

Commonwealth

vs Aug. Crim 1919.

D. N. Vanpelt

After the evidence set forth in Bill of Exceptions No. 1, which is here referred to and made a part hereof, had been produced to the jury, the Court gave over the defendant's objections the following instructions, *after refusing certain instructions asked on behalf of the accused which are set out in bill of exceptions no. 1.* INSTRUCTION NO. 1

A man can only resort to violent means of self-defence when that course is necessary to his protection from death or serious bodily harm, and he cannot do it then if he was himself at fault in bringing on the difficulty or the situation where he finds himself in danger, unless he first seeks to retire from the difficulty and retreats as far as he can with safety. The same principle governs where a defendant claims that the act for which he stands indicted was done in defence of a member of his family. If, therefore, the jury believe from the evidence that the defendant went armed to the place of J.C. Matheny to recover possession of his horse in the expectation of having trouble with Matheny and entered upon the premises of Matheny with his daughters against the warning and protest of Matheny, and proceeded by one of the daughters to break <sup>then</sup> upon the stable door in order to remove the horse, then, the court instructs the jury, the defendant was in such fault in bringing on the trouble that the plea of self-defence, or the defence of <sup>the</sup> his daughter, is not available to him to justify his action in shooting Matheny even though the jury believe from the evidence that Matheny was in the act of picking up a rock as if to throw at one of the Van Pelts when the shot was fired.

THESE ARE THE VIEWS OF THE JURY IN THIS CASE.

THEY ARE NOT TO BE TAKEN AS A STATEMENT OF FACTS.

THEY ARE NOT TO BE TAKEN AS A STATEMENT OF OPINION.

THEY ARE NOT TO BE TAKEN AS A STATEMENT OF BELIEF.

THEY ARE NOT TO BE TAKEN AS A STATEMENT OF DEDUCTION.

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INSTRUCTION NO. 2

An assault with a deadly weapon with intent to maim, disfigure, disable or kill, if not justifiable on the ground of self-defence or the defence of a near relative, must be either malicious or unlawful assault with such intent, within the meaning of the charge given to the jury. If it is committed in the heat of sudden passion arising on a sufficient provocation or in the heat of mutual combat, it is an unlawful assault, otherwise a malicious assault. The difference between malicious assault with intent to maim, disfigure, disable or kill, and unlawful assault with the same intent, is the same as the difference between murder and voluntary manslaughter. The lower grade of the offence is characterized by the absence of malice and exists only when the act is done on a sudden heat arising in mutual combat or on a sufficient provocation.

INSTRUCTION NO. 3

The Court instructs the jury that if they have a reasonable doubt as to the grade of offence of which the accused may be guilty, they should resolve the doubt in favor of the accused and give him the benefit of the lower grade.

To the giving of which instructions and each of them, the defendant by counsel excepted.

Teste this 1<sup>st</sup> day of September, 1919.

J. H. Haas

JUDGE.



After the evidence set forth in Bill of Exceptions No. 1, which is here referred to and made a part hereof, had been produced to the jury, the defendant tendered to the Court the following instructions:

INSTRUCTION NO. 1

The Court instructs the jury that if they believe from the evidence that the accused at the time he shot Matheny, acted under reasonable belief that his daughter, Mrs. Hisey, and Miss Van Pelt or either of them were in imminent danger of serious bodily harm at the hands of said Matheny and that to avoid serious bodily harm being done them by said Matheny, it was necessary for him to defend them from an assault, which was apparently imminent, then they are instructed that the accused was justifiable in defending them by such means as were reasonably necessary, even to the extent of shooting said Matheny, and they must find the accused not guilty.

INSTRUCTION NO. 2

The Court instructs the jury that the accused is presumed to be innocent until every fact essential to his conviction is established beyond all reasonable doubt, and to the exclusion of every reasonable hypothesis consistent with his innocence.

INSTRUCTION NO. 3

The Court instructs the jury that if they believe from the evidence that Matheny did any act or that there were any circumstances brought about by him of such a character as to afford the accused a reasonable ground for believing that Matheny designed to kill accused or either of his daughters, or to inflict on them or either of them great bodily harm, and there was imminent danger of his carrying such design into immediate execution, then, under these circumstances the shooting is excusable, and the jury must acquit the accused.



INSTRUCTION NO. 4

The Court instructs the jury that if they believe from the evidence that the accused with his daughters, Mrs. Hisey and Miss Flora Van Pelt, were upon the lands of Matheny without authority, and that Matheny approached them and ordered them to leave his premises, and the accused and his daughters, did not do so, even in that event, the said Matheny had no right to resort to force to remove them. And if they further believe from the evidence, that Matheny then further approached Mrs. Hisey in a threatening manner and struck at her with a curry comb, and declared his intention to kill all of them and was stooping in the act of picking up a rock to strike Flora Van Pelt, and if they further believe, from the evidence that from the attitude and manner of said Matheny, the prisoner believed that the said Matheny was going to kill or inflict serious bodily injury upon his said daughter, he had a right to resist such an attempt and meet force with force to save his said daughter from the expected bodily injury, and if the injury to said Matheny resulted from an attempt on the part of the accused to defend his daughter, Flora from serious bodily injury at the hands of Matheny, which was then imminent, then the accused was justified in shooting Matheny and is not guilty as charged in the indictment.

INSTRUCTION NO. 5

The Court instructs the jury that if they believe from the evidence that the prisoner, with his daughter, Mrs. Hisey and Miss Flora Van Pelt, were trespassers upon the lands of Matheny and that they ought to have promptly left when ordered to do so, still this did not justify an assault upon them, or either of them, even though Matheny could not otherwise effect the removal of them from his lands, and, if the jury further believes from the evidence that the said Matheny did start towards Mrs. Hisey and strike at

EXHIBIT NO. 1

The Court instructs the jury that it may believe from the evidence that the accused with his daughter, Mrs. Black and Miss White Van Hall, were upon the lands of Mathew without authority, and that Mathew requested them and advised them to leave the premises, and the accused and his daughter, did not do so, even in that event, the said Mathew had no right to request to leave to remove them, and if they later believe from the evidence, that Mathew then further requested her, Black to a substantial number who arrived at her with a heavy load, and advised his intention to kill all of them and was sleeping in the act of blowing up a rock to strike Miss Van Hall, and if they further believe from the evidence that from the witness and number of said Mathew, the witness believe that the said Mathew was going to kill all the other persons besides injury upon his said daughter, he had a right to make an attempt and was force with force to give his said daughter from the expected bodily injury, and if the jury to said Mathew made an attempt on the part of the accused to harm his daughter, from from various bodily injury at the lands of Mathew, which was then imminent, then the accused was justified in shooting Mathew and is not guilty as charged in the indictment.

EXHIBIT NO. 2

The Court instructs the jury that it may believe from the evidence that the prisoner, with his daughter, Mrs. Black and Miss White Van Hall, were trespassers upon the lands of Mathew and that they ought to have promptly left when ordered to do so, and if they did not, they are guilty as charged in the indictment, even though Mathew could not otherwise elude the removal of them from his lands, and, if the jury further believe from the evidence that the said Mathew did not intend towards Mrs. Black and White



her with a curry comb and declared his intention to kill the accused and his daughters, or either of them, and was in the act of carrying such declaration into effect and was then and there stooping over, reaching for a rock for the purpose of striking Flora Van Pelt, then the prisoner was justifiable in defending her from attack, and if he believed that her life was in danger or that she was in danger of great bodily harm at the hands of Matheny, then his right to defend his said daughter extended to the killing of Matheny, if necessary to protect his daughter, and he is not guilty.

To the giving of which instructions and each of them, the Commonwealth objected, which objection the Court sustained and refused to give them, to which action of the Court in refusing to give them and each of them, the defendant by counsel excepted.

Teste this 26 day of September, 1919.

J. H. Hays

JUDGE.

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and with a heavy coat and retained his intention to kill the  
son and his daughter, or sister at least, and was in the act of  
carrying out his intention but - stopped and was then and there  
stopped ever, because for a year for the purpose of waiting  
for the girl, then the intention was renounced in relation  
to the girl, and it is believed that the girl is happy  
and that she was in danger of great bodily harm if she had  
not been, then the girl is believed to have been intended to  
the killing of her father, it necessary to protect his daughter,  
and to be not guilty.

Of the giving of such instructions and such of them,  
the Government's witness, after viewing the Court's evidence  
and returned to the Court, he stated that the Court is not  
for to give them and such of them. The defendant is accused of

John John Day of September, 1911.

John John  
JURY

Commonwealth  
vs  
D. N. VanPelt

3<sup>rd</sup> Aug. Court 1919.

BE IT REMEMBERED that upon the trial of this case the Commonwealth to maintain the issue upon its part, introduced the following evidence:

JOSEPH C. MATHENY, sworn, testified:

Q By Mr. Strickler: You are Mr. Joseph C. Matheny?

A Yes, sir.

Q How old are you?

A Sixty-three.

Q Where do you live?

A At Ottobine, ~~in Rush Springs County~~

Q Did the defendant, D. N. VanPelt, who is sitting here, shoot you sometime recently?

A Yes, sir; on the 29th day of June, 1919.

Q Just tell this jury how it happened that this shooting occurred?

A Well, sir, I left this town on New Year's day and I came home on the 28th of June, last; and there was stock in there when I came home.

Q Where had you been?

A I had been to South Carolina.

Q How long had you been in South Carolina?

A Ever since last New Year's day.

Q When you came home had you information that VanPelt's stock had been up there on your land?

A Yes, sir. All summer she had been annoyed with stock, and sometimes she had driven the stock out two or three times a day out of the wheat.

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Q You did have information from your daughter that the stock of VanPelt's had been bothering you?

MR. HAMMER: Objected to as hearsay.

THE COURT: Tell what you heard? What information did you have about stock being on the place?

WITNESS: After I penned the horse up, she said the stock had been in there.

Q Did she tell you before or after you came back from South Carolina that stock had been trespassing on your place?

A No, sir. She never wrote me.

Q After you came back she told you?

A Yes, sir.

Q After you came back did you get complaint from anywhere that stock had been trespassing on your place?

A She told me after I penned the horse up. That is what I told you. She never told me before that evening.

Q You never heard anything before you penned up the horse?

A I was busy and did not have time to talk over these things.

