to deprive him of the use of his reason in regard to the act done: - that the killing was the result of a diseased or deranged condition of the mind produced by jealousy, domestic troubles, or a knowledge or belief in the mind of the prisoner of the infidelity or gross misconduct on the part of the deceased or from other cause or causes, and that the killing was not the result of a mind capable of choosing between right and wrong in reference to that particular act - that it was the result of an uncontrollable impulse at ^{the} time being, and not of a person acted on by rational motives and capable of governing his will and actions in regard to that particular act - that his mind for the time being was drawn irresistibly to the act of killing the consequence of which he saw, but could not avoid - that is to say, that his mind for the time being was placed under a coercion, which although he may have had sufficient intellectual power to foresee the result of his act, yet had not sufficient moral power at the time to resist and control the homicidal impulse by reason of being affected by insanity to such an extent, then the Jury should acquit the prisoner.

Prisoner 3rd Instruction qualified by the
Of the Jury believe from the evidence
that, At the time of the Killing, the mind
of the prisoner was affected with insanity
to such an extent, that he was impelled
to kill by an insane and irresistible
impulse over which ^{his} mind had no
Controlling power, it is the duty of the
Jury to acquit him, and it is entirely
immaterial whether such insane mental
Condition was Constitutional, or whether
it was produced by jealousy or any
other Cause

Prisoner 6th Instruction

6th Of the Jury believe from All the evidence
that there is a preponderance of proof, in
support of the antecedent insanity of the
prisoner - that is to say, that the preponderance
of proof from all the evidence in
the case shows that the prisoner was af-
fected ~~was affected~~ with insanity in May
A D 1858, then the Law presumes that
the prisoner so continued to be affected with
such insanity up to and at the time of
the Killing, and in that case, unless the

the jury are satisfied, beyond a reasonable doubt, by all the proof and circumstances in evidence that the prisoner had recovered from being so affected with insanity, if forever, and that the prisoner was sane at the time of the killing, the Jury should find the prisoner not guilty.

The Jury will look at the qualification of this instruction

Prisoner's 7th Instruction

Of the jury believe from all the evidence that the prisoner was not affected with insanity at the time of the killing & that the killing was the result of a sudden violent impulse of passion, caused by a recently prior, strong and highly exciting provocation, apparently sufficient to excite an irresistible passion in a reasonable person or caused by a

series of such provocations for some length of time before but continuous and connected with such recent provocation, then although there should appear an interval of several hours between such provocation and the killing, yet if the jury believe from the evidence that such interval, under all the circumstances of this case, was not sufficient for reason to resume her sway, and the voice of humanity to be heard, on account of the extent or grievous character of such provocation and that by reason of the strength and grievous character of such provocation reason was dethroned, the voice of humanity was stifled and the prisoner was not the master of his own understanding at the time of the killing then the jury should find the prisoner guilty of manslaughter only, and not guilty of murder.

Prisoners 8th Instruction

8th

If the jury believe from the evidence that the prisoner was affected with insanity at the time of the killing, but not to the extent set out in the Prisoners 2nd instruction the jury ought to take into consideration the fact, if proven that at the time of the killing the prisoner's mind was affected with insanity to some extent in determining the question as to whether the killing was the result of a sudden ~~and~~ violent and irresistible impulse of passion, and also in determining the question as to whether, at the

Given

the time of the killing, A sufficient interval under all the circumstances of the case in evidence, had or had not elapsed between ~~and the killing~~, if any provocation such as set out in the prisoners 7th instruction, existed prior to the killing; and also in determining the question whether such provocation of proven, was apparently sufficient, under all the circumstances of the case in evidence, to excite an irresistible passion in the prisoner, so as to prevent the prisoner for the time being, from being the master of his own understanding at the time of the killing; and also in determining the question as to whether the killing was or was not the result of premeditated malice.

Given

9th Of the Jury believe from the evidence that at the time of the killing, if there was a killing, the mind of the Prisoner was not entirely insane to such an extent as would in law excuse him wholly, yet if the Jury believe that his mind at the time of the killing, was affected with insanity to such an extent as prevented the prisoner at the time being from forming or acting upon a deliberate intention to kill, then in law the grade of the offence would be reduced from murder to manslaughter provided there was a killing by the prisoner

10th Of the Jury believe from the evidence that at the time of the killing, the mind of

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The Prisoner was not entirely insane to such an extent as would excuse him wholly, yet if they believe that his mind at the time of the killing was affected with insanity to such an extent, that, taken in connexion with, & recently prior strong and highly exciting provocation apparently sufficient to arouse an irresistible passion in his mind, if proven, it prevented him from forming, or acting upon a deliberate intention to kill this in law would reduce the grade of the offence from murder to manslaughter.

