

No. 12282

Supreme Court of Illinois

Hopkinson.

vs.

People.

71641  7

Plead before the Hon^{ble} M. E. Hollister Judge
of the North Judicial Circuit of the Circuit Court of the State
of Illinois. at the October Term of Said Circuit Court in
and for the County of Bureau begun and held at the
Court House in Princeton within and for said County
on Tuesday the second day of October in the year
of Our Lord One Thousand Eight Hundred and fifty
five

Present Hon^{ble} M. E. Hollister Judge
Edward M. Fisher Clerk
Stephen G. Padlock Sheriff
Wm. S. Mallard Dist. Atty.

[The Sheriff] Returns into Court the Return
issued by order of the Board of Supervisors of Bureau
County by which it appears that the following named persons
were duly Elected and notified to appear and serve as
Grand Jurors at the present Term of this Court to wit.
Amos H. Lewis. Charles S. Fink. Samuel Fifield. Allen
S. Lathrop. Benjamin Brewster. George Bliss. Bartlett
Isaac Hoagland. W. A. Morgan. Egbert Reasoner. John
Prouty. Henry Mullin. Charles E. Wood. James G. Swan.
Sylvester S. Pevrier. Jacob Ross. Jonathan Ireland
Cyrus Longworth. John G. Sweet. G. R. Ames. Anthony
Morisy. Samuel Whittington and Ross Freeman. who
being called answer to their names except Charles S.
Fink Bartlett and John Prouty. Whereupon it is
considered by the Court that said Charles S. Fink

Bartlett and John Priority be summoned to appear at the next term of this Court to answer for their contempt in not appearing as jurors as aforesaid Amos H. Lewis and Samuel Fifield being duly sworn and making their excuses to the Court are severally excused from further attendance at the present term - Charles S. Boyd. Lazarus Reme. Lewis M. Olcott. and Isaac Houghs are summoned from the bystanders Cyrus Langworthy is appointed foreman by the Court. and after being duly sworn according to law. and instructed by the district attorney. Said jury have leave to retire to sit as a grand Inquest. for the County of Bureau

To sit on the third day of said term

The Grand jury Return into Court and present in Open Court the following bills of Indictments as true bills To Wit. A Bill of indictment against Francis Hopkinson for an attempt with intent to murder in the words and figures following to wit

State of Illinois - At the October Term of the said Bureau County Circuit Court, in the year of our Lord Eighteen hundred and fifty five

The Grand jury Chosen, Elected and Sworn in and for said Bureau County in the name and by

the authority of the People of the State of Illinois upon
their Oaths present that Francis Hopkinson late
of said County on the twenty seventh day of April
in the year of our Lord Eighteen Hundred and fifty
five, with force and arms, at and within the said
County in and upon one John Cummings in the peace
of said People, unlawfully, feloniously, wilfully,
maliciously and of his malice aforethought, did make
and assault with a certain pistol which was then and
there charged with gun powder and leaden bullets,
and which pistol he the said Francis Hopkinson
in his hand then and there had and held with the
intent on the part of him the said Francis Hopkin-
son then and there with the pistol aforesaid unlaw-
fully, feloniously and of his malice aforethought to
kill and murder the said John Cummings -
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

On the back of said Indictment are the
following Endorsements in the words and figures
following to wit,

The People &c vs Francis Hopkinson
Indictment for an assault with intent to murder
A true Bill Cyrus Langworthy Foreman
Witnesses John Cummings, David Lloyd,
Chester Anson, Anthony Patter Albert Barrington
Bail \$500. M.E. H.
Filed Oct. 5 1855 C.M. Fisher CLK

and the Court order that Said Bill be filed and
that Said Defendant be held to bail in the sum
of Five Hundred dollars -

To wit on The Eighth day of Said Term

The People of the State of Illinois

vs Indt for assault with intent to murder
Francis Hopkinson

Now comes M H L Wallace attorney
for the people and the defendant comes in proper person
and by Peter Taylor and Stupp his attorneys. and Said
defendant waving a copy of the indictment and
names of the witnesses. is arraigned before the Court. and
for his plea Says he is not Guilty in manner and
form as charged in Said Indictment. and for his
trial puts himself upon the Country. and the people
attorney doth the like. And the Court orders that a
jury be empannelled to try the Said Issue. and
there comes a jury of Twelve good and lawful
men to wit. Aaron Fisher William Hudnot. John
Kinnan. James Morrison. James H Tibbets. David
Alexander. William Wooden. James R Moon William
Munsow. Amos Whitemore John L Cator. and Noah
Long^{2d}. who are duly Elected tried and sworn well
and truly to try the Said Issue and a true verdict
render according to the Law and Evidence; and
the Said Jury upon Their Oaths Say "we of the

jury do find the said defendant guilty in manner and form as charged in said indictment, and fix the term of his imprisonment in the penitentiary at one year and six months, and the defendant by his said attorneys move the Court for a new trial herein, and after argument of Counsel and the Court being fully advised in the premises, said motion is overruled. It is therefore considered by the Court that the said defendant be confined in the Penitentiary at Alton for the term of one year and six months, that one day of said time be spent in solitary confinement, and the remainder of said term to hard labor. It is also further considered by the Court that the Sheriff of Bureau County shall within ten days from the last day of the present term of this Court deliver the said defendant into the custody of the warden or keeper of the Penitentiary at Alton in the State of Illinois. It is also further considered by the Court that the People of the State of Illinois have and recover of the said defendant all their costs and charges in and about their suit in this behalf expended and that they have execution therefor.