Q Mr. Matheny, I asked you if you had ever heard any complaint about VanPelt's stock trespassing on you until after you put the horse up?

A They were in there all summer, about three times a week or every few weeks, sometimes.

Q But did you hear about that before you put the horse up?

A I don't remember about that.

Q Well, the horse came up there to your place?

A It came in and came up on my sod, and it did not come up on any brush land either. There was no brush patch there.

Q Now the case information from your daughter that the  
state of Kentucky had been withholding you?

A Yes, sir. Objected to as hearsay.

THE COURT: Tell what you heard about information  
the you have about about being at the  
place?

WITNESS: After I found the horse at, she said the  
place had been in there.

Q Did she tell you before or after you saw her from south?

WITNESS: That she had been trespassing on your place?

A Yes, sir. She never wrote me.

Q After you were back the 15th year?

A Yes, sir.

Q After you were told she got acquainted from neighbors  
that she had been trespassing on your place?

A She told me after I found the horse up. That is what  
I told you. She never told me before that evening.

Q The next time you saw her before you found the horse?

A I saw her and did not have time to talk over time.

WITNESS:

Q Mr. Roberts, I asked you if you had ever heard any one  
talk about Kentucky's name trespassing on your place when you  
had the horse up?

A They were in there all summer, about three times a week  
on every day week, sometimes.

Q But did you hear about that before you had the horse up?

A I don't remember about that.

Q Tell the horse came up there to your place?

A It came in and came up on my side, and it did not come  
up on my horse land either. There was no brush patch there.

Q The horse got on your ground?

A Yes, sir. I got sod below my house.

Q And you penned the horse up?

A Yes, sir.

Q In your stable?

A Yes, sir.

Q What time of the day was that?

A Eleven o'clock.

Q Eleven o'clock on the 29th day of June, 1919?

A Yes, sir; I looked at the clock.

Q Was that a week day or on Sunday?

A Sunday.

Q What happened next?

A I let the horse stay there; and my daughter went up after dinner to Mrs. Taylor's and told Mrs. Taylor. She asked Mrs. Taylor where her cow was, and she said something to Mrs. Taylor --

Q That is hearsay. You do not know anything about that of your personal knowledge. You know your daughter went away?

A Yes, sir, to Mrs. Taylor's, but she told her something.

Q Did she come back?

A She came back directly.

Q What happened next?

A We looked down the road and there they came up, and she said that she thought they were some "branchers," at first, and did not know them; but when they went to the bars, she said "There they are for the horse."

Q Who were those people?

A VanPelt and his two girls.

Q VanPelt and his two girls coming to your place to get the horse?

Q The horse got on your ground?  
 A Yes, sir. I got out below my house.  
 Q And you found the horse up?  
 A Yes, sir.  
 Q In your stable?  
 A Yes, sir.  
 Q What time of the day was that?  
 A Eleven o'clock.  
 Q Where's a clock on the 10th day of June, 1887?  
 A Yes, sir; I look at the clock.  
 Q Is that a week day or no, Sunday?  
 A Sunday.  
 Q What business was it?  
 A I let the horse stay there; and my daughter come up  
 after about ten. Taylor's was left out. Taylor. The clock  
 was Taylor's when he was out, and she was standing in the  
 Taylor --  
 Q That is hearsay. You do not have anything special about it  
 your personal knowledge. You know your daughter was up?  
 A Yes, sir, in Mrs. Taylor's, but she said her daughter  
 Q Did she come back?  
 A The same week exactly.  
 Q What business was it?  
 A We looked down the road and there they were up, and she  
 said that she thought they were some "brambles," at first, and  
 she not know them; but when they went to the barn, she said "There  
 they are for the horse."  
 Q Are there those people?  
 A Taylor's and his two girls.  
 Q Taylor's and his two girls coming to your place to get the  
 horse?



A Yes, sir. I went back of the house, the way I usually go to the stable; and when they came in, I am not certain, but I was about half-way between the fence and the stable, and they came on up to something like 25 or 30 feet of me. The two girls came straight to the stable, but he turned to the left and came around a large apple tree there, and I was out next to the corn-crib; and he repeated two or three times to me "You get my horse out quick."

Q He was talking to you?

A Yes, sir; talking to me, and said "Get my horse out of there quick."

Q Did he have anything in his hand?

A Yes, sir, he did. He had a gun in his hand and he raised the gun on me when about 25 or 30 feet of me when he was at the edge of the apple tree. He came in and right on, and I moved up a little bit. They tore the board off the stable door. It was nailed. They tore it off, and I told them to take the horse out. He had raised his gun on me and I had nothing to defend myself with at all. The horse had his fore-feet if not all out when I turned around to him. I turned my face to him square, facing him as I turned. They had done taken the horse when I turned facing him, and he shot me.

Q Did you have anything in your hands at all?

A I had a curry-comb, yes, sir.

Q Did you attempt to throw it at him?

A No, sir, I never done a thing; I never attempted to do a thing to any of them. That was all that was said before he shot. There was no rock thrown or anything of the kind.

Q Did he have the gun in a threatening way, do you say?

A Yes, sir; he came on up and said "Get the horse out of there quick." He drew the gun on me 25 or 30 feet and he never taken it down.

A Yes, sir. I went back of the house, the way I usually  
go to the stable; and when they came in, I was not aware, but I  
was about half-way between the fence and the stable, and they came  
on as if something like 25 or 30 feet of me. The two girls came  
straight to the stable, but he turned to the left and came around  
a large elm in front of me, and I was not near the stable; and  
he pointed the gun at me and said "You get up there and get out."

Q He was talking to you?  
A Yes, sir; talking to me, and said "Get up there and get out  
quick."

Q Did he have anything in his hand?  
A Yes, sir, he did. He had a gun in his hand and he pointed  
the gun on me when I was about 25 or 30 feet of me when he was of the  
edge of the stable fence. He came in and right on, and I moved up  
a little bit. They took the board off the stable door. It was  
nailed. They tore it off, and I told them to take the horse out.  
He got behind the gun on me and I had nothing to defend myself with  
at all. The horse had his fore-foot in the air when I turned  
around to him. I turned my face to his square, facing him as I  
turned. They had some boxes the horse when I turned facing him,  
and he shot me.

Q Did you have anything in your hands at all?  
A I had a carry-stamp, yes, sir.  
Q Did you attempt to throw it at him?  
A No, sir, I never had a thing; I never attempted to do a  
thing to any of them. That was all that was with me when he shot.  
There was no rock thrown or anything of the kind.

Q Did he have the gun in a threatening way, do you say?  
A Yes, sir; he took an up and said "Get the horse out of  
there quick." He had the gun on me 25 or 30 feet and he never  
taken it down.

Q You told the girls to take the horse out?

A Yes, sir. I thought when he got the horse he would throw the gun down but instead he shot me. The bullet is there yet.

Q How far was he from you?

A About seven steps when he shot me.

Q Just unbutton your shirt and show just where the bullet hit you on the collar bone, there.

A (Exhibiting wound) Gentlemen, I tell you, in the last few weeks it has healed up but the scar is there. See it right there. (Indicating).

Q Did you call to see a doctor?

A Yes, sir; I went down to the doctor's that evening. I went straight on and got down to his stable very near as quick as he did. It is five or six hundred yards from his stable to mine.

Q What did you go to his stable for?

A His stable is sitting right by the public road.

Q You mean that when you went to the doctor's you went right past his stable?

A Yes, sir.

Q But you were going to the doctor's?

A Yes, sir.

Q And you got down to that point about as soon as VanPelt did?

A Yes, sir. It was about 500 yards from where he did this shooting up to his stable.

Q You yourself do not know whether the bullet is in your body?

A I have an idea that it is in there for I suffered last week with very high fever and from Friday on to Saturday; and there has been something in there that caused ~~the~~ fever almost constantly.

Q Now, before you went down to South Carolina were you bothered with VanPelt's stock?

Q The rifle was fired to take the horse out?  
A Yes, sir. I thought when he got the horse he would throw  
the gun down but instead he shot me. The bullet is there yet.

Q How far was he from you?  
A About twenty steps when he shot me.  
Q Just between your shirt and show just where the bullet  
hit you on the collar bone, there.

A (Exhibiting wound) Gentlemen, I tell you, in the last few  
seconds it had peeled up but the bone is there. See it right there.  
(Indicating).

Q Did you call to see a doctor?  
A Yes, sir; I went down to the doctor's first evening. I went  
straight on and got down to his stable very near as dark as he did.  
It is five or six hundred yards from his stable to mine.

Q How did you go to his stable?  
A His stable is sitting right by the police house.  
Q You mean that when you went to the doctor's you went right  
past his stable?

A Yes, sir.  
Q But you were going to the doctor's?  
A Yes, sir.  
Q And you got down to that point about as dark as the doctor's did?  
A Yes, sir. It was about 800 yards from where he did this  
showing up to his stable.

Q You yourself do not know whether the bullet is in your body?  
A I have an idea that it is there but I wouldn't know  
with very high fever and trembling as to whether it is there or  
been something in there that caused the fever almost constantly.

Q Now, before you went down to South Carolina were you  
with the doctor's stock?

A Yes, sir; I have been bothered with them, I reckon, for the last ten years. He just turned them out on the road and don't care anything about them -- turned them out on any body. We were bothered by them greatly trying to keep them out about every summer.

Q Was there anybody there to see this assault besides you and VanPelt and his two girls, his two daughters?

A No one else. My daughter was sitting 36 yards away, and heard all that was said.

Q Where was she?

A She was sitting down in front of the door.

Q The door to your house?

A In front of my door.

Q That door fronts the place where the assault took place, does it?

A It fronts east, on the road. The assault was right north from there.

Q You say she could not see you?

A She could see if she was standing up. The corn is there, but it was not as high as it is now, and if she had been standing up she could have seen it; but she was sitting on a chair and heard all that was said.

Q She was sitting at the door and did not see it?

A She did not see it but she heard everything.

BY MR. OTT:

Q While we are there, let's see if we cannot develop a little better the situation there. Did you and Miss Edith, your daughter, see these people as they came up the road?

A Both of us saw them.

Q Who saw them first?

A Miss Edith saw them first.

Q Yes, sir; I have been bothered with them, I remember, for the last ten years. He just turned them out on the wall and they were something about them -- turned them out on my body. He would have been trying to keep them out about every year.

