1st Was the act of Homicide, committed by the prisoner at the bar?
Of this there is no question. It is admitted by the defence and is proven most conclusively by several witnesses, who saw the transaction

2nd Was the act murder, or manslaughter, or a justifiable killing in self defence?
A great deal of the vast and varied learning, which the books afford touching the distinction between murder and such killing as is justifiable from the necessity of self defence, has already been presented to you, by the laborious efforts of learned counsel — There is no doubt in regard to the right and even the duty of a human being to defend his own life from the aggression of another even by the taking of the aggressors life — when the same shall be necessary.
The only question of delicacy or difference, is, when does such necessity exist, or what constitutes such necessity? In considering this question, I shall endeavor to avoid confusing your minds, by a too diffuse discussion of the general principle, and confine my remarks, as closely as possible, to the application of that principle — which constitutes the gist of the defence — to the facts of the case be-

carried to perfection - in the fulfillment of such deliberate design, or the serious bodily injury of "A" -

In other words, a ~~personal~~ knowledge of a pre-existing murderous design is not sufficient, to make the killing justifiable unless such knowledge is accompanied by some act of the deceased showing very clearly, a present intent at once to consummate that pre-existent design, and by apparent power of instant execution, or to state it in a still different form, the law estimates that only to be a killing in self defence - which results from an act rendered necessary on the part of the accused to prevent the instant completion of an act already commenced by the person slain which the deceased had apparent means an opportunity instantly to consummate and which when thus consummated would have resulted - eo instante - at that very instant in the death or serious personal injury of the accused.

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And you gentleman, can easily perceive the reason and justice of this - Suppose in ever otherwise - how long a door would be open to bloodshed and violence. Th is a principle which you have heard from boyhood and which has been the pride and boast of our common law for centuries, that threatening, insulting and abusive language, do with justify the use of violence in return, not even an assault, much less an assault with intent to kill. And how will you separate the threat from the effect of the threat upon the mind of the prisoner If threats are not an excuse for even an assault, shall the fear or apprehension produced by such threats, be an excuse - nay more - a justification of homicide? Evidently not. This would be to give the actual and pretended cow= ard leave to kill whomsoever he could betray into the indiscretion of a threat. Thus if "A" should threaten "B" with death, in jest or in earnest, in serious converse or in a drunken carousal, and "B" were cow= ardly enough to believe, or shrewd enough to feign to believe in the sincerity of this threat then, he may go into the street and with impunity kill the party who has thus awa=

Ken this Jean, alarm or cowardice in his breast and this he may do the night week or the next year. This is the extent to which the counsel of for the prisoner would strain the rule laid down in case of Granger. Surely no jury will ever, by their verdict, endorse a doctrine so utterly subversive of every principle of our law, designed for the protection of human life.

But this is not the doctrine of the Granger case — although that case was an immense stride beyond the doctrine of the Selfridge case, itself a great extension of the common law doctrine.

The common law doctrine applicable to these cases, was that if from the nature of the attack there is reasonable ground for a man to believe that another has a present intent to destroy his life, or commit a felony on his person, and it afterwards appears that no felony was intended by the assailant it is manslaughter.

As if "A" advances upon "B" in a threatening manner, and with a previously expressed design of taking his life, and holding a pistol in his hand, and "B" kill him and it afterwards appear that the pistol was loaded with powder only such killing would have constituted manslaughter.

By the rule of the Selfridge case such homicide is excusable

Even under the Selfridge rule, which stands upon the very outer limits of ~~common~~ sound law— if the nature of the attack is not sufficient per se, in and of itself, is not sufficient to shadow forth a design to take life or commit a felony, then the killing is not excusable.

More than half a century has elapsed since the trial of Selfridge and yet ~~that~~ the principle of that case, has not generally been received as sound law— scarcely even without modification. In New York under a statutory provision and with an added element viz = that the force shall be within striking distance, and shall be imminent, impending, menacing, at the time the blow was struck. This is even an element of the case of Granger, in which it is laid down that the party committing the act shall believe that great bodily injury is about to be inflicted upon him, i. e. that it impends over him menaces him at the instant the blow is struck.

The nearest approach to an adoption of this rule, in North Carolina, so far as I am aware, is, in the case of Harris which has been cited by the defence, and is relied

on by them.