Given

11th Malice aforethought is the gist of the crime of Murder.

The law gives the prisoner the benefit of all reasonable doubts arising from the unsatisfactory nature of the proofs, all reasonable doubts arising from such a source if any exist in the minds of the Jury should be given, construed and resolved in favor of the prisoner.

The Jury cannot find the prisoner guilty of the crime of murder, if they have any reasonable doubt, as to whether the killing was done with premeditated malice on the part of the prisoner and if all the evidence in the case can be reasonably explained and reconciled and is consistent with the hypothesis that there was no premeditated malice - if all the evidence in the case can be reasonably explained and reconciled, and is consistent with the hypothesis that notwithstanding

Given

standing the facts and circumstances in evidence attending the killing may indicate malice aforethought, still if the killing may have been reasonably under all the facts and circumstances in evidence the result of that sudden irresistible impulse of passion, caused by such highly exciting provocation as is set out in the Prisoners 7th instruction, then the Jury should acquit the prisoner of murder.

Before the Jury can find the prisoner guilty of manslaughter they must be satisfied from the proofs that in this impulse of passion there was no mixture of deliberation whatever.

Prisoners 12th Instruction

12th The Jury in this case are by the law of this state, constituted and declared to be the "judges of the law and the fact" but they are by no means to disregard the law, as laid down by the Court; because if they should do so against the prisoner, if correctly laid down, it would be error.

Given

Prisoners 13th Instruction

13th If the Jury find the Prisoner not guilty of murder, but guilty of manslaughter, the form of their verdict will be "not guilty of murder in manner and form as charged in the indictment, but guilty of manslaughter only." If the Jury find the Prisoner guilty of manslaughter they will in their verdict also find the

Gunn

term of imprisonment in the penitentiary of this state not exceeding the period of eight years. Of the jury find the prisoner not guilty, the form of their verdict will be "not guilty in manner and form as charged in the indictment."

(filed July 23. 1859)

And on July 19th 1859 the same being
one of the days of said June Term of said Court
for the Year 1859, defendant filed Instructions
in the words & figures following to wit:-

"Prisoners 4th Instructions

Although the prisoner may not have been so insane as to excuse him entirely yet in determining whether at the time of the killing he acted without deliberation and under the influence of such a sudden and irresistible passion as would reduce the grade of the offence from Murder to Manslaughter it is proper for the Jury if they believe that the same provocation would arouse such a sudden and irresistible passion in his mind if so affected by Jealousy when ~~he~~ would not have aroused it if he had not been jealous to take into consideration the fact if proven that he was jealous, in determining the degree and extent of the passion which existed at the time of the killing

sum
Refused

Prisoners 5th Instructions

Although the Prisoner may not have been so insane as to excuse him entirely yet in determining whether at the time of the killing he acted without deliberation and under the influence of such a sudden and irresistible passion as would reduce the grade of the offence from murder to manslaughter it is proper for the Jury if they believe that the same provocation would arouse such a sudden and irresistible passion in his mind if so affected by drunkenness when it would not have aroused it if he had not been affected with drunkenness to take into consideration the fact if proven that he was affected with drunkenness in determining the degree and extent of the passion which existed at the time of the killing.

Referred

(Filed July 19th 1859)
J F Nash CLK

And on July 23, 1859. the same being one of the days of said term. the following qualifications were filed by the Court in the records and figures following &c.

"Qualification of prisoners 1st instruction

Not the fact that the mind of the prisoner accused of crime, was affected with insanity, would not of itself, excuse the commission of the crime,

Qualification to prisoners 3^d instruction

Before the jury can acquit the prisoner on the ground of insanity, they must believe from the evidence that at the time of the killing he was in a condition of insanity - That his insanity was of such a character, that he did not understand the nature, quality and character of the act he was committing - or that knowing it he was acting under such an impulse of passion, or insane desire to kill, as to exempt him from the dominion and control of reason -

In order for the jury to acquit on the latter ground, they should be satisfied from the evidence, that this insane desire was of a character that inclined the prisoner to acts of homicide - that is - that it was evinced in attempts at killing in more than a single instance, and must be made to appear in more than the single act of killing the deceased -

If it do not appear in the manner stated above - it must be shown by facts and Circumstances Contemporaneous with the killing or the existence of an habitual tendency developed in prisoners cases becoming in itself a second nature,

Qualification of prisoners 6th instruction.