Q Has there anybody there to see this account besides you and yourself and his two girls, his two daughters?

A No one else. My daughter was sitting in the room, and that's all that was said.

Q Where was that?

A She was sitting down in front of the door.

Q The door to your house?

A In front of my house.

Q That your house has since when the account took place, have

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Q It is there now, on the road. The account was right next to that house.

Q You say she would not see you?

A She would see it she was standing up. The room is there, but it was not as high as it is now, and it was then standing on the wall, but she was sitting on a chair and could not see it.

Q She was sitting at the door and did not see it?

A She did not see it but she heard everything.

Q Yes, sir.

Q While he was there, did he see it or would he have a picture better the situation there. Did you see him when he was laughing, and there people as they came up the road?

A Yes, sir, on the road.

Q Did you hear that?

A Yes, sir, when they were there.

Q Mr. VanPelt lives below you?

A Yes, sir.

Q Your house faces directly Mr. VanPelt's house, does it not?

A Faces some that way. You can see from the front of my house to VanPelt's.

Q The public road makes a little bend in going from your house to his?

A Yes, sir.

Q There are draw-bars in front of your place?

A One at the end of the hill.

Q There is one pair of draw-bars there and you go in that way?

A Yes, sir.

Q Did Miss Edith see them first as they came up the road, Mr. VanPelt and his two girls, or did you? How was that? Who saw them first?

A I was currying the horse and she was on the front porch. I don't know which saw them first. Both of us saw them.

Q Where was Miss Edith?

A On the front porch at the front door.

Q Where were you at that time?

A Around currying my horse, and I went around there.

Q How did you happen to come around where she was?

A I saw them coming up the road and I was not certain who they were and I went around there; and she wasn't certain who they were at first.

Q You spoke of currying your horse; did you do that at the stable or at your house?

A Down at the house.

Q Mr. Venale lives below you?

A Yes, sir.

Q Your house faces directly Mr. Venale's house, does it not?

A Yes, more or less, for one end of the front of my house

is facing his.

Q Yes, sir.

Q There are two-horse stalls in front of your house?

A Yes, at the end of the hill.

Q There is one pair of two-horse stalls and you go in that way?

A Yes, sir.

Q The stalls with one stall as they come on the road, Mr. Venale and his two stalls, or his stalls, how many stalls do you have?

A I am counting the stalls and also on the road stalls, I

have four stalls on the road, both of us have.

Q There are five stalls?

A On the front porch at the front door.

Q There were four at that time?

A I should say four stalls, and I went around there.

Q How did you happen to come around where the stalls

are? I was then coming up the road and I was not certain who

they were and I went around there; and she wasn't certain who they

were either.

Q You speak of carrying your horses; did you do that at the

stalls or at your house?

A Both at the house.



Q Look at this picture and see if that is a picture taken by yourself of your stable and corn-crib? (After examining picture)

A Yes, sir, it is.

Q That is the stable there, is it not?

A Yes, sir.

Q That is the stable where the door is open?

A Yes, sir.

Q That is the corn-crib?

A Yes, sir, that is the corn-crib.

Q From the stable and corn-crib in which direction is your house?

A From the stable, in this direction -- south.

Q Was there a lot in which there was corn at that time which comes up close to that corn-crib?

A Yes, sir. There is the corn-crib and there is the house and there is the garden, there, and there is a little roasting-ear patch in the garden. Here is where VanPelt was standing.

Q In other words, there is your stable where that door is open; there is your corn-crib, and there is your house?

A Yes, sir.

Q Is that garden, between the house and the orchard here, in front of the stable or near the stable?

A Yes, sir.

Q Was there or not a path which led from the back of your house up to the stable?

A Yes, sir, a path that I use all of the time.

Q Was there a front porch in front of your house?

A Yes, sir.

Q Miss Edith, you said, was on the front porch?

Q Now, this picture and see if that is a picture taken by  
camera of your stable and cow-cub? (After examining picture)

A Yes, sir, it is.

Q Now in the stable there, is it not?

A Yes, sir.

Q Now in the stable where the door is open?

A Yes, sir.

Q That is the cow-cub?

A Yes, sir, that is the cow-cub.

Q Now the stable and cow-cub in which direction is your

house?

A From the stable, in this direction -- south.

Q Now there is a lot in which there was born in that time when

you were down to that room-right?

A Yes, sir. There is the cow-cub and there is the house

and there is the corner, there, and there is a little penning-out

pen in the corner. There is where Lanoff was standing.

Q Is there a door in your stable where that door is

open; that is your cow-cub, and there is your house?

A Yes, sir.

Q Is that passage between the house and the stable door, is

front of the stable or near the stable?

A Yes, sir.

Q Now there is not a path which led from the back of your

house to the stable?

A Yes, sir, a path that I saw all at the time.

Q Now there is a front porch in front of your house?

A Yes, sir.

Q Now when you said, was on the front porch?

A Yes, sir, on the front porch.

Q You testified that a person standing on your front porch could see to your stable?

A Yes, sir.

Q Could they hear anything that was said --

A (Interrupting) Yes, sir, everything that was said.

Q Now, you spoke of carrying your horse there at the back of your house; was that at the end of that path?

A It was back of the house. The house was here and I was back of the house.

Q You were not, then, at the stable when you carried the horse, but had the horse back of the house?

A Yes, sir, I had him back of the house.

Q How did you happen to go to the stable?

A When Mr. VanPelt came in the bars, I went on up to the stable to meet him, and I told him not to trespass on my ground.

Q Where were you standing when you first saw VanPelt, after he had entered your premises?

A I had left my horse and had gone around in front of the house or very near in front of the house, standing in the yard.

Q Was he in your orchard, that is, when he was coming from the draw-bars?

A Yes, sir. He had thrown the bars down and was in my orchard.

Q He was in your orchard?

A Yes, sir.

Q Did he say anything to you from there?

A No, it was too far back, but after I went around the path to the corner of the garden he did.

Q You then went to the back of your house?

A Yes, sir, on the front porch.  
Q You testified that a person standing on your front porch  
could see the rear window?  
A Yes, sir.  
Q Would they have anything that was said --  
A (Interrogating) Yes, sir, everything that was said.  
Q Now, you spoke of carrying your horse there at the back of  
your house; was that at the end of that walk?  
A It was back of the house. The house was here and I was  
back of the house.  
Q You were out, then, at the stable when you carried the  
horse, not back the back of the house?  
A Yes, sir, I was back of the house.  
Q Now did you happen to go to the stable?  
A Yes, sir, I was in the barn, I went on up to the  
stable to get him, and I told him not to trespass on my ground.  
Q Where were you standing when you first saw VanDine, after  
he had entered your premises?  
A I had left my horse and had gone around in front of the  
house to get that in front of the house, standing in the yard.  
Q Was he in your orchard, that is, when he was coming from  
the three-story?  
A Yes, sir. He had driven the horse down and was in my orchard.  
Q He was in your orchard?  
A Yes, sir.  
Q Did he say anything to you from there?  
A No, it was too far back, but after I went around the path  
to the corner of the garden he did.  
Q You then went to the back of your house?

A Yes, sir, where I was currying my horse.

Q And you came around the back path?

A Yes, sir.

Q What was VanPelt and his girls doing in the meantime, coming through the orchard or not?

A Coming on through the orchard, and I reckon they got half-way -- I am not certain of that -- from the road to the stable.

Q They would have to go through your orchard, which is practically your stable yard, in order to reach your stable?

A I have no barn-yard at all; the stable was in the orchard.

Q They were at some point in the orchard when you came around the back path to a point near your stable?

A Yes, sir.

Q Who spoke first, you or the VanPelts?

A I spoke first. I told them not to trespass on me but to go back.

Q Can you tell from that picture, or anything, the jury about where you were when you told him to go back and not to trespass on you?

A There is an old cushion there (indicating).

Q Does that cushion indicate where you were?

A That is near where VanPelt stood when he shot me.

Q Where were you?

A Back of that cushion, on the path.

Q Where was VanPelt and his girls when you said that?

A About half way from the road to the stable.

Q What did VanPelt or the girls say when you said that?

A They did not answer anything; they just bolted <sup>right</sup> ahead.

Q Did they go together then, walking three abreast, or did

A Yes, where I was carrying my horse.  
 I And you know around the back point?  
 A Yes, sir.  
 I That was VanDell and his girls being in the morning, was-  
 they through the orchard or not?  
 A Looking on through the orchard, and I reckon they got half-  
 way -- I am not certain of that -- down the road to the stable.  
 I They would have to go through your orchard, would it not?  
 A They would have to go through your orchard, in order to reach your stable.  
 I I have no horse-past at all; the stable was in the orchard.  
 I They were at some point in the orchard when you saw them?  
 A The back road to a point near your stable?  
 A Yes, sir.  
 I The night that you saw them?  
 A I don't know. I said that I saw them in the orchard, but I do not know  
 the day.  
 I Can you tell them that picture, or anything, the day about  
 when you were when you told him to go back and to tell me?  
 A Yes, sir.  
 I There is an old machine there (indicating).  
 A Yes, that machine indicates where you were?  
 A That is what VanDell's story was when he told me.  
 A Where was that?  
 A Back at that machine, on the path.  
 I There was VanDell and his girls when you said that?  
 A About half way from the road to the stable.  
 I What did VanDell say to the girls when you said that?  
 A They did not answer anything; they just looked down.  
 I Did they go together then, walking down the road, or did

VanPelt come one way and his girls another, as they approached you?

A The girls went straight to the stable and VanPelt came to the left, around behind them.

Q You say the girls went straight on to the stable?

A Yes, sir.

Q And Mr. VanPelt --

A (Interrupting) Turned to the left.

Q That is your stable door (indicating on picture)?

A Yes, sir.

Q The girls headed for the stable?

A Yes, sir.

Q By him going to the left, explain to the jury what you mean?

A They separated out here and he came around this way (indicating) and came in behind me. I was up here on this path, going straight to the corn-crib, and I got about that barrel there a little; and there was a large apple tree there and he was about 25 or 30 yards from me and he drew his gun, threw it towards me.

Q He threw it towards you?

A Yes, sir.

Q And the girls started to the stable door?

A Yes, sir.

Q Was the stable door closed or locked? It is open in the picture.

A It was closed -- nailed closed.