The Defendant filed this day
the following bill of Exceptions
Oct 16th 1855 E. M. Fisher, Clerk

(3)

The People of the State of Illinois
vs. Francis Hopkinson

Indictment for Assault
with intent to murder

Be it remembered, that on the trial of this
cause, at the October Term of the said
Circuit Court, A. D. 1855, the said People
to maintain the issue on their part gave
in evidence to the jury, by the testimony of
John Cummings a witness then and there pro-
duced and sworn on the part of the said
People, that some time in the month of ^{April} ~~May~~
A. D. 1855, at Princeton in said Bureau County,
the said Cummings was at the dwelling
house of Justus Stevens in said Princeton in
company with one Potter, Payne, & Merriam
that said Payne & Merriam were at work on the
house doing the carpenter work, that the de-
pendant and one Richard Wood were there
also in another part of the house plastering
that said ~~John~~ Cummings, Potter and
Merriam left said House and went towards the
Eagle House in said Princeton, which was
the boarding house of said Cummings & Potter,
that the defendant and said Woods ~~walked~~
ahead of the said Cummings, Potter and Merriam until
said Cummings Potter and Merriam stepped for

a few moments into a meat shop ^{the East side of} on Main
Street in said Princeton, during which time said
Dependant and said Wood ~~passed said~~
~~Cummings, Potter & Morris~~ ^{went into the Post office} that
after they left the said meat shop & proceed-
ed on their way; that at the first office on the
East side of said Main Street a few rods north
of said meat shop they passed the dependant &
said Wood; that just south of the Prairie House
where said Main Street is crossed by an alley
running ^{East & West} ~~North & South~~, a few rods north of
said post office, the said Cummings & Potter
turned West to cross said Main Street; that just
as they turned said Wood who had left said
Post office ~~approached said Cummings &~~
~~Potter,~~ ^{Called out to} said Potter and said "I heard
that you said you had seen better work than
ours" (referring to the Plastering done on Stevens
house) "cut down back East"; that said Potter
replied that he had not said so; that then
said Cummings addressed said Wood, and
said "I'm the man that said it"; that then
said Wood replied to said Cummings and
asked him "do you think you can do better
work" to which said Cummings replied "I can";
that then said Wood asked said Cummings
if he had any money to bet on it, said Cum-
mings replied that he had; that then said

Wood said he would let said Cummings
fifty dollars that he ^{Cummings} could not do as good
work; that said Cummings said he would let
it, and asked whose hands the money should be
put up in; that said Wood replied that he did
not care; that then said Cummings saw one
Lloyd coming East on said Alley on the west
side of said Main Street and proposed to
put up the money in his hands to which said
Wood assented; that then said Wood, Potter &
Cummings started to meet said Lloyd, said Wood
& Potter being before & said Cummings be-
hind; that then said Defendant came up be-
hind said Cummings, addressed said Wood
& told him not to put the money in Lloyd's
hands, but to put it in the hands of one
Epperson, the landlord of the Prairie house
; that when said Defendant came up close
to said Cummings, said Cummings turned
round towards said Defendant, stepped off
the walk which crossed the street on the north
side, addressed said Defendant, and said
"You Pitched on to me last night, now
stand off; that at the same time, the said
Defendant, as soon as the said Cummings turned
round towards him and stepped off the walk step-
ped off said walk on the south side and drew
a Pistol, one of Kotts revolvers" and presented

it ^{at} said Cummings, that said Cummings
told said defendant to put up the pistol.
When said defendant fired at said Cummings
and ran towards the Prairie House, that said de-
pendant and said Cummings were about ^{3 or 4 steps} ~~8~~ feet
apart when said defendant fired; that the ball
from the pistol passed through the left skirt of
defendants coat cutting his pantaloons on the left
side about at the hip; that immediately ^{on} the
firing of the ^{said} defendant, the said Cummings ran
after the said defendant and ran him to the door of
the Prairie House, when the defendants pistol again
went off, & fell on the pavement, but said Cum-
mings did not know whether the said defendant
fired it, or whether it went off accidentally, that
said defendant ran into the Prairie House when
said Cummings ran him no more on that occa-
sion. ^{that said pistol was capable of killing a man at the distance}
Said Cummings was then cross examin-
ed by the said defendants counsel, when said
Cummings stated further to said jury that he
was a plasterer by trade, that he had arrived
in Princeton, from Massachusetts a few weeks
before the said shooting; that at the time of the
said shooting he was in the employ of the said
Lloyd; that he was not at work in the house of the
decs at the time of the shooting but was at work
in Princeton in that neighborhood; that the

that said pistol
was from
dept. when it
was fired -

reason why he went to Stevens' house on the eve-
ning of the shooting, was that either Payne or Murri-
am called to him to come there as he was on
his way to the Leigh Hotel, that he visited Stevens
home frequently, but not ^{to} criticise the defend-
ants plastering, he went to see Payne & Mur-
riam, ^{and that he had no other acquaintances in town} with whom he was acquainted, but had
examined defendants plastering; that about
dark on the evening before the shooting he
Cummings had met the defendant at the
Hayseals on the ~~North~~ ^{South} side of the Public
Square East of said Main Street; ^{where} ~~that~~ de-
fendant asked him Cummings if he had
said that he had seen better work than
his defendants' cut down, to which Cum-
mings replied that he did say so; that
then defendant ^{and assumed a threatening attitude} ~~straitened himself up~~ & said
"You son of" and Cummings thought defend-
ant was going to call him a son of a bitch
but before he got the words out Cummings
caught the defendant by the throat & choked
him so as to stop his utterance, but thought he
did not quite shut his wind off; that while
he had the defendant by the throat he thought
defendant struck him with his hand or fist in
the breast, but not so as to produce any pain, that
defendant fell from being choked, or pushed
& choked together, that while ^{down} on the hayseals the de-

to plastering, had told others that he had seen further work cut down, that he had
sawing was good but he had seen better, and that the carrier was not good, that when moved
is work cut down down wood & 8 to 10 in Cummings said "I am the man that said it down
the piece of wood he did not catch him; that when he advanced upon defendant he thought he
in his pistol down him; that he Cummings at the time of fight weighed from 190 to 200 pounds
servant scribbled about and in Cummings
thought defendant might be pulling for or
brick, but defendant got up and ran away
that while the defendant was scribbling the said
Cummings caught up a ^{small piece of} board ~~and~~ & threw
at the defendant as he ran, saying "damn you
leave" - that when the defendant approached
him the said Cummings on the occasion of the
shooting, the said ~~defendant~~ ^{defendant} said nothing to
said Cummings whatever, that he made no
motion or gesture whatever, that he ^{much} ap-
proached him as he was crossing the ^{coming close to his side} street, that
on his approaching the said Cummings turned
round and said to defendant, "you pitched
me last night now ~~damn you~~
stand off", that then he stepped off the walk
that then defendant stepped off and drew his
pistol, that then Cummings said to defend-
ant two or three times "damn you" put up
your Pistol and advanced towards the de-
pendant two or three steps, that at the
same time defendant stepped back two or
three steps that then the defendant stopped and
took aim at him Cummings & fired; that at
the time the defendant fired he Cummings
was not advancing towards defendant; that
he Cummings advanced towards the defend-
ant because he intended to make defend