In determining the question of sanity or insanity in May 1858 the Jury are not to take the testimony of the witnesses Maurell, Berry & Stett alone on that point - nor the testimony of all or any one of the other witnesses who have testified on the same point alone - but they are to judge from all the facts and circumstances connected with his previous and subsequent conduct, as well as from his manner, appearance, conduct, and conversation at and near the time of killing which are in proof, and if from all the evidence before them, they are satisfied from a preponderance of testimony, that the prisoner was generally insane in that month, they must presume that ^{such} insanity continued up to and existed at the time of killing - if there is not proof to the ~~certain~~ contrary which

appearances

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satisfied them that he was subsequently
and before the killing, restored to a
same condition of mind -

(Filed July 23^d 1869
J. F. Nash clk.)

And on July 19, 1859, the same being one
of the days of the June Term of said Court
for the Term 1859, the following ~~Bill of~~
^{Report} ~~and~~ was filed in the words and
figures following, to wit:

has been

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The People

v. S.

Wesley B. Fisher

June Term 1859

The defendant by his attys
do hereby Except to the opinion of the
Court in giving the instructions for the
People, to each and every one of them,
and also to the qualifications given by
the Court, and each of them, to defendants
instructions, and also in refusing to
give defendants, and each of defendants,
instructions marked "Refused"

July 19th 1859

Gray Hough & Glover

(Filed July 19th 1859

J. F. Nashella)

And on July 22, 1859 the same being
one of the days of the June Term 1859
of said Court, the following Bill of
Receipts were filed, in the words
and figures following, to wit -

State of Illinois } On the Circuit Court
La Salle County } Thereof July Term 1859

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The People &c }
vs } Indictment for Murder
Wesley B Fisher }

Be it remembered that
on Tuesday afternoon July 19th 1859 being
one of the days of ^{the} said term of this Court
between the hours of 4 & 8 o'clock P M of
said day, and after all the evidence
and arguments of counsel were closed, and
after the instructions had been given to
the jury, the jury retired under the charge
of a sworn officer of the Court, to
deliberate upon their verdict, to the
jury room. On Wednesday morning at
about 9 1/2 o'clock A M July 20th 1859, the
said jury at their request, were suffered
to come into Court, when the following
queries in writing ^{marked "A & B"} (see queries marked AX & BX hereinafter
inserted.)

were propounded to the Court by Abner A
Fisher Esq Foreman and one of the jurors
in behalf of the jury whereupon the
Court at the request of the jury gave the
jury the following instructions - (Here
insert them) (See instructions marked
A & B hereinafter inserted)

in the presence of the prisoner. To the Court suggesting the Jury to come into Court for the purposes aforesaid and to the Court giving to the jury the said instructions, the Counsel for the prisoner then and there objected but not until after the instructions were given & not until after the prisoners Counsel had expressed themselves satisfied with said instructions. The Court overruled the objections and instructed the Jury as aforesaid, and the Counsel for the prisoner then and there excepted, and the Jury retired again under charge of A sworn officer to deliberate further upon their verdict. And afterwards on Thursday morning July 21st at about 9 1/2 O'clock in the morning of said day the Court permitted Abner A Fisher Esqr one of the Jurors to retire from the Jury then deliberating in the Jury room, and come into Court under

charge of A sworn officer and converse with the Court in the hearing ^{& presence} of Counsel for the people and the prisoners Counsel and at the special instance & request of the Court the Court before this had received at the hands of the officer in charge A paper writing signed by the said Abner A Fisher as foreman of said Jury on the subject of the said trial.

(See interrogatories or paper writing
 after inserted marked C.)

And the Court then and there informed the said
 Juror that he would instruct the said Jury
 further in the evening of said day according to
 the request of the Jury in said paper writing
 expressed To the whole ~~and~~ every part of
 said proceeding the prisoner by his Counsel
 did not object (Here insert the said
 paper writing). At 8 o'clock P.M. of said
 last mentioned day, the Court directed the
 Jury and the prisoner to be brought into Court
 which was accordingly done whereupon
 the Court gave to the Jury the following instruc-
 tions. (here insert the instructions)
 (See instructions here in after inserted
 marked C.)