The instructions given in that case by the Judge below, and approved by the Supreme Court are stated in the decision of Ch. J Nash, in a very disjointed and unconnected manner.

That portion of the charge, which was read by the Attorney for the prisoner taken by itself certainly seems, at first sight, to sustain the rule in Grangis case and a little more, in short, the very position taken by the defence viz: that if any person believes that another designs to take his life and has reasonable grounds for that belief, he may lawfully kill such person at any time on sight.

A little consideration and comparison with other parts of the decision, show, however, that such was not the intention of the Court.

The words which have been read to you and very extensively commented upon are as follows —

"His Honor laid down the law upon this subject and stated. "Whenever there is reasonable ground to believe there is a design to destroy life, to rob, or commit a felony, the killing will be justifiable — But it is for the jury, and not

prisoner, to judge of the reasonable grounds of the apprehension — We see no error in these directions."

There are two things connected with this case which throws peculiar light upon the rule designed to be established — viz — Another portion of the instructions given to the jury were in these words — viz — Should the jury believe the prisoner, detected the deceased in robbing his trunk (i.e. in the commission of a felony) and there killed him they should acquit. If they believe he found the prisoner in such a situation as clearly to have manifested such purpose, they should commit him of manslaughter.

This is more clearly merely the common law doctrine than anything else, and is not quite that.

This case turned upon altogether a different point — viz — as to who should judge as to the belief entertained by the prisoner, himself, the court or the jury.

The doctrine with regard to the intent merely and its character, are very loosely stated as to the contradictory statements which we have cited shows more conclusively.

There is one thing however, which shows the intention of the court most unmistakably

fore us, under every view which it may be possible for you to take of these facts from the evidence laid before you.

First – then I would say to you, that the danger, the violence against which the law allows a person to defend himself even to the taking of another's life, must be a present danger. Expected, anticipated danger, apprehension, arising from fear of an act not yet begun, can never justify killing or change the character of homicide from felonious to justifiable. It is not a present apprehension of death, or serious bodily injury, but an apprehension of such death or injury from the present act of the aggressor, an act already commenced, imminent, impending, as it were, which renders the party justifiable in taking the life of another and accounts such homicide to be in self defence.

"A" – may be fully convinced upon entirely reasonable and sufficient grounds – that it is the deliberate intent of "B" – to take his life, and yet such belief or even such positive knowledge will not justify "A" in taking the life of "B" unless the act of "B" – is such as would immediately and immediately result – if

knowledge of it conveyed to the prisoner — Scott had been forced into a fight by the deceased and had at first retreated, finally his assailant stooped as if to pick up a missile when Scott clubbed and killed him.

A closer parallell in all its essential features to the State -v- Govern, as admitted urged and argued by the counsel for the Defendant could scarcely be framed by human ingenuity — Let me call your attention to these points of resemblance again.

Scotts life was repeatedly threatened by the person killed as Govene claims to have been by Smith. He is admitted to have believed that the deceased intended to take his life, as the prisoner claims to have done in this case. The deceased forced him into an altercation by curses & threats as Smith is claimed to have done in this case. Scott retreated or refused to fight and used no rough language, was evidently afraid, as the prisoner claims to have done in this case. The deceased stooped as if to pick up a stone or other missile Smith raised his clenched hand — The killing was proven upon Scott. it is admitted by the prisoner at the bar.

What then is the law laid down in this

kindred case by that great Judge.
He says—

The belief that a person designs to kill me will not prevent my killing him from being murder, unless he is making some attempt to execute his design or at least is in an apparent situation to do so, and thereby reduces me reasonably to think that he intends to do so immediately — Again he says—

The prisoner must have seen that the deceased was not armed, or at least, he did not appear to be armed. The most then that could be made of it, would be that the prisoner may have thought the deceased to be armed and therefore that he might then intend to kill him. But such a remote conjecture, will not justify one man in killing another.

This case is modified by the State v. Harris only in this — that it is settled, that the jury are the judge of the reasonable grounds on which the prisoners belief must be founded. The doctrine in the Scott case is clearly and unmistakably the law in North Carolina to-day

The case of the State v. Scott is cited and approved. And it is expressly stated by Ch. J. Nash that the doctrine of that case, do not conflict with the doctrine in Scott's case.

Just ten years previous to the decision in the case of the State v. Harris, a decision had been rendered in State v. Scott, by that court of the N. C. Burch. C. J. Ruffin with a dissenting opinion by Judge Daniel.