in account of the night the evening before
(3) That said Cummings thought, when charged, that he Cummings had talked about it
defendant come up to him in main street he
might strike or knock into him - and that he
witness made no attempt to strike defendant - that
he had nothing in his hand & did not even double his fist -
ant put up his Pistol. The answer to the ques-
tion by defendants Counsel "whether he ad-
vanced upon defendant in order to secure his own
personal safety, the said Cummings replied that
he intended to make defendant put up his pis-
tol - when asked by defendants Counsel, whether
he did not advance with intent to beat defend-
ant, said Cummings replied, that he intended
to make defendant put up his pistol; when
asked by defendants Counsel whether defendant
did not before he fired tell him Cummings to
stand back or he defendant would shoot him
said Cummings said if defendant did so, he
Cummings did not hear him - (1) (3)
The said People then gave in evidence to the said
jury, by the testimony of the said Potter, that on
the evening of the shooting, the said witness was at
the said dwelling of said Stevens in company with
said Cummings, Payne & Merriam; that the
said defendant and said Wood were there
also in another part of the house plastering, that
witness went into the room where they defendant
& Wood were, that Wood threw some mortar upon
witness, that said defendant and Wood
then left the house and started to supper, they
dined at the privies house, that witness, & said
Cummings then started to the Eagle Hotel & followed

and after said Wood & defendant, that said
Merriam went with witness & Cummings till they came
to the said meat shop; that there witnesses, Cummings
& Merriam went into the meat shop; that witness
& Cummings stood a moment only & then proceed-
ed; that he saw defendant and Wood at the ^{said} Post
Office; that they went on till they came to the said
alley, just south of the Prairie House, when Wood
who had come along ^{behind} with them from the Post Office
called out to ^{him} ~~and~~ ^{and} said he wanted ^{the} ~~the~~ ^{the} difficulty with
~~substant~~ said witness & ^{and} said I heard you said
you had seen better work than ours out down
; that witness said he had not said so; that
Cummings then said "I in the name that said it;
that Wood then offered to bet 50¢ or 5 to one
or something to that amount; that Cummings
took Wood up, & proposed to put the money
in the hands of Lloyd whom they saw com-
ing up the alley towards them; that ^{they} proceed-
ed to cross the street witness and Wood being ahead
& Cummings behind that they had got nearly across
the street to the West side when the defendant
came up behind Cummings, and spoke to
witness objecting to putting the money in Lloyd's
hands; that when witness turned round he saw
defendants pistol raised, & heard Cummings
tell him to put up the pistol two or three times
; that defendant stepped back two or three
~~steps~~ ^{steps} & fired. said father was then cross

examined by defendant's counsel and stated
^A further to said jury, that ^{just before the} ~~at the~~ time the
defendant fired his pistol, Cummings
advanced towards him one or two steps
, but that at the time he fired Cummings was
standing still. Witness was then asked
if he saw Cummings turn towards the
defendant, he answered "I saw him ^{get}
raise his pistol. Witness was then asked
if he was looking at Cummings & defend-
ant when the defendant first came up
- he answered "I saw him ^{get}
raise his pistol. Witness further stated that at the
time of the firing defendant & Cummings
were about 6 or 8 feet apart; that on the
evening of the shooting Witness went to Stevens
house before Cummings; that the reason why
Cummings came to Stevens house on that
evening was, that he witness called to Cum-
mings as he was passing to come there,
and ^{that} when Cummings came he witness show-
ed Cummings where Wood had thrown the
mortar on him, that he called Cummings
there to show him the mortar & tell him of
the circumstances; that he had visited Stevens
House frequently, that he did not go to Critch-
field's work, he went to see Boyer & Merri-
am, that he was a plasterer by trade and
that he did not hear defendant till Cummings
he was standing ^{to stand off} ~~at the~~ ^{and he would shoot him and that}
a rod of the parties at the time of the shooting

1)* and that he, witness, was within two rods of the parties at the time of the firing and did not hear defendant tell Cummings to stand off or he would shoot him - & thinks if he had said so that he (Cummings) would have heard it.

The said People then gave in evidence to said jury by the testimony of one David Lloyd a witness produced and sworn on the part of the said people, that he said Lloyd on the evening of the shooting was at supper at the Eagle Hotel, ~~that~~ ^{when} ~~some~~ ^{at} ~~own~~, he did not recollect who, told him there would be a fuss that evening between Hopkinson & some of his men; that he then hurried up from supper and went up town that when he got into the West End of the Alley which crosses Main Street, as he was near the Methodist Church he saw Wood, Pather, Cummings & defendant in Main Street; that Wood & Cummings had their wallets out & were apparently in conversation but he heard nothing, that Cummings turned round towards defendant when defendant stepped back & pulled out his pistol when Cummings said two or three times put up the pistol, defendant ^{then} fired & Cummings ran after him to the grocery house when defendant fired the second time and hit the front of Eppersons Bug; that he thought it was Colts Pistol; that he knew nothing of the fight at the Hay scales. The said Lloyd ^{was then} ~~was then~~ cross examined by defendants counsel & further testified ~~and to said~~ to said jury that he rather

thought Defendant fired the Pistol at
Cummings the 2^d time, that there was a crowd
about the door of the prairie house, that the
Licklera Hook was at or near the door of
the prairie house; that he did not see
Cummings at the time of the second fire
that he does not swear Defendant fired
the pistol the second time, but thinks so;
that Cummings did not advance
upon the defendant at all at the time
of the first fire, ^{that he stepped off the cross plank sideways} that he only turned round
and stepped obliquely ^{and stepped obliquely} ~~turned~~ ^{turned} ~~down~~ ^{down} that he could not be mis-
taken about it; that he Cummings was
in the employment of Lloyd at the time
; that he Lloyd is a plasterer; that he suppos-
ed he had had a contract with Ste-
vens to do the plastering of his house
himself; that he had written to Lasalle
to one Sumner to send him a good
plasterer; that Sumner sent the Defend-
ant; that defendant came to Princeton
but did not come to him, but went
to Stevens & took the job; that he had
talked to Stevens ^{thought it over} about it, as he ought
to be talked to, and told Stevens that
the Defendant was no gentleman;
that he Lloyd had tried to employ Mr

(1)* That on the morning before the shooting commenced the said deft talking about the affair at the Haystack when deft said that Cummings did not hunt him & that the reason that he (deft) was down on the ground was that he was looking for a brick bat to beat Cummings & was afraid to come out.