To the giving of said instructions by the Court
 the prisoners Counsel then and there objected
 The Court overruled the said objection
 and the prisoners Counsel then and there
 excepted, The Counsel for the prisoner
 before the giving of the said instructions
 requested to see the said paper writing so
 given by said Juror to the Court the

Court refused to let the prisoners Counsel see the same, and to the Court so refusing the Counsel for the prisoner then & there did not except. While the said jury were in Court as aforesaid, on Wednesday morning July 20th 1859 the prisoners Counsel asked the Court to give the jury the following instructions, the Court refused either to give the said instructions or to refuse them (here insert ^{the} instructions) (no such instructions on file)

but drew up the instructions marked given on said 20th day of July in lieu thereof with which the prisoners Counsel then & there expressed themselves satisfied & accordingly did not ask the Court to give the instructions drawn out by them on which the Court laid them aside as not papers belonging to the Case (here insert ^{the} instructions given) (see instructions hereinafter inserted marked A & B as aforesaid)

While the Jury were in Court at the last
 mentioned time, and after the said first
 one of said last mentioned instructions had
 been given to the Jury the Court suffered
 Abner A. Fisher one of the Jury to ask of
 the Court verbally in the presence and hearing
 of the other Jurors and in their behalf as foreman
 and of the prisoner as to what amount of
 evidence the Jury should be satisfied ^{with}
 on the subject of insanity of the prisoner
 at the time of the killing and thereupon the
 Court gave to the Jury the following instruc-
 tions on that subject (here insert the instructions)
 (See instruction 6th of instructions
 hereinafter inserted marked "C".)

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To the whole of which said proceeding
 And the said instruction, the Counsel
 for the prisoner then and there objects
 The Court overruled the objection and
 to the decision of the Court in that
 behalf ~~for~~ ^{then and then received} the prisoner, at the times
 when the same were severally made
~~then and then excepted~~ and asked
 the Court to sign and seal this bill of
 exceptions which is accordingly done
 W. B. Hollister Seal

(Filed July 22^d 1859
 J. F. M. H. L. L.)

On July 22, 1859 the same being one
of the days of the June Term of said
Court for the Year 1859, the following
Bill of Exceptions ^{were} filed, in the words
and figures following, to-wit:

125

(See paper writing and instructions hereinafter inserted marked D.)

State of Illinois } Indictment for Murder
La Salle County }

The People vs Wesley B Fisher } Be it remembered that
on the 22nd day of July
being one of the days of
the present Term of this
Court the Jury came into
open Court (the Prisoner and his Counsel being
present) for the purpose of asking further
instructions as follows (here insert instruc-
tions) which were given + the Counsel for the pris-
oner then and there objected to the giving of
said instructions - The Court overruled
the objection and gave said instruction
to the Jury. And to the decision of the Court
in that behalf, the prisoner then and there
excepted, A ben A Fisher Esq one of the
jurors stated to the Court verbally that
there was no probability of the Jury
ever agreeing, and wished the Court to
discharge the Jury, ~~which~~ which the
Court refused to do, saying at the same
time to the Jury in reply, that he con-
sidered it his duty to keep the Jury longer,
in view of the fact that the prisoner was
~~discharged~~ charged with the Commission of the high-
est Crime known to the law, and that the
security of the life of the people ^{required} as well

(over 100)

remarking that no further instructions would be given
either for the people or the prisoner except requested to do so
by the jury

as interests of the prisoner that the Jury should not be discharged until every effort had failed, and (then no) probability whatever, that the Jury could agree. On this consideration the Court remarked to the Jury that before the next term of this Court the witnesses may be in their graves and justice may be cheated of its victim! To the Court making this latter remark to the Jury the prisoner by his Counsel then and there excepted. The Counsel for the prisoner then asked the Court to have some instructions given to the Jury for the prisoner the Court decided that no instructions of the prisoner could be given and refused to suffer the prisoners Counsel to offer any instructions on his behalf. And to this decision of the Court in that behalf the prisoner Counsel then and there excepted. The Court remarked to the Jury orally, that in the opinion of the Court it was proper for any Juror to communicate to the Court in writing in reference to their differences, and that the Court would if they were so communicated in writing to the Court determine whether it was expedient to keep them together any longer. To which oral remarks of the Court the prisoner