Q Had they tried to open the door before he raised the gun on you or not?

A I don't think they had. When he first raised the gun they had not opened the door yet.

Q Where were the girls?

A Close to the stable door.

Went to the door and saw the man, as they approached him.

A The girl went straight to the stable and went

to the left, around behind them.

Q The girl went straight on to the stable

A Yes, sir.

Q Now Mr. Venable --

A (Interposing) Turned to the left.

Q That is your stable door (indicating as before)

A Yes, sir.

Q The girl looked for the stable

A Yes, sir.

Q He is going to the left, explain to the jury what you mean

A They searched and have not found any more of the

girl and she is looking for me. I was up here on the

to the barn-yard, and I got about that barrel there a little, and

there was a large white tree there and he was about 25 or 30 yards

from me and he drew his gun, threw it towards me.

Q He threw it towards you?

A Yes, sir.

Q And the girl went to the stable door?

A Yes, sir.

Q Was the stable door closed or locked? Is it open in the

picture.

A It was closed -- nailed closed.

Q Had they tried to open the door before he pulled the gun

on you or not?

A I don't think they had. When he first raised the gun they

had not opened the door yet.

Q Where was the girl?

A Close to the stable door.



Q Did you say anything to him when he first raised the gun on you or to the girls?

A No, sir, I did not.

Q Where were you standing when he first raised the gun on you?

A I was not quite to the corn-crib.

Q About this place? (indicating).

A Yes, sir; somewhere along there.

Q About how far from him?

A Twenty-five or 30 yards.

Q 25 or 30 yards from him?

A Yes, sir.

Q Did he say anything to you when he first raised the gun?

A He did not say a word.

Q Did you say anything to them there?

A No, sir. He says, "Get that horse out of there quick," and he repeated it two or three times.

Q Whom was he talking to, you or the girls?

A He was talking to me. He meant for me to do it.

Q I understand you to say that the girls were at the stable door?

A Yes, sir, I said that.

Q After he said "Get the horse out there quick," and after he pulled the gun on you, what happened next?

A I told the girls to take the horse.

Q You told the girls they could have the horse?

A Yes, sir.

Q About how far were you from him then?

A Twenty-five or thirty yards when he first raised the gun.

Q You told the girls they could have the horse; did you use

Q Did you say anything to him when he first raised the gun

on you or to the girls?

A No, sir, I did not.

Q When were you standing when he first raised the gun on you?

A I was not going to the room-early.

Q About this place? (indicating).

A Yes, sir; somewhere along there.

Q About how far from him?

A Twenty-five or 30 yards.

Q 25 or 30 yards from him?

A Yes, sir.

Q Did he say anything to you when he first raised the gun?

A He did not say a word.

Q Did you say anything to him then?

A No, sir. He says, "Get that horse out of there quick," and

he repeated it two or three times.

Q When was he talking to you or the girls?

A He was talking to me. He meant for me to go.

Q I understand you to say that the girls were at the stable

door?

A Yes, sir, I said that.

Q After he said "Get the horse out there quick," and after

he pulled the gun on you, what happened next?

A I told the girls to take the horse.

Q You told the girls they could have the horse?

A Yes, sir.

Q About how far were you from him then?

A Twenty-five or thirty yards when he first raised the gun.

Q You told the girls they could have the horse; did you see

any rough or abusive language to them?

A No, sir; that is all I said. I said, "Take the horse out." I had nothing to defend myself with and I seen he was going to shoot. I thought if they took the horse out of the stall he would take his gun down.

Q Where were you standing when you said to the girls that they could take the horse out?

A Out there (indicating on picture) where you see those sticks.

Q At the corner of the corn-crib where two sticks are sticking up?

A Yes, sir.

Q After you told the girls to take the horse out, when you were standing here near the corn-crib, what did VanPelt do?

A He never stopped when he was under the apple tree; he came to that place (indicating). It was all done so quick. The whole thing was done inside of five minutes. When I turned around, right square around to him, and as soon as I turned around, he shot me.

Q After you told the girls to take the horse out and you were standing there at the corner of the corn-crib?

A I never moved.

Q And he had been 25 or 30 yards away?

A Yes, sir; he had been coming on up there.

Q You say you turned around?

A I turned around.

Q Did you stand where you were at the corner of the corn-crib or did you come further down?

A I stood right where I turned around; I didn't move.

Q Did he move up towards you?

A No, when I turned around he was standing still; he had gotten

any rough or abusive language to them?

A No, sir; that is all I said. I said, "Take the horse out."

I had nothing to defend myself with and I mean he was going to shoot.

I thought if they took the horse out of the stall he would take his

gun down.

Q Where were you standing when you said to the girls that

they could take the horse out?

A Out there (indicating on picture) where you see those stables.

Q At the corner of the barn-crib where two stables are adjoining

why

A Yes, sir.

Q After you told the girls to take the horse out, when you

were standing here near the barn-crib, what did you say to

A He never stopped when he was under the wire fence; he came

to that place (indicating). It was all done so quick. The whole

thing was done inside of five minutes. When I turned around, right

opposite around to him, and as soon as I turned around, he shot me.

Q After you told the girls to take the horse out and you were

standing there at the corner of the barn-crib?

A I never turned.

Q And he had been 25 or 30 yards away?

A Yes, sir; he had been coming on up there.

Q You say you turned around?

A I turned around.

Q Did you stand where you were at the corner of the barn-

crib or did you come further down?

A I stood right where I turned around; I didn't move.

Q Did he move up towards you?

A No, when I turned around he was standing still; he had gotten

up that way and was standing still and had his gun up.

Q Had the girls gotten the horse all the way out of the stable then?

A The front feet of the horse were out. Both girls had hold at the head of the horse.

Q Did he say anything to you, then? Did the girls say anything to you then, either?

A No, sir; no one.

Q When did he shoot you, then?

A When I turned square to him he shot me.

Q Can you tell from this picture, or explain from this picture, the position you were in at the time he shot you?

A He was standing right square to me; I turned right square around to him, and that is all I can tell you.

Q Can you locate any points on the picture so as to enable the jury to know or see just where you were when you were shot and where VanPelt was when he fired the shot?

A I was standing right there, right at this point. (Indicating).

Q Right near these poles?

A Yes, sir.

Q Where was VanPelt?

A He was standing right there (indicating).

Q Right where that mark is?

A Yes, sir.

Q You were standing up near the poles?

A Yes, sir.

Q Where I make this "x", near these poles, is where you were standing, and you were turned to him, and right there was where he was standing? How far, if you have measured it, was he from you

Q Did the girls get out the way out of the house  
up that way and was standing still and had his gun up.

A The front door of the house was out. Both girls had hold  
at the head of the horse.

Q Did he say anything to you, then? Did the girls say any-  
thing to you then, either?

A No, sir; no one.

Q When did he shoot you, then?

A When I turned around to him he shot me.

Q Can you tell from this picture, or explain from this picture,

the position you were in at the time he shot you?

A He was standing right square to me; I turned right around

around to him, and that is all I can tell you.

Q Can you locate any points on the picture as to the position

the boy is now or was just where you were when you were shot and

where VanBelt was when he fired the shot?

A I was standing right there, right at this point. (Indicates)

Q Right near these poles?

A Yes, sir.

Q Where was VanBelt?

A He was standing right there (Indicates).

Q Right where that mark is?

A Yes, sir.

Q You were standing up near the poles?

A Yes, sir.

Q Where I mark this "X", near these poles, is where you were

standing, and you were turned to him, and right there was where he

was standing? Now far, if you have measured it, was he from you

when he fired the gun?

A I was seven yards from him when he fired.

Q Twenty-one feet?

A Yes, sir.

Q Now, the shot was fired and you have told how it came about; what happened after he fired this shot?

A Well, they taken the horse out the way they came in.

Q Wait a moment before you go that far, I want to ask you this; from the statement of counsel for defense they have indicated that you were abusing these girls, that you were about to hit the girls, or one of them, with a curry-comb and that you were stooping down trying to get a rock and were about to stike them in some way with it, tell the jury whether or not there is any truth in that statement.

A Gentlemen, there is no truth in it at all. They never told but two truthful things in their testimony out there at the called trial, just two things.

Q You are getting a little too fast and I will ask you to answer ~~xxxxxxx~~ my question. There was no truth in that statement?

A No, sir, no truth at all.

Q You did not say anything to the girls or did not do anything to them by word or deed, you made no attack on them?

A No, sir.

A JUROR: Were you close enough to them to hit them with the curry-comb?

WITNESS: No, sir; I was six yards from the girl and not close enough to hit them.

A JUROR: May I have the picture?

MR. OTT: I will pass it to you a little latter, if that will or do you want to see it now?

When he fired the gun?

A I was seven yards from him when he fired.

Q Twenty-one feet?

A Yes, sir.

Q Now, the shot was fired and you have told how it was about;

what happened after he fired this shot?

A Well, they taken the horses out the way they came in.

Q Well a moment before you go that far, I want to ask you

this: from the statement of counsel for defense they have indicated

that you were shooting those girls, that you were about to hit the

girls, or one of them, with a cury-candy and that you were stopping

them trying to get a rock and were about to strike them in some way

with it, tell the jury whether or not there is any truth in that

statement.

A Gentlemen, there is no truth in it at all. The never said

but two truthful things in their testimony but those of the called

trial, but two things.

Q You are willing a little too fast and I will ask you to

answer gentlemanly my question. There was no truth in that statement?

A No, sir, no truth at all.

Q You did not say anything to the girls or did not say anything

to them by word or deed, you made no attack on them?

A No, sir.

A JUROR: Were you alone enough to them to hit them with

the cury-candy?

STEWART: No, sir; I was six yards from the girls and not

alone enough to hit them.

A JUROR: Why I have the statement?

MR. O'NEIL: I will leave it to you a little longer. It does

will or do you want to see it now?



THE JUROR: I want to see it now. (Picture handed to juror.)

Q Now, he has fired the shot; what happened just after the firing of the shot?

A The girls had taken the horse on out, and he went on around, on the right hand side of me, and met the girls and all of them went out. After he got out close to the bars, I told him that he was n't anything but a thief and a liar.

Q You stated you were back near the corn-crib and VanPelt was twenty-one feet, or seven yards away from you when he shot?

A He was seven yards.