I do not hesitate to affirm that this decision of Judge Ruffin (on the doctrine of which there was no dissent) is the best clearest, and most masterly exposition of the doctrine of intent, in the class of cases we are now considering, which has ever appeared in the United States.

The case in its elements was strikingly similar to the one now under consideration and turned upon precisely the same point viz whether an antecedent declaration repeatedly made and believed by the prisoner, and not with an assault by the deceased will justify Homicide.

The deceased and the prisoner had had an altercation three weeks before, and the deceased had then threatened the life of Scott. The threat had been repeated and

If therefore you believe from the evidence that the prisoner, at the time he started to deliver the fatal stroke, was beyond the reach of the stroke of the deceased, then you will find him guilty of Murder.

If you believe that the prisoner was within the reach of the arm of the deceased at the time he started to deliver the fatal stroke and had sufficient opportunity to know reasonable grounds to believe that the stroke impending, the assault offered, was a blow of the fist and not of a deadly with a weapon, you will find him guilty of murder.

If you believe that the prisoner at the time was within reach of the stroke of the deceased he started to deliver the fatal stroke, and that he had reasonable grounds to believe that the deceased was about to deliver a stroke with a weapon likely to produce death or serious bodily injury, and if you believe that the deceased held in his hand at that time no such dangerous weapon, then you will find him guilty of manslaughter. or to place these propositions in other words. If you believe the statement of the appellant & either of the witnesses who saw it, to be true, you can do no less than find a verdict of guilty of manslaughter.

If you believe the version given by either of the witnesses who saw the affair, an infer from that statement that the prisoner had sufficient opportunity to perceive reasonable grounds to believe that the stroke proposed to be delivered by the deceased was a stroke of the fist only, then you must render him guilty of Manslaughter.

If you have a reasonable doubt, as to his having had reasonable grounds for belief as to the character of the stroke about to be delivered you will give the benefit of such reasonable doubt to the prisoner

If you believe from the evidence that the Prisoner prepared and procured a deadly weapon, viz: a pencil and concealed the Pocket knife with which the act of homicide was committed upon the assault described by him was made upon him by the deceased then you will find the prisoner guilty of Murder which may have been his apprehension of the character of the assault

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The law of the land, the law upon which our rights and liberties depend, is not that foolish and dangerous rule of honor, which has been eloquently urged upon you as a rule of action in this case, and which underlies the Selfridge, Granger and Matt. Ward cases, and all others of a similar class. Thank God, our country is not governed by the code duello! The law does not hold a person guiltless who takes the life of another because he has been called a coward, because he feigns to be a coward, or because he is a coward. The law gives to the citizen the right to resist to the death those acts of violence feloniously endangering his life or property and which come upon him so suddenly as to prevent his appealing to the law for protection or redress. It is an extraordinary remedy which remains in the hands of the citizen in the formation of the social compact and which has been very carefully limited and circumscribed by the common law. It can only be safely exercised when the power of the law to protect or redress is insufficient

If "A" follows "B" persistently from day to day or from hour to hour using threatening language cruel gestures, and producing in the mind of "B" the conviction of

a settled and deliberate design to affect his death. has he no remedy but to allow the same to continue until a personal rencontre ensues and the life of one is taken? Certainly he has. The law is chary of the right of the citizen, and especially his life, and will even more cheerfully guard him against apprehended danger, than redress existing wrong if only reasonable grounds of apprehension exist. As in the present case if the prisoner actually felt all that alarm, trepidation and cowardly fear, which is so pitifully ~~and [illegible]~~ put forth as a ground of justification in this action — whether that fear resulted from language used to Presnell, a month or more before or from the conduct and language of the accused upon that day — the law allowed him a full, complete and almost instantaneous remedy or means of protection. Upon affidavit of such fact, even without requiring farther proof, before any magistrate, even the humblest justice of the peace, the whole power of the county would at once have been exercised if necessary to prevent his receiving bodily injury at the hands of Smith and Smith himself confined in jail to secure to the prisoner, the quiet enjoyment of his

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rights. And it is precisely because this is so, that the law will not consider this belief of a pre-existing intent to take his life as any justification of his act. He chose not to employ the means which the law had provided to protect him.

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Law — creature of —
" · tempered with mercy —
" Ancient conception of

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