129 Counsel then and there excepted and
asked the Court to sign and seal this
bill of exceptions which is accordingly
done in open Court

M. E. Hollister Secy

(Filed July 22 1869
J. F. Nash clerk)

On July 25, 1859 the following queries
in pencil
were filed, (the same being one of the days
of the June Term of said court for the year
1859) in the records and figures following
to wit:

"To his Honor, M. E. Hollister

129
D Is the jury to give equal credence and weight to the testimony of each and every witness stating facts (and not their opinion upon subjects) that are not impeached or in any way contradicted by other witnesses or circumstances and to receive the same as truth

A. A. Fisher Foreman,

(D)

And on July 23, 1859 the same being one of the days of the June Term of said Court for the Year 1859 the following instructions were filed, in the words and figures following to wit: "D,"
D Instructions by the court on the 23rd day of July 1859 at the request of the jury

The law does not require that the jury should give equal credence and weight to the testimony of each and every witness who testifies to facts (Independently of opinions) that is not impeached or in any way contradicted by other witnesses or circumstances. They are to receive such testimony and determine for themselves whether it is true or false, if they believe from his appearance on the stand from the manner which he testified, from his candor and intelligence, from his means of information upon the point to which he testifies and from his impartiality that he testifies truly

Groom

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Given

they must receive it as truth though not corroborated by other ~~subtle~~ proof - But if on the contrary the witness appears to testify under a strong bias or from feelings of interest or revenge or from a want of correct information or in any manner that in the eye of reason appears to be suspicious or incredible they may reject his testimony though not contradicted by other witnesses or circumstances - This rejection or admission of testimony must be reasonable and not capricious and must be justified on the ground that it either convinces or fails to convince the judgment of a candid and impartial man.

On the 23^d day of July & 25th of July 1859
the following interrogatories & instructions
were filed, (the interrogatories in pencil, both
the above days being days of the June Term
of said Court) in the words and figures
following, to-wit:

"A X"

133

Filed July 25th 1859 C. F. Marsh Clk

"A X"

"Does" a deliberate intention to kill "as found in the 9th instruction of the People vs. W. B. Fisher mean, or intended to mean (a full consciousness on the part of the prisoner of the enormity of the crime - or merely a calculation or contrivance of means to kill, without such consciousness -"

~~Instructions given in the morning of July 20th 1859~~ "A" ~~Instructions given in the morning of July 20th 1859~~

"A"

"The law of provocation when applied to sane persons, so as to reduce the killing from murder to manslaughter, is the unlawful killing of a human being without malice express or implied and without any mixture of deliberation whatever -

If from motives of hatred, revenge, jealousy, or any wrong or injury, real or imaginary, one person kills another, the killing shall be referred to malice, and must be considered murder - If however the killing is the result of a sudden violent ^{impulse} of passion, caused by a serious and highly provoking injury, inflicted upon the person killing, which is sufficient in the minds of the

134 Jury, to excite an insupportable passion
in a reasonable person, or there is an
attempt by the person killing to commit
a serious personal injury on the person
killed. Then it is manslaughter and
not murder.

2^d The law makes the killing of a hu-
man ^{being} ~~murder~~ when there is an intention,
deliberately formed to take the ^{life} of another.
In determining the question of intention,
it is competent for the jury to take
into consideration any facts in proof,
which show that the mind of the
person killing, was affected with in-
sanity at the time of killing.
If they believe that at such time the
mind was so far and so much affected
with insanity - as to satisfy them that
he had not, prior to the killing, deliberately
formed an intention to kill, or that at the
time of the killing, he had so far lost the
control of his reason, by reason of his insanity,
as to be incapable of acting upon such
intention, or had forgotten, or abandoned it, tho-
it may have been formed. Then altho they may be
satisfied that he could distinguish between the right &
wrong of the act, the killing is manslaughter & not murder.