Peters to prosecute Defendant for the shooting, that he had tried to employ Mr. Stapp to prosecute him and that he did employ and pay Mr. Sweet for prosecuting Defendant before the justice on his examination request of Mr. Epperson whose boy was shot by deft. The said people then gave in evidence to the said jury by the testimony of E. Ann a witness produced and sworn on the part of the said people, that he saw you was at jail with one Borington and heard a conversation between Defendant and Borington in which Defendant inquired about the Boy whose foot was shot, and said he was sorry for the Boy but wished he had ^{shot} ~~hit~~ Cummings; that he had no enmity to words the Defendant, that he did not know how it had been found out that he had heard the defendant say so - he might have told it. The said people then further gave in evidence to the said jury by the testimony of one Albert Borington a witness produced & sworn on the part of the said people, that he was present and ~~was~~ ^{saw} the shooting. Wood & Cummings were talking about putting money up in logs & boards. witness was standing near the sign post at the Prairie

and was within 25 ft of the parties at the time of the shooting.
Hence, that Potter, Wood & Cummings were
crossing the street towards the West, that dependant
came up behind, that when dependant
came approached Cummings, Cummings
turned round towards dependant, that de-
pendant drew his pistol out and held
it with the muzzle down, witness supposed
to lock it, that Cummings told dependant
two or three times to put up his pis-
tol, that ~~dependant~~ ^{Cummings} advanced two
or three steps towards dependant and
at the same time dependant retreated two
or three steps, ^{he fired at Cummings} that at the time dependant
fired witness ^{A thought} ~~thinks~~ both Cummings and
dependant were standing still, but it was
only for a moment; that he did not hear
dependant tell Cummings to stand back
or he would shoot him; that when dependant
fired he ran to door of Prairie House
and Cummings ran after him; that at the
door of the Prairie House, dependant either slip-
ped, or was pushed down; that he thought
while down the pistol went off; that he
did not think dependant fired the pistol
the second time it went off; that he thought
it went off accidentally; that when dependant
fell he dropped the pistol, and some-^{one}
picked it up & threw it in the entry of the

Prairie House; that Witness & Anson went
to the jail to see Defendant, that Defendant
asked, witness from the Boys foot was,
whether it would have to be taken off; that
witness told Defendant, that it was thought
it would not and that Defendant said
he was sorry for the Boy, but ~~that he~~
wished he had ^{shot} Cummings. The
Defendants Counsel then cross examined
said Barrington when he further stated
to said jury, that he was friendly with
the Defendant when at the jail at the
time of the conversation spoken of by him;
that since then the Defendant had got
mad at the said Barrington and had had
& manifested ill feelings towards him;
but he Barrington had no ill feelings
towards Defendant at all; that he
could not tell how the matter had
got out about the conversation, he might
have told it, The foregoing was all of
the evidence in chief on the part of said
People. The Defendant then gave in
evidence to said jury by the testimony of
one Gilbert Brainard, that he Brain
ard was looking out of a window on
the south side of the Prairie House, that
he saw Cummings, Wood, ^{& Defendant} Potter first

on the East side of Main Street just as they
were turning to cross the street, that they
were in conversation; ^{that Cummings & Wood} had their wallets
out, and he supposed there was a bet up,
which interested him, and he ~~not~~ looking
at them; that all three started across the
street, Cummings ^{& the defendant} ~~behind~~, that behind, that
when they got just to the West side of the
street Cummings turned round saying some
thing to defendant which witnesses could
not understand; that defendant then
stepped back some 4 or 5 steps and told
Cummings to stand back or he defend
ant would shoot him; that then Cum
mings advanced about as many steps
towards defendant telling him to put
up the pistol; that defendant contin
ued to step back as Cummings advan
ced, telling Cummings "Stand off or I'll
shoot you; that defendant told Cum
mings three or four times as he was re
treating, to stand back or he would
shoot him; ^{and then fired his pistol} that Cummings advanced
^{#1} about the same distance that defend
ant retreated; that just at the instant the
pistol fired Cummings ^{had} stopped, but that
defendant was still in the act of stepping back.

that immediately upon the pistols firing
with parties ran towards the door of the
Prairie House; that after they had run
far enough to get in front of the Prai-
rie House witness could not see them
from his position; that witness then
immediately went down stairs; that
defendant did not go up stairs, or he should
have met him; that when he came down
stairs Cummings was within the door
of the prairie house and some others
were forcing him out; that Cummings
then said "I can't let him go".

Said witness cross the cross examined
by the State Attorney, by said People
and further gone in evidence to said
jury that, he saw the whole of the fight
until the parties ran in front of the prai-
rie house; that the window ^{from which he looked} was in the
2^d story of the Prairie House; that it was

the 3^d or fourth window from the front,
and was 25 or 30 ft from the front of the house ~~on the~~ ^{on the} 2^d story
that a person standing by the sign post

would be nearer than the witness to the parties
that the reason that he was interested in the betting was that he was a sporting man
lies fighting; witness is a Saguerrean Artist
; that he lived in Princeton at the time; that
nearly ever since he has lived in Mendota, that
within the last two weeks he has moved to Auro-
ra, that he resides in Aurora now. that

he could have a distinct view from
the window in the Prairie House; that at
the time he was sitting with his head out of
the window, that when Cummings first ^{was}
seen ~~coming~~ towards defendant he supposed
he turned ^{for} the purpose of fighting with de-
pendant the appearance of the parties as he
perceived was to have a brush. The said
defendant then gave in evidence to said
jury by the testimony of one Michael All-
baugh who was produced and sworn on
the part of said defendant, that said
Allbaugh was at Stevens House on the
evening of the shooting, before the shooting;
that witness saw Defendant & Wood
come out of the House to start to supper
that witness called to Defendant to wait
till he unharnessed his horses & that then
he would go with him, that witness, de-
pendant, & Wood boarded at the Prai-
rie House; that Defendant & Wood
waited for witness; that they then proce-
ed towards the Prairie House; that they stop-
ped at the post office; that when witness
Wood and defendant started, Merriam
Potter & Cummings followed; that when
witness, Wood & defendant stopped at the
Post office, defendant stood in the of-

out-

piece and that Wood & witness went on to
cross the Prairie House; that about the
time Wood and witness left the Post
office Cummings & Butler came along
; that just as they all got to the alley
South of the Prairie House, Wood said
to Butler & Cummings "Hello Boys, why
cant we get along peaceably"; that But-
ler replied "Don't me"; that since "no I
heard you said you had seen better
work than ours cut down"; that Butler
replied "I did not say so"; that then Cum-
mings ^{said} "I said it, ~~don't~~ you what of it"
; that then Wood offered to bet that Cum-
mings could not do better work; that
Cummings said he would bet, and pro-
posed to put the money in Soyds hands
; that then dependant came up and
said "don't put the money in Soyds
hands, put it in Ephsons hands
that when dependant came up near
to where Cummings was, Cummings turned
round towards dependant and said Damn
you stand back, you pitched on to me
last night; that dependant stepped back
and drew his pistol and told Cummings
to stand off; that then Cummings ad-
vanced upon dependant saying damn