Q The girls after the shot was fired started out with the horse, they being towards the stable there, which is a little higher above where he was?

A Yes, sir, some higher.

Q Did he go back in a straight line in the direction of the draw bars ?

A He went right straight forward and turned off a little to the right of me. I was at the corn-crib and he turned a little to the right and he and the girls went in the direction they came in -- he went straight across there and met the girls. He went on out around the apple tree.

Q The girls had the horse?

A Yes, sir.

Q He had the gun?

A Yes, sir, he had the gun.

Q Did you follow him or did you not?

A No, sir, I did not follow him.

Q Did you remain standing where you had been shot?

THE JUDGE: I want to see it now. (Pleasantly turned to JURY.)

Q Now, he has fired the shot; what happened just after the

falling of the shot?

A The girl had taken the horse on out, and he went on around

on the right hand side of me, and met the girl and all of them

went out. After he got out of the barn, I told him that he

wouldn't get a trial and a fair.

Q You stated you were back near the corn-crib and Verbeet was

twenty-one feet, or seven yards away from you when he shot?

A He was seven yards.

Q The girl after the shot was fired started out with the

horse, they being towards the stable there, which is a little higher

above where he was?

A Yes, sir, was higher.

Q Did he go back in a straight line in the direction of the

back door?

A He went right straight forward and turned off a little to

the right of me. I was at the corn-crib and he turned a little

to the right and he and the girl went in the direction they came

in -- he went straight across there and met the girl. He went

on out around the apple tree.

Q The girl had the horse?

A Yes, sir.

Q He had the gun?

A Yes, sir, he had the gun.

Q Did you follow him or did you not?

A No, sir, I did not follow him.

Q Did you remain standing where you had been when?

A No, sir, I moved down between the corn-crib and the corner of the garden after they started away with the horse.

Q Was that going back towards your home?

A Yes, sir, by the old path back of the garden.

Q How far were you from him when you hollared, "you are a thief and a liar"?

A Twenty-five or thirty yards.

Q What did he say in response to that?

A He did not say a word.

Q Did you make any attempt to follow him at all?

A No, sir, not at all. I staid there and went back in the path where I always go by the garden. I told him he was a thief and a liar because I know he was.

Q Did you make any further remark to him?

A I told him that he was keeping that little whore down there.

Q Did you say anything further to him?

A No, sir, that is all that was said.

Q Was that before or after you were shot?

A After the shooting.

Q You made no further statement to him?

A No, sir.

Q What did you do then?

A I went down to the house and told the girl I had been shot. I didn't know anything about it. I knew I was shot and that is all I could tell.

Q She went up and got your horse and you went immediately to the doctor?



A Yes, sir.

Q When this shot was fired what effect, if any, did it have upon you physically?

A It sort of blinded me and stunned me, of course. If you let some gentlemen ~~xxx~~ fire on Mr. Hammer like Van Pelt did on me, I think, it would stun him.

Q Did it cause you to fall down?

A No, sir, it cause me to step around ~~kw~~ a little, sort of blinded me a little, something of that kind.

Q Mr. Matheny, are there any rocks in this orchard that your stable is in?

A There is no fence around it; there is no barnyard there, but the stable is out in the orchard and don't have any barn lot.

Q How far is that stable from the road where the bars are that lead into your place?

A Ninety-eight yards from the road.

Q A man going into your stable would have to come through the bars and through the orchard to the stable, would he not?

A Yes, sir.

Q Are there any rocks at all on the ground there that you could have gotten or picked up had you been desirous of getting them?

A. No, sir, there were no rocks there that I could have picked up. It is not rough ground but it is sod.

Q Were there any rocks there?

A The only rock was one near the corn-crib and you could not have thrown it if you wanted to.

Q Are those heavy rocks?

A Yes, sir, heavy rocks.

A Yes, sir.

Q Then this shot was fired what effect, if any, did it have

upon you physically?

A It sort of blinded me and stunned me, of course. It you  
had been, perhaps, like Mr. Hammer like you felt this on  
me, I think, it would be the same.

Q Did it cause you to fall down?

A No, sir, it caused me to step around as a little, work of  
blinded me a little, something of that kind.

Q Mr. Mahoney, are there any rocks in this orchard that you  
would be able to see?

A There is no fence around it; there is no boundary there,  
but the stable is out in the orchard and don't have any back fence.  
Q How far is that stable from the road where the man was

shot into your place?

A Twenty-eight yards from the road.

Q A man going into your stable would have to come through the  
gate and through the orchard to the stable, would he not?

A Yes, sir.  
Q Are there any rocks at all on the ground there that you  
could have gotten or picked up had you been desirous of getting

them?

A No, sir, there were no rocks there that I could have picked  
up. It is not rough ground but it is not.

Q Are there any rocks there?

A The only rock was one near the corn-crisp and you would not  
have known it if you wanted to.

Q Are there heavy rocks?

A Yes, sir, heavy rocks.

Q Could they have been used to strike anybody with them?

A No, sir, they could not have been used to strike anyone, unless he was a terribly stout man. If you had a man down you could mash him with them. That is about all that could be done with them.

Q Between your front porch and your orchard, you have said there is a garden?

A Yes, sir.

Q Is this garden enclosed in a fence or not?

A Yes, sir, it is enclosed.

Q In which garden I understand there is now standing corn?

A Yes, sir, roasting ears.

Q What was the size of that corn on June the 29th, 1919?

A I can not tell you certainly, but something like that high. (Indicating) But she could by standing up see over it from the porch-- if she had been standing -- but she was sitting down. She was standing up and saw the first part of it; and she heard everything that was said.

Q Is your front porch in such position that it commands the view of the road almost down to the VanPelt house?

A Very near it. There are some trees there and you can not see along that turn.

Q Have you some near neighbors around your house there, for instance, where does Mr. George Ritchie live?

A He lives 350 yds. His porch is 350 yds. from my house. I stepped it yesterday.

Q How far does G.W. Matheny live from you?

A Something like 300 yds.

Q Would they have been used to strike anybody with them?  
A No, sir, they could not have been used to strike anyone,  
because he was a terribly stout man. If you had a man four feet  
square and his wife then, that is about all that could be done  
with them.

Q Between your front porch and your croquet, you have said  
there is a garden?  
A Yes, sir.

Q Is this garden enclosed in a fence or not?  
A Yes, sir, it is enclosed.

Q In which garden I understand there is now standing corn?  
A Yes, sir, standing corn.

Q What was the size of that corn on June the 23rd, 1919?  
A I can not tell you certainly, but something like that

(indicating) but she could by standing up and over it from the  
porch -- it has been standing -- but she was sitting down. She  
was standing up and saw the first part of it; and she heard something  
that she said.

Q Is your front porch in such position that it commands the  
view of the road almost down to the Vermont house?  
A Very near it. There are some trees there and you can not  
see along that way.

Q Have you some near neighbors around your house there, for  
instance, where does Mr. George Nichols live?  
A He lives 250 yds. His porch is 250 yds. from my house. I  
noticed it yesterday.

Q How far does O.W. Mahoney live from you?  
A Something like 300 yds.



Q Isn't there a Mr. Joseph Miller, a bachelor, near you?

A Yes, sir.

Q How far does he live and in which direction from you?

A A little south west and between three and four hundred yards. And Mr. Crist lives near there, below there.

Q How far does Mr. Crist live from you? and in which direction?

A About 350 yds, <sup>east</sup> South He is a sadler by trade. It is that far from my house to his shop.

Q How far is it to his house?

A Somewhere between fifty and seventy-five yards further.

Q Now, are there any other neighbors who live within close range and who could have heard any boisterous noise?

A No, sir; those are the only ones.

BY MR. STRICKLER:

Q You say, just before you received that shot that you had turned your back towards Van Pelt?

A Yes, sir, had turned right squared around to him.

Q Were you walking away from him prior to that time?

A No, sir, I was standing there and told the girls to take the horse, and I turned right around and as soon as I turned around I thought he would drop his gun as soon as the horse came out of the stable, he shot me, which shows he did not come for the horse but to murder me. He has been thinking this for several years.

Q I want to know, when you were standing looking towards the girls whether your back was towards Van Pelt?

A Yes, sir, my back was toward him when I told them to take the horse out of the stable.

Q What's there a Mr. George Miller, a bachelor, near your  
A Yes, sir.  
Q How far does he live and in which direction from your  
A A little north west and between three and four hundred  
yards, and Mr. Miller lives near there, below there.  
Q How far does Mr. Miller live from your and in which direction?  
A About 1000 feet, south he is a number by train. It is that  
the type of house in the shop.  
Q How far is it in his house?  
A Lawrence's business fifty and seventy-five yards further.  
Q How are the other neighbors who live within close range  
and who could have heard my potatocan salicy?  
A Yes, sir; there are the only ones.  
Q Now, sir, you  
A Yes, sir, you received that that you  
had turned your head towards the left?  
A Yes, sir, and turned right around around to him.  
Q How far walking away from his place to that time?  
A Yes, sir, I was standing there and told the girls to take  
the money, and I turned right around and as soon as I turned around  
I thought he would shoot his gun as soon as the horse came out of the  
stable, he shot me, which shows he did not come for the horse but  
to murder me. He has been thinking this for several years.  
Q I want to know, when you were standing looking towards the  
right side of your head was towards the left?  
A Yes, sir, my head was toward him when I told them to  
take the horse out of the stable.

Q Then you say the horse was gotten out and you turned around?

A Yes, sir.

Q And you were turned around facing him.

A As soon as I turned around I thought he would drop his gun but he right up and shot me.

Q You were not to the side of him?

A No, sir, not to the side of either party.

Q You made no threatening motion?

A No, sir, I made no threatening motion ~~or~~ by throwing up my hands or ~~nothing~~. There was nothing to get. There was a barrel there close to me but no rocks on the ground. It is not rocky land. We don't need any rocks there and don't have any rocks.

CROSS EXAMINATION BY MR. HAMMER.

X Mr. Matheny, I want you to show me precisely the position you were in and the position Mr. Van Pelt was in.

A All right sir. (Witness places Mr. Strickler in the position of Van Pelt to indicate how Van Pelt was standing at the time he shot the witness.)

X And you were facing Mr. Van Pelt just as I am now facing you

A When he shot me I was.

X And you stood still in that position when he shot you and you saw the gun raised up there?