(and murder)
killing

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(Filed July 23^d 1859
J. F. Nash clerk)

On July 25, 1859 the same being one
of the days of said June Term of said
Court for the Year 1859, the following
interrogatories in pencil, was filed in
the records & figures following, & was
immediately after fellow instructions filed
on the 28th day of July, 1859

(B)

"BX"

(B)

"BX"

- 1 The juror maintains that whatever evidence was produced in the trial in regard to any supposed provocation or provocations or in regard to any state of mind intricately insubly may have any weight or such weight in the mind of the juror as in his judgment it may demand either in excusing or mitigating the crime of murder.
- 2 The juror maintains that he is competent to judge of the correctness of any oral or the instructions of the Judge as his the jurors own opinion of the law may dictate -

Instructions by the Court on the 20th July
~~at evening~~ ^(not referred to in the trial of reception)

- 1 The deliberate intention to kill without the meaning of the instructions given on that point, is a deliberately formed purpose to take the life of a human being. It is not necessary that the prisoner should have maturely considered all the consequences of the act. If the evidence satisfies the jury beyond a reasonable doubt, that there was this deliberately formed purpose to take the life of the deceased - then they must

Juror

find that the Killing, if there was a Killing, was of malice aforethought - It does not change the character of the Killing if the consequences of the act have or have not been ~~materially~~ ^{naturally} considered or foreseen by the prisoner. It is enough in the eye of the law, if the purpose to kill was deliberately formed, and the Killing was deliberately done in pursuance of that purpose - Such Killing is murder.

- 2 Before ~~the~~ ^{an} unlawful Killing can be made manslaughter, on the ground that the prisoner's mind was affected with insanity, it must be made to appear, by clear and satisfactory proof, that it was affected to such a degree that it was incapable to such a degree of deliberating upon the time and mode of Killing, or of acting upon any rational ground of provocation. The mind must be so far emancipated from the dominion of reason as to be incapable of carrying into execution any deliberately formed purpose to kill, and this by reason of insanity, and not, of ungovernable and ill regulated passions, aroused by provocations insufficient to

excite them in reasonable persons—

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3° Before the jury can acquit entirely, on the ground of insanity, they must be satisfied from the proof in the case, that at the time of the killing the prisoner was so insane that he did not understand that the killing was contrary to the laws of God and the State— and on this point no testimony on the ground of provocation is to be considered—

"B3"

B 3° The jury must take the law as given to them by the Court as the law which is to govern them in this case— It is for the jury to determine whether the law thus laid down by the Court is applicable to the proofs in the case— If the jury find the facts to be such as to make the law applicable either to a case of murder, manslaughter, or to a case of insanity, or to a state of innocence, the law as laid down to them must be made to apply— It is not for the jury to say that the instructions given, are not, the law by which they are to determine the guilt or innocence of the prisoner—

Filed July 23^d 1859
 J. F. Nash Clerk

On July 25th 1859 the same being one
 of the days of the June Term of said Court
 for the year 1859, the following Interrogatories
 were filed in the records & signs following
 thereto immediately following are
 instructions filed on the 23^d of July
 1859.

141 To the Hon W. C. Hollister -

As we are not permitted to explain to the Hon Court our strange and peculiar situation we ask the instruction of the Hon Court upon the following points -

1st Is it lawful for a jurymen to go behind our statute law and search the Bible to see whether our statute laws are not void in consequence of their disagreement with the higher law -

2nd

Is it lawful for a juror to go behind the testimony and read medical books to see whether the Doctors & others examined on the trial testified correctly or not -

3rd

Is it lawful for a jurymen to go behind the trial and search law book to see whether the judge did not exclude some testimony that ought to have been admitted -

4th

Is it lawful for a juror to go behind the instructions of the Court and search law books for the purpose of finding some error in said instructions -

5th

Is it lawful for a juror after admitting the proof of every essential fact which constitutes a certain crime being in a different verdict because he

142 The said juror does not approve of the penalty attached to the first—

If so how long must we remain in this worse than purgatory, and be abused and vilified by a fanatical mad man

In behalf of the jury

A. A. Fisher Foreman

(Filed July 30th 1859
"J. F. Nash clerk")
(C)

(C)

"C" "Instructions by the court on the 21st July

1 The jury cannot lawfully disregard the Statute of the State which defines what crime is, and take the Bible for the law. They have no right to determine for themselves, the question, whether the Bible & the law are given to them by the court agree or not. There is but one law by which they are to decide the question before them & that is the law laid down to them by the court—

2

The jury must be governed by the sworn testimony in the case. They have no right to consult medical works, to determine the truth or falsity