you, put up your Pistol; that defend-
ant retreated and told Cummings three
or four times Stand back or I'll shoot
you, that when Cummings was advancing
and defendant retreating, defendant
fired his pistol; that when the pistol
fired both sprang, the defendant run-
ning towards the door of the Prairie
house and Cummings running after
him; that near the door of the Prairie
House defendant slipped or was pushed
& the pistol went off; that he does not
think defendant fired the Pistol the
2^d time; that at the time of the first firing
of the Pistol the defendant retreated
four or five steps, and Cummings
advanced about the same distance be-
fore defendant fired; that Cummings
was advancing and defendant retreat-
ing at the time of the first fire. The
State Attorney then Cross examined
said witness on the part of said
people when he further stated to said
jury, that he thought he had as good
an opportunity as any body to see; that
he was within two steps of the parties when
the gun began; that he was in about the

the
middle of ~~the~~ street on the north side of
the walk which crosses the street.

In answer to the question whether he
witness knew from anything that was
said, as he, Wood, and dependant were
going to the prairie, that dependant
had the pistol, the witness answered that
he did; In answer to the question
what was then said, the witness an-
swered, that as they were going along
near the corner where the new Hotel now
is, Wood said to dependant "let us stop
these fellows and talk to them," that
dependant replied "no let them go"
and at that time he witness saw
the pistol in dependants pocket.
he was then again asked if that was
what was said about the pistol, &
he answered that that was all he
~~heard~~ ^{heard said} about it; the witness further
said that he did not know that
dependant was armed for the purpose
of a fight; that what was said at
the time he saw the pistol, was all
that was said about Kussnings or
his party as they came from Stevens
House to the Prairie House

The said Defendant then gave in evidence to said jury by the testimony of a witness produced and sworn on the part of said Defendant, Franklin Stansdell, that witness saw the shooting; that defendant walked three or four steps; that Cummings advanced three or four steps; that defendant was looking at Cummings going towards him when defendant fired; that before defendant fired he told Cummings three or four times to stand back or he would shoot him; that when defendant fired witness ran in to the Prairie House and saw no more of it. The said witness was then cross-examined by the State Attorney for said People, and further stated to said jury that he witness was about ~~fourteen~~^{twelve} years old; that he was the son of the Land Lord of the Prairie House; that he lived at the Prairie House at the time; that defendant had talked to witness about the matter and that was on the Sunday next before this trial - once, that the talk was that defendant asked witness if he had seen the shooting that witness said he had, that he then told defendant what he saw; that defendant did not give him anything or promise him anything to testify; that he had never told any one else what he saw, that the

reason was he did not wish to be a witness, that the reason he did not wish to be a witness was, that he had never been a witness. Witness was then re-examined by defendants counsel & said that he had kept out of the way of the Officer who came to subpoena him. Witness was then re-examined by the State Attorney & said he went to his aunts to keep out and that his aunt lived on the west block in the same village of this town. The said defendant then gave in evidence to said jury by the testimony of William Bernick a witness produced and sworn on the part of said defendant, that he saw defendant and Cummings at the time of the shooting they were about the middle of Main Street, that Defendant was backing out and holding up his pistol, that Cummings was advancing; that he saw defendant back out about five or six steps, and saw Cummings pursue him about the same distance, that Cummings was saying damn you put up your pistol; that defendant was saying stand off or I'll shoot you; that Defendant told Cummings three or four times to stand off or he

would shoot him before he fired;
that then both Sprong defendant run
running towards the prison house & Cum-
mings after him. The witness was then
cross examined by the states Attorney for
said People, when he further stated
to said jury; that he first heard de-
pendant say "Stand back", both parties
were south of the crossing that runs East
& West across Main street; that Cum-
mings was nearest to witness, both
went about the same speed defend-
ant backing out & Cummings fol-
lowing him up, did not know whether
Cummings fist was clenched or not
does not think Cummings stopped
before the fire, but may have stopped
a moment when the Pistol fired; that
he heard defendant distinctly say
"Stand back or I'll shoot you"; that
he saw both the parties at the same time
; that he was no crowd of defend-
ants, had seen him a few times only
; might have drunk with him once
or twice was not much acquaint-
ed with defendant; ^{that he} had never seen Cum-
mings before to know him; that he was
sitting on his Tailor Board in his shop

which was on West side of main street
about ⁴ or ⁵ rods from the porch;
that he was looking out of the door.
The defendant then gave in evidence
to said jury by the testimony of one
William Fisher a witness produced
& sworn on the part of said defend-
ant, that he was in Burnsides shop
that he saw the shooting, that he saw
defendant and Cummings, just before
the firing of the Pistol; that he saw
defendant looking and Cummings
following; that Cummings advanced
about four or five steps & the defend-
ant retreated about the same distance
that Cummings told defendant two or
three times to put up the Pistol, that
defendant told Cummings ^{three} ~~two or three~~
or four times to stand back or he
would shoot him, before he fired;
that at the time of the firing Cummings
was advancing and defendant retreat-
ing; said witness was then cross ex-
amined by the State Attorney on the part
of said People, and further said to said
jury, that he was not mixed up with the
crime; that both Cummings and de-
fendant were entire strangers to him

that at the instant of the fire he thinks both parties were still, but could not have stopped more than an instant.

