

get away; he said he did not like me, and accused me of drawing a knife on his friend; he drew his pistol, which he snapped twice; I broke and ran, and he called out, with an oath, "If I see you today I'll get you." I got to my room as fast as I could. When I was inside I heard some one at the window whom I believed to be Romaine, but I was not positive; I got a pistol from my room mate, a German; I told him what had occurred; I did not go to bed for two hours and then I was so worried I could not sleep; the pistol was loaded—all five chambers; I also got five extra cartridges; about 10:30 a.m. I got up, and later I went down to the river, and fired two shots; I did this to learn how to handle the gun, because I expected to be attacked; I got back to town about 1 p.m.; I called at Daniels' room, and woke him up; did not get any liquor to drink; am not in the habit of drinking; I told Daniels that Romaine had attacked me, and snapped a revolver at me, and had threatened to get me when he saw me; Daniels and I went to the Gaiety restaurant, but it was shut; Mr. Daniels proposed that we go to the *Tribune* office and get a paper; we started, and just before we got there we saw some of the printers in the hallway; we intended to go past. I was just going to speak to Mr. Pinneo and the others, when Romaine stepped out. I had not seen him before. As soon as he came I went into the street. I said, "You s— b—, you had the drop on me this morning; but now I am healed; come out and fight like a man." I pulled my gun and showed it, then put it back in my pocket. He said, "Go ahead and do your shooting," and laughed. I walked down the edge of the gutter, keeping my eye on him. Mr. Pinneo came towards me, and Mr. Romaine followed. I did not understand the proceeding. Mr. Pinneo stepped on one side, and I saw Romaine coming at me with his revolver pointed at me. As quick as I saw his revolver I began to back, and pulled my gun. I fired as rapidly as I could. I fired five shots, emptying the revolver. Romaine was still standing up, and I got around the corner as quick as I could. I threw out three shells, and started to re-load with the three cartridges I had put in my pocket, but I had lost them. I expected Romaine to be on me every instant. I went to the north corner of the building, and looked back and saw the crowd rushing up. I knew then that Romaine must be hit, because he did not follow me. I turned back and met Policeman Cummock. I asked if he was an officer, and he said yes. I told him I was the man he was after. Then Franks came up, and I told him the same. I asked them to get Romaine's gun, and they did. I was taken to the room where Romaine was lying dead. When Romaine said I had drawn a knife on a friend I knew what he referred to. It was an incident in the Gaiety restaurant. Romaine and Lannon came in; the latter was half drunk; we were not

very friendly, because I had refused to lend him a dollar; they began to make fun of my new suit of clothes; Lannon was very abusive and threatened to dirty my clothing. I told him I had had enough of their conduct. Lannon threatened to slug me in the face. I drew my pocket knife and told him he could start in. He was a pugilist. I pulled the knife to stand him off. They went away, and I went home.

Mr. Varian conducted the cross-examination. Mr. Hughes said he did not expect to meet Romaine at the *Tribune* office, as it was not his habit to get there so early. Hughes was greatly agitated at what had occurred; thought of having Romaine arrested, but decided not to, as he believed that he (Hughes) would be killed if he did so. He believed that Romaine would attack him at the first opportunity. There was no variance from the account given in the direct examination.

Wm. G. Phillips and Chas. W. Barnes were called to corroborate some of the statements of Hughes, and the case was rested.

The arguments were made this afternoon, and the case went to the jury at 4 o'clock. It seems probable that a verdict of not guilty will be returned.

Judge Zane charged the jury as follows:

Gentlemen of the jury! The court charges you that the indictment in this case alleges that Tandy M. Hughes, the defendant, on the 10th day of November, 1889, in this judicial district, did kill one Frank D. Romaine, with malice aforethought. To this indictment the defendant has entered a plea of not guilty.

The court charges you that murder is the unlawful killing of a human being with malice aforethought, and that malice may be expressed or implied; that it is expressed when there is manifested a deliberate intention unlawfully to take the life of a human being; that it is implied when the circumstances attending the killing show an abandoned or malignant heart; and that every murder perpetrated by a person lying in wait, or any other kind of wilful, deliberate, malicious and premeditated killing, is murder in the first degree; that an intention to kill upon deliberation must be proved in order to constitute homicide—murder in the first degree; if the deliberation is sufficient to form a distinct intention to kill, that is sufficient; the deliberation is upon the killing and not upon the distinct intention after it is formed.

The court further charges you that every other unlawful, wilful and premeditated killing of a human being, with malice aforethought, is murder in the second degree.

Every person found guilty of murder in the first degree the law requires to suffer death, unless the jury in their verdict recommend that he be imprisoned at hard labor in the penitentiary for life. Upon such a recommendation, the court may so sentence. It is your province, if you should find the defendant guilty of murder in the first degree, to make such a recommendation in your verdict.

The court further charges you that manslaughter is the unlawful killing of a human being without malice, and

that it is of two kinds: First—Voluntary, upon a sudden quarrel, or heat of passion, and it must be without any deliberation or premeditation. Second—Involuntary, in the commission of a lawful act, which might produce death in an unlawful manner, or without due caution and circumspection.

The court further charges you that when it is necessary for one person to kill another in order to save his life, or when the circumstances of the killing are such as to induce in him a reasonable belief that such killing is necessary, the person doing the killing is justified. A bare fear of such killing is not sufficient to justify it, but the circumstances must be sufficient to excite the fears of a reasonable person, and the party killing must act wholly under the influence of such fears.

The court further charges you that upon a trial for murder, the commission of the homicide by the defendant being proven, the burden of proving circumstances of mitigation, or that justify or excuse, devolves upon him, unless the proof on the part of the prosecution tends to show that the crime committed only amounts to manslaughter, or that the defendant was justifiable or excusable.

Although you may believe from the evidence that the defendant, immediately before killing the deceased, and before deceased had made any assault or demonstration hostile to defendant, used toward deceased violent and abusive language, and displayed his pistol (but without aiming it at deceased, or attempting any assault with or without the weapon), yet if you find that defendant thereupon returned his pistol to his pocket, and was in the act of backing or moving away from deceased, with the intent, in good faith, of avoiding further conflict, and that thereupon deceased (Romaine) advanced towards defendant and aimed his pistol at defendant in such manner or under such circumstances as would lead a reasonable man, situated as defendant was, to believe that his life was in danger, or that he was in danger of receiving great bodily harm at the hands of deceased, and defendant did so believe, and also believed that such danger was imminent, then I charge you that defendant would have the right to resort to whatever force should seem to him, as a reasonable man, from the circumstances surrounding him, as seen and understood by him at the moment, necessary to prevent the deceased from doing him great bodily harm, although the means employed resulted in the death of the deceased; nor would the defendant under such circumstances be required to retreat before firing the fatal shot unless it was apparent to him that retreat might be resorted to without exposing him to great danger.

You are further instructed that if the facts as you find them to have been established by the evidence may be reconciled with any reasonable theory of the defendant's innocence, it is your duty to so reconcile them and to acquit him.

The Court instructs you that the law is: If a person is assaulted in such a way as to induce in him a reasonable belief that he is in actual danger of losing his life or of suffering great bodily harm, he will be justified in defending himself, although the danger be not real, but only apparent. Such a person will not be held responsible criminally if he acts in self-defense from real and honest convictions as to the character of the danger induced by reasonable evidence, although it should afterward appear that no injury