143 or the weight of sworn testimony -

3

It is not ~~lawful~~ the law, that the jury can go outside of the case, as given to them by the testimony & the instructions of the court, and determine for themselves whether the law as given to them is or is not the law, nor have they any right to determine for themselves whether the court did or did not err in excluding or receiving testimony - They cannot presume that there is any fact or circumstances which may have had a bearing in the case, except such as is given to them in the testimony -

The law is that no fact exists, except it is shown to exist by the testimony -

4

It is not lawful for the jury to go behind the instructions given to them by the court, and take it upon themselves to determine, by law books or in any other manner, whether the ruling of the court is or is not correct. They must take the instructions as they receive them from the court, to be the law by which they are to be governed in the case -

5

The jury have no right to call murder manslaughter, nor manslaughter murder, any more than they have a right to call either the one

or the other robbery -

The law defines what crime is and the jury must take that definition as it stands in the instructions given to them. The law is further, that the jury have no right to determine for themselves the character of the crime, because they may be opposed to the kind of punishment which the law prescribes. They have no business with the punishment. It is for them to find the facts & the law as it is laid down to them by the court, they are to say guilty or not guilty on their oaths. When the verdict is rendered it is for the court to pronounce the punishment which the law prescribes.

6

th

The jury must be satisfied from the proof in the case that the mind of the prisoner was affected with insanity as laid down in the 2nd instruction of the court given on the 20th instant before they can find him guilty of manslaughter for that reason - The fact of insanity to that extent must not be left in doubt. The mind or judgment of the jury must be convinced from the testimony that his mind was affected with insanity to that extent before they can pronounce the killing if proved, for that reason manslaughter.

("Filed forly 28rd 1859 -
J. F. Nash, Clerk")

145 Afterwards to wit: on Saturday July 23rd 1859 the same being one of the days of the same term of said court the following ^{entered of record} proceedings were: in the words and figures following to wit:

"The People vs
 or
 Merley, B. Fisher } Indictment for murder
 Bushnell & Gray their attorneys and the
 Defendant in his own proper person as well as by C. C. Gray
 & J. C. Glover his attorneys, together with the jury sworn herein,
 who return into the court the following verdict to wit:
 "We the jurors in the above entitled case do find the
 defendant guilty in manner & form as charged in the
 Indictment, and recommend to the governor the com-
 mutation of the penalty to imprisonment in the peniten-
 tiary for fifteen years"
 Defendants counsel now move the court for
 a new trial

147

Afterwards to wit on Monday July 25th 1859 the same being one of the days of the same term of said Court the following proceedings were entered of record in the words and figures following to wit:

"The People vs

or

Wesley B. Fisher

} Indictment for Murder.

} This day the People again come by Bushnell & Wallace their Attorneys

and the defendant by Elmer & Gray his attorneys and as well as in his own proper person. The Court now overrule the Defendants motion for a new trial, to which decision of the Court in overruling said motion defendants Counsel except. The Court now sentences the defendant Wesley B. Fisher in the words and figures following to wit: "You Wesley B. Fisher are to be taken from hence to the prison from which you came and from thence to the place of execution, which place is to be within the walls of the prison of this county, or within a ^{yard} ~~yard~~ or inclosure adjoining such prison and there on the seventeenth day of August next between the hours of twelve o'clock at noon and six o'clock in the afternoon, you are to be hanged by your neck and until you are dead."

The People of the State of Illinois { indictment
for Murder
vs
Wesley B Fisher

Now comes the prisoner Wesley, B. Fisher, by A. O. Glover, his attorney, and says that there is manifest and material error, appearing of record in this Cause, in this, To Wit,

The Court erred in overruling the prisoners motion to quash the indictment in this Cause,

The Court erred in overruling the defendants motion for a Continuance - at the June term, ¹⁸⁵⁹ of the said Court

The Court erred in overruling the defendants ~~peremptory~~ ^{for cause} Challenges of Solomon Williard and in refusing to allow the defendant further to examine said witness

The Court erred in excluding the testimony of Maria Budd and in refusing to allow her to testify

The Court Erred in excluding the testimony of Mary Ford and in refusing to allow the prisoner to establish the facts which the defendant offered to prove by her

The Court erred in excluding the testimony of George C Hooker and in refusing to allow said witness to answer the questions and each of the questions put to him by defendants Counsel and also in the instructions given to said witness limiting his answers to defendants questions

The Court erred in refusing to allow the defendant to establish the facts the defendant offered to prove by the testimony of Stephen Nicholson