The defendant then came in evidence to said jury by the testimony of Richard Brown, a witness produced & sworn on the part of said defendant, that he was at work plastering Stevens House with defendant on the evening of the shooting; that just before witness & defendant started to supper Potter came into the room where witness was at work, and said nothing but peeped up at him; that witness threw some mortar and caught Potter on the chest; that witness and defendant then went to the front door of the House to go out and go to supper but some one had locked it, that it was not usual to lock it; that witness supposed Cummings, Potter, or some of the carpenters had locked it to keep them from coming out that way; that witness & defendant then went out at one of the Back Doors and went in company with Allbough towards the Prosie House; that they went out at the gate near the store; that Cummings, Potter & Merriam followed them; that they stopped at the Post office to ask for letters; that wit

was, dependant, and although were go-
ing to the Prairie House to supper; that
that was their boarding house; that
just as witnesses come out of the Post
office Cummings and Potter ~~came~~
had passed along ~~to long~~ that witnesses spoke to them
and asked them well boys why cant
we get along friendly; that Potter
replied well dont we; that witness
said No, I heard you said you had
seen better work than ours out down
Lock East & down over; that Potter said
he did not say it; that Cummings
then said I am the man that said it
God damn you what will do you about
it; that witness then asked Cummings
if he thought he could do as good work
that Cummings said he could; that wit-
ness then asked Cummings if he had
any money to let of it; that Cummings
said he had; that witness then offered
to let Cummings fifty dollars he could
not do it; that Cummings took wit-
ness up and proposed to put the money
in the hands of Foyel who was coming
up the Alley; that witness said he did
not care whose hands it was put
in; that the dependant then came up

and told witness not to put the money into Leveys hands; but to put it into Epsons hands; that when the defendant came up to where the parties were, Cummings turned round towards defendant and said "down you keep off, you pitched on to me ~~that~~ last night; that Cummings was in a fighting position when he hurried towards the defendant; that then defendant stepped back from Cummings and drew his pistol saying do you keep off or I'll shoot you; that Cummings then advanced upon defendant saying down you put up the pistol; that defendant continued to retreat and told Cummings 3 or four times to stand off or he would shoot him; that while Cummings was advancing and defendant retreating, defendant fired the pistol; that when the affray between Cummings and defendant began, witness was by the side of Foster near the brick house on the West side of Main Street; that while Cummings was advancing upon the defendant he was all the time in a fighting position; that witness heard defendant tell Cummings two or three times to stand back

or he would shoot him before he
fired; that when defendant fired
he ran towards the Slave House and
Cummings ran after him; that just at
the door ~~defendant~~ ^{defendant} slipped and
~~the door~~ ~~Cummings~~ ~~caught~~ ~~defendant~~
fell and the Pistol went off and
fell on the pavement; that just as the
pistol fell Cummings caught de-
fendant by the arm; that defendant
got loose and ran into the Slave
House; that Cummings then made an
attempt to pick up the Pistol when wit-
ness picked it up first and threw it
in to the Slave House; that when the
Pistol was first fired the parties might
have been 25 or 30 feet apart; The wit-
ness was then cross-examined by the
State Attorney for said people and
further stated to said jury that he was
not acquainted with defendant until
3 or 4 days before the fight; that he nev-
er loaded the Pistol; that he knew
in the afternoon that ~~the~~ defendant
had the Pistol; that Cummings & Potter
had come preying round the dock; that
Conklin had told him so; that witness
did not intend to have a room; that
he supposed ~~Potter~~ & Cummings might

might undertake to throw him for throw-
ing the mortar; ~~and that if they did~~ but
that before he left the House of Stevens to
go to the Prairie House he took off his
watch & gave it to defendant's appren-
tice; that the reason why he did so was
that if Potter or Cummings did jump
on to him he might not get it back
; that he thought they were sneaking round
to steal the trade, and also for the purpose
of talking about his work; that witness
was not waiting for Cummings & Pot-
ter at the Post office; that he stopped
to look for a letter; that he did not re-
collect whether he got a letter or not;
that the reason he spoke to Cummings
was that he supposed if he spoke to them
in a friendly manner, as he was a stran-
ger, they might get along friendly;
that witness had no intention to fight
; that he did not fight at the prairie
House with Cummings only to get the
Pistol away; that when witness snatched
up the Pistol and threw it away, Cum-
mings caught ~~the witness~~ ^{him, witness} and pushed
him up against the prairie House and
struck him when witness hit him one
That at the time of fight defendant

had a lame arm. it was his right arm
witness had heard defendant complain
that day that his arm was so lame he
could not work; that after the fight
he had seen defendant's arm it was
black where Cummings caught him
it was not black before the shooting
that witness did not like to hear
Peter & Cummings flapping around his
work; that Cummings had put his
hands on the carrier in the absence
of witness; that Corbin said so;
that witness was at the time in the
employ of Stevens ~~the defendant~~
that at the time the defendant fired at
Cummings the parties might have been
20 feet or 25 feet apart or they might
only have been 10 feet he did not notice
the distance (2) The defendant then gave
in evidence to said jury by the testimony
of one Peter Brady, a witness produced
and sworn on the part of the defendant
that he saw the shooting that when he first
saw them they were near the west side of the
street defendant had his pistol up and
was looking out, Cummings was following
him saying damn you put up the pistol.
defendant was saying to Cummings stand

(2) that he did not know the distance that he had not
told ~~Brady~~ John Brady or that that was his words

back or I will shoot you; that dependant
and continued to retreat until he was about
the middle of the street, and Cummings follow
ed him; that dependant told Cummings
to stand back or he would shoot him three
or four times before he fired the pistol
that at the time he fired dependant was
backing and Cummings was following.
; that just ^{before} ~~after~~ the pistol cracked ^{Cummings} stopped a
second perhaps 3 then ran after depend
ant who ran when he had fired his pistol
that he looked at the time at Stevens house
that he had seen Cummings frequently walk
ing round the house. The said Henry was
then cross examined by the State Attorney
on the part of said people, and further said
to said jury that, there were a good many
persons went to see the house which it was
building, that the dependant invited some
there; that at the time of the first fire wit
ness was five or six steps from the cross
ing; that at the time of firing he thought the
parties were 8 or 10 feet apart. The depend
ant then gave in evidence to said jury by
the testimony of John Condon, a witness pro
duced and sworn on the part of the depend
ant, that he had heard, before the time of
the press, Cummings say he had seen better

work than dependants cut down; that he
had seen Cummings in the absence of depend-
ant and stood upon their scaffold
examining their work and that Cummings
and Father both observed the work.

The dependant then gave in evidence to the
said jury by the testimony of one George Rich-
ards, a witness produced and sworn on the
part of the said dependant that, he heard
said talking ^{come out of the prairie house} and saw dependant with
his pistol up looking out and Cummings
advancing upon him, that he heard depend-
ant tell Cummings to stand off or he
would shoot, dependant fired and ran
to the prairie house door and Cummings ~~was~~
ran after him. They both ran round a post
at the prairie house door and as dependant
turned his pistol went off it was not point-
ed at Cummings when it went off
at the first fire they might have been 15 or 20
feet apart; that at the time of the first
fire of the pistol ~~the dependant was look-~~
ing and Cummings following him.