A Yes, sir, I saw the gun up there. When I turned around after telling the girls to take the horse, I thought he would drop his gun, but instead of dropping his gun when I turned around, he right up that way and shot me.

X And you were standing like I am now?

A I was standing square to him.

Q Then you say the horse was gotten out and you raised amount?

A Yes, sir.

Q And you were turned around facing him.

A As soon as I turned around I thought he would drop the gun

but he didn't do that.

Q You were not to the side of him?

A No, sir, not to the side of either party.

Q You made no threatening motion?

A No, sir, I made no threatening motion or by throwing up my

hands or anything. There was nothing in fact. There was a barrel that

came to be but no words on the ground. It is not very loud. He

didn't even say a word there and don't have any words.

DEPOSITION OF MR. HANSEN

Q Mr. Hansen, I want you to state as precisely as possible

the date and the position Mr. Van Wert was in.

A All right, sir. Witness please Mr. Stricker in the position

of Van Wert is witness how Van Wert was standing at the time he

shot the witness.

Q And you were facing Mr. Van Wert just as I am the witness you

A That is what I was.

Q And you stood still in that position when he shot you and

you saw the gun raised up there?

A Yes, sir, I saw the gun up there. When I turned around

after seeing the rifle to take the horse, I thought he would drop

the gun, but instead of dropping his gun when I turned around, he

kept it up that way and shot me.

Q And you were standing like I am now?

A I was standing square to him.

X How, then will you explain the fact that the bullet did not enter directly into your body but entered from the side?

A That bullet hit right at the top of my collar bone.

X You heard Dr. Koontz's at the call-trial?

A Yes, sir, but he didn't understand that. I told him he was wrong.

X The doctor didn't understand it?

A No, sir; I told him how it was.

X I will ask you another thing; you say these girls only swore to two things truthfully at the call-trial, what two things were they? You said Van Pelt and the girls swore to only two things that were true at Dayton at the call-trial, and I want to know what they were. What two things did the girls tell that were true?

A They told, and you stopped them right there. You objected to their telling that they objected to Van Pelt's taking the gun but that Mrs. Van Pelt <sup>told him</sup> to take the gun.

X How do you know that was true?

A Mrs. Snyder was down there and she heard it.

X What did they tell that was true?

A They told that they didn't know whether my girl could see when she sat down on the porch the road from where she was sitting. I don't know for certain whether she could or not.

X You testify here that your girl was within <sup>hearing</sup> distance of everything out there.

A She was within hearing distance. She was within thirty-six yards and anybody can hear within thirty-six yards.

X You heard your daughter testify at Dayton?

A Yes, sir.

Q Now, then will you explain the fact that the coffee can  
 was empty already into your body but watered from the other  
 A That coffee was right at the top of my coffee can.  
 Q The nurse Dr. Knapp's at the trial?  
 A Yes, sir, but he didn't understand that. I told him he

was wrong.

Q The doctor didn't understand it?  
 A No, sir; I told him how it was.  
 Q I will ask you another thing; you say these girls only  
 went to two things, practically at the trial, what two things  
 with them? You said you said the girls were in only two things  
 that were in at the trial, and I want to know what  
 that were. What two things did the girls tell that were true?  
 A They told, and you stopped them right there. You objected  
 to their telling that they objected to her father taking the girls  
 out that way, you told her to take the girls.

Q How do you know that was true?  
 A How, indeed, was down there and she heard it.  
 Q These are the girls that was true?  
 A They told that they didn't know whether or not they saw  
 when she was down on the beach the road from where she was sitting.  
 I am not sure but I believe whether she said or not.  
 Q The testimony here that your girl was sitting at the  
 hearing  
 was sitting out there.

Q The way within hearing distance. She was within thirty-six  
 yards and nobody was near within thirty-six yards.  
 Q You heard your daughter testify at Dayton?

A Yes, sir.

X You heard her testify that she did not even hear the shot?

A No, she did not even hear the shot. I meant the talking. I did not mean the shot. You could not have heard it if you were across this room from it, but I meant she could hear the talking, this swearing and everything, she could have heard everything, sir.

X What did you say that you said to Van Pelt before he shot?

A I didn't say anything, I said I didn't say a word.

X Had you said anything to the girls?

A I did not say a word to him more than when he first came in I told him not to trespass on me but to go back. That was all that was said.

X I will ask you this; if in response to a question of Justice Keiter you did not say that Van Pelt never said a word to you and the only thing that was said was, "get that horse out of there quick"?

A That is all he said, sir.

X You and Van Pelt had been living there side by side as neighbors before this?

A I don't ~~suppx~~ suppose you would live with a neighbor very good if he would go in your corn patch when you were away from home at work -- he was over there on my land before that without permission, and he wanted to get a way before I got home. He taken the blades and everything off of the corn patch and he promised that he would bring the blades back and the tops. He did manage to throw the tops over the fence but not the blades. He got half of my molasses. He didn't do anything but have that cane cut and he taken half of the molasses. I went down and asked him for the molasses or his wife and she didn't make me an answer. You wouldn't

be in a very good humor with a man of that kind.

I was bound by feeling that she did not even hear the shot.  
 I did not hear the shot, I meant the talking.  
 I did not hear the shot, you would not have heard it if you were  
 cornered like you were I, but I meant she would hear the talking,  
 this meaning and everything, she would have heard everything, etc.  
 I don't see you say that you said to her before he shot?  
 I didn't say anything, I said I didn't say a word.  
 I had you said anything to the girls?  
 I did not say a word to him more than when he first came  
 to I told him not to trespass on me but to go back. That was all I  
 said.

I will ask you this: is it possible to a question of justice  
 raised on his part that you felt never said a word to you and  
 the only thing that was said was, "get that horse out of there  
 quick."  
 That is all he said, sir.  
 You and your wife had been living there since by this time  
 and you had a horse there.

I don't know whether you would live in a neighborly way  
 and it is said to be your own horse when you were away from home  
 at that time -- as was your horse on my land before that without  
 permission, and he wanted to get a way before I got back. He took  
 the blades and everything off of the corn patch and he promised  
 that he would bring the blades back and the tops. He did nothing  
 to give the tops over the fence but the blades. He got half  
 of my money, he didn't do anything but have that come out and  
 he took half of the money. I went down and asked him for the  
 money of his wife and she didn't take me an answer. The woman's

he is a very good person with a son of that kind.



X As neighbors did you visit back and forth each others homes?

A His children have.

X Which children?

A His children.

X What children were they, name them?

A Florrie has been to our place several times.

X When was she there last before the shooting?

A I couldn't tell you.

X You have not been there at home this summer, have you?

A I was not.

X You just came home the day before the shooting?

A Yes, sir, I just came the day before the shooting. She was in and taken my cherries a few days before that.

X You did not know that of your own knowledge?

A No, sir.

X You were evidently a pretty angry man that morning?

A No, sir, I was not. They say my girl was up at Mrs. Taylor's and told her I was mad or pretty angry, but there is not a word of truth in that, there is not a word of that, sir.

X You were contentious that day?

A No, I was tired. I sat down to rest. I went over to my fence where I saw a rail down and yied that rail to the fence.

X Where did you go to fix that fence that morning?

A I went west of my house, over towards Mr. Miller's.

X So, you were up the hill that morning?

A No, sir, I was not.

X How far were you from your house up there?

A Two hundred and fifty yards across there, but I was not up on the hill.

Q As neighbors did you visit back and forth each other  
 A Yes, we did.  
 Q Did you ever have  
 A Yes, I did.  
 Q What children were they, were they  
 A Florida had been to our place several times.  
 Q Was she there last before the shooting?  
 A I don't recall you.  
 Q You have not seen them at home this summer, have you?  
 A I don't know.  
 Q Just came home the day before the shooting?  
 A Yes, sir, I just came the day before the shooting. She was  
 in and taken up shortly a few days before that.  
 Q You did not know that of your own knowledge?  
 A No, sir.  
 Q She was extremely pretty, was that correct?  
 A No, sir, I was not. They say my girl was up at the  
 Taylor's and that day I was not so pretty, but there is not  
 a word of truth in that, there is not a word of that, sir.  
 Q You were somewhat that day?  
 A No, I was tired. I had been to work. I went over to my  
 tent where I saw a tall dark and that girl to the fence.  
 Q Where did you go to the tent that morning?  
 A I went out of my house, over towards Mr. Miller's.  
 Q So you were up the hill that morning?  
 A No, sir, I was not.  
 Q How far were you from your house by there?  
 A Two hundred and fifty yards across there, but I was not up

X At the trial at Dayton before the Justice you denied being away from the house?

A No, sir, I did not.

X Didn't I ask you that very question?

A You asked me if I had been up on the hill and I told you I had not. But I went across on the other road and tied up a rail. I live between two public roads.

X You said that if I had been shot it would have affected me, and so forth; you mean that you were so affected that the shot caused you to call those girls whores?

A I never called them whores.

X And thieves?

A There wasn't an oath sworn on the ground, and there wasn't a "bitch" called on the ground. The word was not mentioned on the ground by either party.

X Didn't you say, when you said they were thieves and liars - didn't you tell him that he was keeping a little whore down there?

A That was after the shooting. He taken my cane tops.

X What caused you to do that?

A Because he is that. You will find out sometime what he is. A man can't go and take my stuff off my land while I am away from home and be a man. A man will stay off a man's land, if he is a man.

X Did you think it was a neighborly and manly and right thing to do to lock his horse up in your stable and not send him word of what you had done?

A I was going to send him word before sundown. I knew my business. If he had come out and acted like a gentleman, but he

Q At the trial at Dayton before the Justice you testified being

any from the money?

A No, sir, I did not.

Q Didn't I ask you that very question?

A You asked me if I had been up on the hill and I told you

I had not, but I went across on the other road and that is all.

I live between two public roads.

Q You said that if I had been shot it would have affected

me, and so forth; you mean that you were so affected that the shot

counted you to call these girls whores?

A I never called them whores.

Q And then?

A There wasn't no oath sworn on the ground and there wasn't

a trial called on the ground. The word was not mentioned on the

ground by either party.

Q Didn't you say, when you said they were fifteen and fifteen

didn't you tell him that he was keeping a house where these

A These men after the shooting. He takes up some form.

Q That caused you to do that?

A Because he is that. You will find out something about it

for a man can't get any more of that off my land while I am away

from home, he is a man. A man will stay off a man's land, he is

in a way.