The Court erred in refusing to allow the prisoner to give in evidence to the Jury, Chittys Medical Jurisprudence, Shelford on Lunacy, Becks medical Jurisprudence, Taylors medical Jurisprudence, and Whartons Medical Jurisprudence for the purpose stated in the bill of exceptions

The Court erred in excluding the proof ~~offered~~ that the prisoner offered to establish by the testimony of George Sherwood and in refusing to allow witness Sherwood to answer the questions and each of the questions put to said witness by defendants Counsel

The Court erred in refusing to allow the defendant to establish the facts which ^{he} offered to prove by the testimony of Solomon Sherwood

The Court erred in refusing to allow the defendant to prove the facts which he offered to establish by the testimony of George H West and Henry West and in refusing to allow said witnesses to answer the questions put to them by defendants Counsel

The Court erred in excluding the testimony of Anna Voyell and in refusing to allow her to testify to the facts the defendant offered to establish by her testimony

The Court erred in excluding the testimony offered to be established on the Cross examination of the witness Goodrich and in refusing to allow said witness to answer the questions put to him by the defendants Counsel

The Court erred in overruling defendants objection to the testimony of David Strawn A witness called by the People and in allowing the testimony of said witness to go to the Jury

The Court erred in giving the instructions and each of the instructions, ^{severally} given on behalf of the people
~~The Court erred in~~

The Court erred in refusing to give the defendants first instruction without qualification, ^{and in giving it as qualified} and in refusing to give the Prisoners third instruction as asked for and in ^{giving the same as qualified} ~~qualifying the same~~ and also in refusing to give the Prisoners sixth instruction as asked for without qualification and in giving the same as qualified

The Court erred in giving said instructions and each of them as qualified

The Court erred in refusing to give the defendants fourth instruction and also in refusing to give the defendants fifth instruction

The Court erred in suffering the Jury to return into Court ^{on the 20th day of July} after they had retired to consider of their verdict and after the evidence had been closed and instructions given and in permitting the Jury to propound to the Court the queries in writing marked in this record A & B and also in giving to the Jury the instructions in said record marked A & B

The Court erred in permitting A & B

A. H. Fisher, on the 21st day of July
Aforesaid one of the Jurors in
said Cause to retire from the
Jury then deliberating and
Come into Court, and in con-
versing with the Court on the
subject of this trial, and in
advising the Jury through said
Fisher that he would further in-
struct them, The Court also erred
in ~~directing~~ ^{directing} the Jury at 8 o'clock
P.M. of said day to be brought
into Court, and in requiring them to
Come into Court, and in giving
to the Jury the instructions marked
C in this record. And in per-
mitting the written Communica-
tion of said Jury to give to the
Court the Paper writing in said
record marked C, and also in
refusing to let the prisoners
Counsel see said paper writing.
The Court also erred in permitting
Abner D. Fisher, one of the Jurors
in said Cause to enquire of the
Court touching the amount of
evidence they should be satisfied
with on the question of insanity

and the Court erred in giving
to the Jury ^{the} instructions on that
subject

The Court Erred in permitting the Jury
to come into Court on the 22nd day
of July aforesaid and in permit-
ting the Jury to propound to the
Court the written interrogatories
marked B in this record the
Court also erred in giving to
the Jury the instructions marked
D in answer to said interrogatories
The Court erred in saying to ~~Admiral~~
~~Hooker~~ ^{this Jury} ~~in the presence and hearing of~~
~~the rest of the Jury~~ ^{that} ~~and~~ before the
next term of this Court the witnesses
may be in their graves and justice
may be cheated of its victim
The Court erred in refusing to allow
the prisoners Counsel to offer any
instructions on behalf of the
prisoner The Court Erred in saying
to the Jury on said 22nd day of
July orally that in the opinion
of the Court it was proper for any

Prorog to Communicate to the Court
in writing in reference to their dif-
ferences, and that the Court would
if they were so Communicated in
writing to the Court determine whether
it was expedient to keep them together
any longer

The Court erred in overruling the prisoners
motion for A new trial

J O Glover atty
for Defendant

Let a superseas issue on the foregoing
Record

Attomey Sept 13th 1859.

J H Caton
Ch Just Ills.

Wesley B. Fisher
vs

The People of the State
of Illinois

Record & Assignment
of Errors

Filed September 13th 1859
L. Leland
Clerk