The said witness was then cross examined
by the State Attorney on the part of said People
and further said to the jury of course, that when
the trigger was pulled they were both still for
a moment, which was all the evidence
on behalf of said dependant. And he it further
reminded that on the trial of this case

after both sides had closed their testimony
^{my object} the states atty, ^{called} one Brown and one

Merriam as witnesses on the part of
the people. but when names were put over
the back of the indictment & proposed to
examine them, ^{as submitting witnesses} on the general merits of the indict-
ment to which the deft. objected, but his objection
was overruled and said witnesses permitted to
testify and Brown testified as follows
to wit, that he was standing on the East side
of Main street near Kings gate I saw the
the firing, they both stood still when the fire
was fired, that he heard Cummings tell defend-
ant to put up the the pistol - did not hear
the defendant say anything that he thought
they stood still at the time of the firing three
or four seconds. And the said Merriam
testified as follows, to wit, ^{that} some time in the
day of the shooting he heard the defendant say
that Cummings did not strike him at the
Kern scales; that he did not know of any birds
being about the Kern scales.

The said People then gave in evidence to the
jury by the testimony of our federal Agent
that he knew Cummings in the East, that
he was not much acquainted with him, that
he had both worked about 6 years ago in the
same village in Massachusetts for a short
time; that he & Flynn worked on Stevens house
and that they generally locked the door
that he had heard Wood say the cornice
in the house was a crown and a new
thing & not proportioned to the Room
The states Attorney then ^{gave} in evidence to
the jury by the testimony of our John Porter Jr

a witness produced and sworn on behalf
of said People, that some time during the
summer the witness Wood had told him at
^{his office} that he Wood had brought the pistol with
which defendant fired at Cummings, to
this country with him, ~~that would tell him~~
that if he had stated all he knew about
the pistol when he was examined before the
justice, it would have gone home with the
defendant, that Wood told him that de-
fendant wanted him, Wood to go along to
see justice done, and that defendant want-
ed Wood to carry the pistol; that no person
but himself and Wood were present during
this conversation.

The said People then further gave in evidence
to said jury by the testimony of Lebbe Hopkins
that he was at work at the house of Thomas when
defendant & Wood started down to the prai-
rie house; that Wood gave witness his watch
before he started, that he saw the pistol in
defendants pocket at the house before they
started, that he heard Wood say he
was ready for his run; that when
Wood gave him his watch he did not say
anything but to keep it for him.

~~The witness then~~
which was all the testimony on behalf of the
said People.

The said Wood was then
recalled on the part of said defendant &
testified that he had never been in the office
of John Porter Jr. and that he had never
had any conversation with him on the sub-
ject of the said pistol.

(1)* It was also in proof in said cause that Cummings and Potter had turned off the water to the Prairie house before they were arrested by Wood, and that defendant could have gone along to the Prairie house without coming in contact with Cummings.

The said defendant then came in evidence to the said jury by the testimony of one Mossylon M. Conchie a witness called & sworn on the part of the defendant, that he was & is the partner of Thoms whose house defendant & Wood were plastering, that he had heard Cummings say before the shooting that he had seen better work than they were doing down; that he had also heard Cummings say previous to said shooting that defendant & Wood were a couple of damned foreigners & ought to be crushed; that he knew nothing about the Pistol ^{& that he had heard defendant} ~~which was all the testimony~~ say that Cummings & Potter were a couple of ~~the said cause~~ ^{And he it further} ~~brushhackers & no workmen~~ ~~that on the trial of~~ ~~the said cause~~ It was further proved to said jury that the said Pistol was a double weapon & that it was six shooter. Which was all the testimony in the said cause. And he it further remembered that on the trial of the said cause

N,

Eagle
Hotel

alley

main
&
rue

Barber

place of shooting

Post office

meat market

New Hotel

Steam
stove

Steam
stove

M,

E

3

The above was testified to by the witnesses
as being a correct representation of the
localities spoken of by the witnesses

The People
vs Indict for an assault to murder,
Francis Hopkinson

The Court instructs the Jury for the defendant

1st That if at the time the defendant fired upon Cummings, Cummings was advancing towards the defendant in a hostile attitude, that then it is the duty of the Jury to acquit the defendant.

2^d That if the defendant had a well grounded apprehension, that Cummings intended him personal violence, and that he ~~had a reasonable~~ ^{he} ~~believed~~ ^{Cummings} ~~that he~~ ^{was in a position to} ~~was advancing~~ ^{was in a position to} ~~towards him for~~ ^{that purpose}, that then he is not guilty on this indictment, although said defendant was mistaken in his apprehensions, and ^{no} ~~no~~ personal injury was intended by ~~Hopkinson~~ ^{Cummings} and ~~he was not in fact so advancing towards~~ ~~defendant~~.

3^d In order to find the defendant guilty, the Jury should be convinced beyond a reasonable doubt that the defendant ~~intentionally~~ ^{intended} intended to murder Cummings, either with express malice, or without any considerable provocation, and if they believe that if death had ensued, it would have been manslaughter, and not murder, then it is their duty to acquit the defendant -

4th That every ^(material) Circumstance proved must be consistent with such Hypothesis, or they should acquit the deft -

The People
vs
Francis Hopkinson

Depts Instructions

Filed Oct 10, 1855

Edw Fisher
clerk

These are the Defendant's instructions
Refused to in Writ of Habeas Corpus
that the instructions made by the Judge
to the nation instructions are incorrect in
Shuchel.
Edw Fisher clerk

A Defendant

5
Given
In this case the Jury are to give the defendant the benefit of all the ^{reasonable} doubts in the case, and if the Jury have a reasonable doubt of the guilt of the defendant they must acquit him.

4th 7th
Reputed
That even the advancing towards another in a hostile manner and continuing to do so after being requested to stand back is such a provocation in law as will reduce this offence below an assault to Murder if the firing was immediately thereupon and without time for reflection or deliberation on the part of the deft although just the instant before the person advancing had stopped.

The People

vs
Francis Hopkinson

6th 6th
Reputed
That if just before Hopkinson fired Cummings had been advancing towards him in apparently a hostile attitude, and Cummings had continued to advance after being requested by Hopkinson to stand back and thereupon Hopkinson fired even if Cummings had stopped for an instant, still the Jury can find the deft guilty on this indictment.