Q All you think it was a neighborly and manly and right

thing to do to lock his horse up in your stable and not send him

away at what you had done?

A I was going to send him and before sundown. I knew my

business. It had come out and asked like a gentleman, but he

wouldn't do that. He has been trespassing there right along.

X You had not been at home for six months, how do you know that?

A I reckon the neighbors around there told me.

X Who told you that he had been doing anything like that during the last six months?

A Why, you will find out after a little.

MR. OTT: Tell him.

WITNESS: Mr. Crist and Mr. Ritchie. I can prove it all right. I can prove it by Mrs. Crist and Mr. Crist, and prove it by Mr. Beard.

X They told you that Mr. VanPelt was trespassing on your land?

A Yes, sir. And I can prove it by Mr. Beard.

MR. STRICKLER: Do I understand that all these people told you this before the shooting occurred?

WITNESS: No, sir; I had just come home.

MR. OTT: What Mr. Hamner wants to know is whether you heard of this while you were away.

WITNESS: I did not hear anything about this before the shooting. I came home at 5 o'clock in the evening. I came home just the day before the shooting. I did not hear this before that.

MR. OTT: Mr. Hamner wants to know whether you had any complaint before the shooting as to VanPelt's stock trespassing on you; had you? Had anybody told you?

WITNESS: Nobody told me before the shooting. I wasn't home long enough.

THE COURT: Now, did you have any trouble as to VanPelt's stock trespassing on your land before you went to South Carolina?

WITNESS: Yes, sir. He has been trespassing on me all the time; he has been doing it for years. He has always been doing it. I was down in South Carolina when the girl was there by herself, and she had to go out three and four times a day drive his stock off.

Q And how long has he been trespassing there right along?  
A You had not been at home for six months, how do you know  
that?

A I wouldn't know the neighbors around there told me.  
Q The fact you told me he had been taking property from the  
house the last six months?  
A Yes, you will find out after a little.

MR. OTT: Tell him.

WITNESS: Mr. Baker and Mr. Richards. I can prove it  
all right. I can prove it by Mr. Baker,  
and Mr. Baker, and prove it by Mr. Baker.

Q They told you that Mr. Baker was trespassing on your land?  
A Yes, sir, and I can prove it by Mr. Baker.

MR. BAKER: Do I understand that all these  
people told you this before the shooting  
commenced?

WITNESS: No, sir, I had just come home.

MR. OTT: That Mr. Baker wants to know if whether  
you heard of this while you were away.

WITNESS: I did not hear anything about this before  
the shooting. I came home at 4 o'clock  
in the evening. I came home just the  
day before the shooting. I did not hear  
this before that.

MR. OTT: Mr. Baker wants to know whether you had  
and complained before the shooting on the  
Yankee's stock trespassing on your land  
you had anybody told you?

WITNESS: Nobody told me before the shooting. I  
wasn't home long enough.

THE COURT: Now, did you have any trouble as to  
Yankee's stock trespassing on your land  
before you went to South Carolina?

WITNESS: Yes, sir. He has been trespassing on  
me all the time; he has been taking it  
for years. He has always been taking it.  
I was down in South Carolina when the  
girl was there by herself, and she had  
to go out three and four times a day  
drive his stock off.

MR. STRICKLER: These people, Crist and others, told you about this trespassing, and that was told you after the shooting?

WITNESS: Yes, sir, after the shooting.

X You say you were where when you first saw VanPelt and his daughters?

A Where was I?

X Yes, sir.

A I was in my yard, around near the door.

X You were currying your horse at rather your kitchen door, were you not?

A Yes, sir, at my palings.

X You did not see VanPelt and his daughters yourself, or did somebody call your attention to them coming up the road?

A I seen them before they came to the first bars. It was right close there. I happened to see them. There is nothing to interfere with seeing anybody going along on the road. I saw them but did not know who they were.

X Did you say you thought they were tramps?

A No; you don't understand that country.

X What did you say they were?

A There is a branch up there, and I said that I thought they were some branchers.

X You mean some people coming from War Branch?

A Yes, sir.

X When did you find that they were not branchers?

A When they opened the bars and came in the orchard. I went

Q. Now, you said that you saw people, girls and others, told you about this happening, and that was told you after the shooting?

A. Yes, sir, after the shooting.

Q. And you were there when you first saw Vanhoose and his daughter?

A. Yes, sir.

Q. And you saw them at the house?

A. Yes, sir.

Q. And you saw them at the house, around the house?

A. Yes, sir, carrying your boxes of rubber gear through door.

Q. And you saw them there?

A. Yes, sir, at my house.

Q. Now, you said that you saw Vanhoose and his daughter, or did somebody call your attention to them coming to the house?

A. I saw them before they came to the first house. It was that close there. I happened to see them. There is nothing in particular with seeing anybody going along on the road. I was there but I did not know who they were.

Q. Did you see anybody else there?

A. No, sir, I did not see anybody else there.

Q. Did you see any other people there?

A. There is a house up there, and I said that I thought they were some neighbors.

Q. You mean some people coming from the house?

A. Yes, sir.

Q. And you said that they were not neighbors?

A. When they opened the door and came in the orchard. I saw



out the back way to go to the stable and when I got to the corner of the garden they were something like half way between the bars and the stable, and I told them to go back and not to trespass on me.

X You went out there?

A I went to the corner of the garden and told them to go back.

X If you were going to act so nicely and reasonably with your neighbor that you would let him have the horse that evening, when you saw them coming why didn't you say to Mr. VanPelt, you are trespassing on me and your horse has done me so much damage and you ought to pay it and take the horse out?

A He had his gun with him.

X That would make it more necessary for you to be humble?

A Is that the way for a gentleman to walk up to a man with a gun? That is not the way. Gentlemen, it was not that. He has been threatening that all along. He started from home for murder and he shot for murder. That is what he shot for.

X You are not afraid of that gun?

A I wasn't!

X You were not, were you?

A Aint you afraid of a bullet in your head?

X If I was, I don't think I would have walked down there some 30 steps towards him; I would have walked off the other way.

A I did not walk up to him.

X What did you do?

A I was standing there talking to his girls at the corn-crib

out the door and go to the stable and when I got to the corner  
of the garden they were standing like half way between the door  
and the stable, and I told them to go back and not to trespass  
on me.

Q You went out there?

A I went to the corner of the garden and told them to go

back.

Q It has been going to get so noisy and commotion with  
your neighbor that you would let him have the horse that evening  
when you saw them coming why didn't you say to Mr. Venable, you  
are responsible for me and your horse has done as he was told  
and you ought to let it and take the horse out?

A He had the gun with him.

Q That would make it more necessary for you to be loaded  
is that the way for a gentleman to walk up to a man with  
a gun that is not the way. Gentlemen, it was not that. It was  
just threatening that all along. He started from here the water  
and he came for water. That is what he was for.

Q You are not afraid of that gun?

A I wasn't.

Q You were not, were you?

A That was what of a belief in your hands?

Q In your hands, I don't think I could have walked down there

when he came towards him; I would have walked off the other way.

Q I did not walk up to him.

Q That is the way?

A I was standing there talking to him while at the same time

and he was the man that walked up, he was twenty-five or thirty yards away when he drew the gun on me.

X And when you walked up further towards the girls what happened?

A He never stopped, but I stopped there a little bit and told the girls to take the horse, and the horse was coming out and I turned around and he was then seven steps from me and had his gun up and maybe he drew it a little finer. He came there, he let on that he is blind and crippled and could not see, but he could see and he shot for murder; he shot for the heart, gentlemen; that is what I think.

X He is blind in one eye?

A I don't know. It would be better if he was blind in both.

X You said you were talking to the girls, what did you say to them?

A I told the girls they could take the horse out.

X You told them to take the horse?

A Yes, sir, that is all I told the girls; and then I turned around and he shot me.

X And he shot you for nothing more than that?

A That is all he shot me for, and there was not a word said, nobody swore or called "bitch" or anything like that. There is not a word of that true, not a word of that, gentlemen.

X Your land up there is what kind of land and how far are you from Dry River?

A Four miles.

and because the one that walked up, he was twenty-five or thirty  
years more than he was the one he was.

A And when you walked up further towards the little what  
is that?

A He never stopped, but I stopped there a little bit and  
told the girls to take the horse, and the horse was walking out  
and I turned around and he was there never stops that he had  
the one he was talking to was a little finer. He said there,  
he said he was in a little and he said he was not here, but he  
said he was not the one; he said he was the one, he said he was  
that is what I think.

A He is blind in one eye?

A I don't know. It would be better if he was blind in both.

A You said you were talking to the girls, were you?  
Yes to that.

A I told the girls they would take the horse out.

A You told them to take the horse?

A Yes, sir, that is all; that is the whole thing; you know  
I turned around and he said so.

A And he shot you for nothing more than that?

A That is all he shot me for, and there was not a word

said, nothing more or nothing "given" or anything like that. There

is not a word of that sort, not a word of that, gentlemen.

A You had up there in what kind of land and how far was  
you from the river?

A Four miles.

X What creeks go along by your place?

A No creeks. Briery Branch is something like three or four hundred yards. Three or four hundred yards from my house there is a branch running which divided the soil. That is Briery Branch soil at one place and Bever Creek soil, that is black soil.

X Your land is not Bever Creek soil is it?

A Part of it is.

X Not really where you were when this difficulty occurred?

A Yes, sir, right where I was there is a branch there that divided the land and runs clean up the ridge and comes down to Bever Creek.

X Where your house is is a Alluvial land?

A There is nothing there but a pond. The only water there is a pond.

X How close in the channel of the creek to your house, has it ever changed?

A Do you mean Bever Branch?

X Yes, sir.

A There are two creeks, one is a small branch and the other a large branch. The small branch is something like seven hundred yards.

X And how far is the big branch?

A It is something like half a mile away or maybe not that far.

X The creek never overflows your land?

A It don't come to my land at all. There is a branch t here that keeps all that water southwest from there. There are no branch rocks where my orchard is, nothing of that kind. There are

Q That creek is named by your place?

A No creek. It is named by the three or four hundred yards. There are four hundred yards from my place there is a branch running north divided into two. That is the main creek. That is the main creek. That is the main creek.

Q Your land is not the main creek is it?