The People
vs
Francis Hopkinson

The People
vs
Francis Hopkinson
Depts Instructions
Filed Oct 10. 1855
C. W. Fisher
Clerk

That if the Jury have a reasonable
doubt of Francis Hopkinson having

The People
vs
Francis Hopkinson
Depts Instructions
Refused
Filed Oct 10. 1855
C. W. Fisher
Clerk

The People
vs
Francis Hopkinson
Depts Instructions
Refused
Filed Oct 10 1855
C. W. Fisher
Clerk

People v
as } Assault with intent
Francis Robinson } to Murder.

People's instructions

1st If the jury believe from the evidence
that the defendant in April last
and within this county, made an
assault upon John Cummings, with
a pistol ~~with~~ under such circumstances
that if Cummings had been killed
~~the defendant~~ such killing would
have been murder - then the jury are
bound by law to find the defendant
guilty.

2nd The fact that Cummings had
spoken disparagingly of defendant's
work, or told him to put up his
pistol - or advanced towards ~~him~~
defendant without any threat or
offer of violence, would not
justify defendant in using a deadly
weapon - and if he did use a
deadly weapon in assaulting
Cummings under such circumstances
- and Cummings had been killed
thereby then the defendant would
have been ~~murder~~ guilty of murder.

3^d The Killing of Cummings, if it had
happen resulted from defendants
assault, would not have been
justifiable or excusable unless
the danger to Hopkinson was so
great that in order to save his
own life or prevent his receiving
great bodily harm the killing
of Cummings was absolutely necessary.

4th If Cummings had been ^{intentionally} killed in
the assault ^{by the defendants}, the defendant would
have been guilty of murder unless
he had received a serious and highly
provoking injury, and was roused thereby
to an irresistible passion in defendant
or that the killing of Cummings was
necessary to save defendant from
being killed or from receiving
great bodily injury -

5th The intent is the gist of this offense
and the jury are to determine the
intent from all the circumstances
attending the shooting and what was
said by defendant at the time and
after the occurrence, and if they
believe that the assault was made as
stated in the indictment, and that
the defendant intended at the moment
he fired to ~~kill~~ murder Cummings -
then the jury are bound to find the
defendant guilty -

These are the Piffs Instructions
Referred to in the bill of Exceptions
W. M. Fisher
etc

The People

vs

Francis Hopkinson

Piffs Instructions

Filed Oct 10 1855

W. M. Fisher

etc

For Off-
-1855

(The People
vs

Francis Hopkinson

Plffs Instructions

Filed Oct 10, 1855-

E. M. Fisher
clerk

7th

If the jury find the defendant
guilty they will fix the time
of his imprisonment in the
penitentiary not less than one
nor more than 14 years.

6. The ~~reasonable~~ doubt that can
avail to acquit the defendant
must be a reasonable doubt
not a mere capricious or fanciful
doubt.

The People
vs

Francis Hopkinson

Plffs Instructions

Filed Oct 10, 1855

C. M. Fisher

clerk

The People
vs

Francis Hopkinson

Plffs Instructions

Filed Oct 10, 1855

C. M. Fisher

clerk

STATE OF ILLINOIS,

Supreme Court,

ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the county of Bureau — Greeting:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the circuit court of — Bureau — county, before the Judge thereof, between The People of the State of Illinois —

plaintiff, and Francis Hopkinson —
 defendant in a certain indictment against him in
Said Circuit Court for an assault with intent to murder
~~defendant~~ it is said manifest error hath intervened, to the injury of the aforesaid Francis
Hopkinson —

as we are informed by his complaint, and we being willing that error, should be corrected if any there be in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint, aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the county of La Salle, on the second Monday of June next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law;

WITNESS, the Hon. Walter B. Scates
SAMUEL H. TREAT, Chief Justice
 of our said Court, and the Seal thereof, at Ottawa, this 16th day of October
 in the Year of Our Lord One Thousand Eight Hundred and Fifty-five

L. Seland

Clerk of the Supreme Court.

W. B. Rice Deputy

Francis Hopkinson
vs
The State of Illinois

Writ of Error

This writ of Error is
madea Superseas
and as such should be
obeyed by all concerned

L. Leland
Clerk

by J. B. Rice Deputy

Filed May 15, 1856

L. Leland Clerk

State of Illinois } Supreme Court April Term A.D. 1837
3rd Grand Division

Francis Hopkinson }
vs } Founder in Error
The People &

And now comes the People
of the State of Illinois by W Bushnell States
Attorney, and say that there is no error
either in the record and proceedings
aforesaid or in giving the judgment
aforesaid. And therefore they pray that
the said judgment and proceeding may
be affirmed and that they may have
their costs adjudged & there in this behalf
&

By W Bushnell
States Atty

Supreme Court

Francis Hopkinson

vs

The People of

Florida in Error

Filed Apr 28, 1857

L. Deland

Clerk

(4)
Francis Hopkins

vs. Error to Bureau Co Cir Court
The People of the State of Illinois

and the said Plaintiff comes and
says that in the record & proceedings
aforesaid there is manifest error
because

- 1st That the Court erred in giving the
instructions asked for by the people
- 2 That the Court erred in refusing the
1st 6 & 7th instructions asked by Plaintiff
- 3 The Court erred in qualifying the
2-3-4-5 instructions asked for by Plaintiff
- 4 That the Court erred in not making
defendants below 2^d instruction asked for
either given or refused
- 5th The Court erred in refusing to permit
defts counsel in Court below to argue the
case to the Jury after giving people's 7th instruction
- 6 The Court erred in not requiring ^{that} the deft
should be furnished with a copy of the
jurors & interrogatories
- 7 The Court erred in not having the indictment
read to the deft. and taking a
plea from him in person
- 8 The Court erred in not having the officer
sworn ~~the Jury~~ ^{that} took charge of the
Jury after their first reading -

- 9 The Court erred in refusing the motion for new trial.
- 10 The Court erred in compelling Pliffs in error counsel to proceed with their said motion without giving them proper time.
- 11 The Court erred in permitting the people to again go into the general merits of the case after both sides had had ^{exhausted} their ^{witnesses}.
- 12 The Court erred in giving contradictory instructions on the part of the people to those on the part of the Pliff in error.
- 13 The instructions given by the Court for the people were calculated to mislead the Jury.
- 14 The Court erred in giving Pliffs in error 2^d instruction given.
- 15 The Court erred in every decision he made when for the said pliff in error prays that the said verdict be set aside and the Judgment reversed & annulled.

William T. Plent &
Geo. W. Pliff -
attys for Pliff in error

Francis Hopkinson
vs
The People

JRD

12282

1856