A Not at all.

Q But really where you were when this difficulty occurred?

A Yes, sir, right where I was there is a branch there that divides the main and runs down the ridge and comes down to the main creek.

Q Where your place is in a divided land?

A There is nothing there but a pond. The only water there is a pond.

Q How long is the channel of the creek to your house, and is very shallow?

A No, you mean the main creek?

A Yes, sir.

Q There are two creeks, one is a small branch and the other is large creek. The small branch is something like seven hundred yards.

Q And how far is the big branch?

A It is something like half a mile away to my place and that far.

Q The creek never overflows your land?

A It has't come to my land at all. There is a branch there that keeps all that water southwest from there. There are no branch there where you speak of, nothing of that kind. There are

no rocks there anyway, no rocky land. It is sod. I never plowed that land but once and I have owned it for forty years. I have no barn yard fenced it. I can turn my horses loose anywhere.

MR. STRICKLER: It is old orchard sod there?

WITNESS: Yes, sir, old orchard sod.

X Old orchard sod has rocks on it sometimes?

A Some of them but that has not. There are a few rocks in the upper part of the orchard, but there are not many there for I cleaned them off.

X There are some sand rock there?

A Not laying there. It is not river rock. You don't understand sand rock. They are rock used by masons to build chimneys. You find some small ones in the upper part of the orchard.

X There are some rocks within seventy-five yards of the stable?

A Yes, sir, you will find a few scattered around; where the stable is there are no rocks there but if you go on top of the hill then you will find little sand rocks. I have been there all of my life and know.

X You do not recollect that you did any cursing of these girls that day?

A Nobody done any cursing, I told you.

X Nobody?

A Nobody did there.

X You did not curse them there?

A No, sir, I did not. I am no swearing man. You can not find a man in Rockingham County or West Virginia who will say I am a swearing man. I have been on the road thirty-eight to forty years and you can not find a man that will say that I swore or drank or did anything of that kind.

no towns there anyway, no rocky land. It is all. I never signed  
that land but once and I have owned it for forty years. I have no  
farm land nearby. I can turn my horses loose anywhere.

MR. BISHOP: It is all owned and there?

BISHOP: Yes, sir, all owned and.

I did not know you had horses on it  
A long time but that has not. There is a few trees in  
the upper part of the orchard, but there are not many trees  
planted there yet.

I have the same land now?

A lot better than. It is not river bank. You can't water  
wheat and such. They are such good by means to raise things.  
For this land will grow in the west part of the orchard.

I have the same trees at the twenty-five years of the  
orchard?

A lot, sir, you will find a few scattered throughout the  
orchard. There are no more there but it was at the time  
then you will find little hand tools. I have been there all  
my life and more.

I was so surprised that you did not mention it then  
quite soon why?

A nobody knew my name, I told you.

I nobody?

A nobody else there.

I was not sure then there?

A no, sir, I did not. I am no assuring man. You see the  
that a man in Washington County or West Virginia who will say I  
am a assuring man. I have been in the road thirty-odd to forty  
years and you can not find a man that will say that I assure or  
assure or do anything of that kind.



X You have been trying to get a little money out of this case; you have been trying to get \$150.00?

A No sir, not for that at all. I did pity the family a little bit. I said if he would pay everything, the costs and \$150.00, I would let him off. That is what I said, sir.

X You know Robert Myers?

A Yes, sir, I told him that and I don't deny anything I said. I will tell you the truth.

X Didn't you go to him and mention this matter?

A I did not. I met him in the road.

X You brought it up and told Robert Myers that if Van Felt would give you \$150.00 and pay the costs of this prosecution you would not appear against him, is that right?

A I told him that I pitied the family but did not pity him sir. There are a good many people in the country that pity the family of children. They are not the cause of this here, they are not the cause of their father being a criminal. There are a lot of people that way and I did pity them. A gentleman here in town told me to compromise it and afterwards I seen I could not do it, and after that I would not have done it for \$2000.00 of any money whatever after the way he has acted.

X If you were doing it out of pity and trying to restore neighborly feelings through friendly feelings for the family, why did you condition the settlement on the \$150.00 if it was paid to you?

A I knew he wasn't able to pay it, he was hard up.

X In other words you wanted the \$150.00?

A I tell you, we have all got to die some day, and you have got to die and you are not paying any attention to that. The best

I have been trying to get a little money out of this  
company; you have been trying to get \$150.00  
I do not, not for that at all. I did give the family a  
little bit. I would like to see everything, the cash and  
\$150.00, I would like to see. That is what I want, etc.  
I would like to see  
I will tell you the facts.  
I think you go to him and mention this matter  
I do not. I will be in the town.  
I do not know if you will have any more in the town  
I will give you \$150.00 and let the matter go with you  
I will not agree to that, in that way  
I will tell you that I visited the family but did not  
etc. There are a few more people in the country that are  
family of children. There are not the same of this town, they are  
not the same of their father being a criminal. There are a lot  
of people that are not like this. A gentleman here in town  
told me that somewhere it was different. I want to see it  
and after that I would not have done it for \$150.00 of any money  
whatever after the way in the world.  
I do not want to see it out of my eye and let it be  
relatively better through family feeling for the family.  
I will tell you the matter. The \$150.00 if it was  
paid to you  
I know he would like to see it, he was hard on.  
I do not want you to see the \$150.00  
I will tell you, we have all got to the same way, and you have  
got to see the way but really my attention is that. The matter

thing for every man is to tell the truth and never take up for a fellow that will lie. I won't do it.

X You thought it was right to take the \$150.00 and settle this case out of court, is that right?

A It is not right the way he has violated the law; it is nto right --

THE COURT: Don't let us dwell on this. Assault and battery is a private injury as well as a public offense, and as a private injury he has a right to settle it. He has a right to bring suit in court for damages for the assault and battery.

MR. HANMER: It was this prosecution that he was ask<sup>d</sup> to settle for the \$150.00.

THE COURT: He has no right to do that.

X Who opened the stable door and got the horse out?

A The two girls and I don't know which one of them opened the door. I can not tell you about that. They were both there.

X Did they have the door open when you got out there?

A No, sir they did not have it open when I got to the corner of my garden. They opened the door when I got to the side of my corn-crib.

X You tried to prevent them from opening the door?

A No, sir, I did not.

X You did not offer to use any rock on them?

A No, sir, there was no rock there.

X You did not swear at those girls and call them names?

A No one swore on the ground; not an oath was sworn on the ground; not one of them was called a "bitch."

X You did not call Mrs. Heisy or Miss Flory Van Pelt "damn whores" or "damn bitches"?

A I do not swear. I told you no one swore on the ground; no one.

...for every one to tell the truth and never take up for

a fellow that will lie, I won't do it.

I thought it was right to take the first one and settle

this case out of court, in that right?

...if it was right the way he has violated the law, it is

the right --

THE COURT: Don't let us dwell on this. Anarchy and  
barrage is a private injury as well as a public  
injury, and as a private injury he has a  
right to settle it. He has a right to bring  
suit in court for damages for the assault and  
battery.

THE COURT: It was this agreement that he was  
settling for the \$100.00.

THE COURT: He has no right to do that.

I thought the state had and the horses were

...the state and I don't know which one of them was  
the best. I am not sure about that. They were both injured.

I thought that the state was not out there?

...but they all not have it open when I got in the

corner of the garden. They opened the door when I got in the

area of my own-own.

I was tried to prevent them from opening the door?

I do not know.

I was all out there to see any rock on that?

I do not know, there was no rock there.

I was all out there at those girls and all their money?

I was all out there on the ground; not on the wall or the

ground; but one of them was called a "ditch."

I was all out there, Halsey or Miss Mary Van Hall - same

ground, or same ditch?

I do not know. I told you no one was on the

ground on the.

X When they were trying to get the horse out of the stable you did not reach to the ground and try to strike one of them with a rock?

A No, sir, for there was no rock there. I never stooped down to the ground at all.

X And you were facing Van Pelt when he shot you?

A Yes, sir, I was facing him when he shot me and the bullet glanced off from the collar bone.

X Which way did the bullet glance?

A It hit the top of the collar bone and I think the bullet is in there now.

X You heard the doctor say that it was not?

A No, he didn't say that. After he probed in there and could not find it, he said he could not probe for a small bullet like that.

X The doctor said it hit the bone and glance off?

A He thought it glanced off but he was mistaken about that.

X You heard the doctor state that you could not have been standing up and facing Van Pelt because of the way the bullet came in on your flesh?

A It did not come in on my flesh but hit the top of the bone and went in.

MEMO: Court adjourned for noon recess, after which the direct examination of the witness was resumed by Mr. Ott as follows;

Q Mr. Hammer in his cross examination stressed the fact that you did not tell Mr. Van Pelt when he came in there that he could have the horse; did Mr. Van Pelt make any attempt to have any conversation with you or ask you whether he could get

Q Now they were trying to get the boxes out of the station  
and did not reach at the ground and try to strike one of them  
with a stone.

A Yes, sir, for there was no rock there. I never thought  
about the ground at all.

Q And you were looking for the boxes when he said that  
A Yes, sir, I was looking for the boxes when he said he and the  
other witness got from the station house.

Q Which way did the witness go?  
A It is the top of the station house and I think the witness  
is in there now.

Q The witness the doctor says that it was only  
A No, he didn't say that. After he looked in there and  
found out that it, he said he would not probe for a small distance  
from that.

Q The doctor said it hit the head and knees with  
A He thought it glanced off but he was mistaken about that.  
Q You heard the doctor state that you would not have been  
standing up and looking for the boxes at the top of the building  
and in on your knees?

A It did not come in on my knee, but all the time of the  
time and went to.

Witnesses examined for each person, after which  
the direct examination of the witness was re-  
sumed by Mr. C. G. as follows:

Q Mr. Sawyer in his cross-examination advised the jury  
that you did not tell Mr. Van Tass when he came in there that  
he would have the boxes, did Mr. Van Tass say anything to  
have any conversation with you or the other witness at that time?

the horse or say anything to you at all?

A No, sir, he did not.

Q Mr. Harmer also stressed the fact that you had said you would take \$150.00 and compromise this case; I will ask you this first; did you say anything to Mr. Strickler the States's attorney here in charge of this case about that?

A No, sir.

Q Or did you make mention of that to me?

A No, sir.

Q I mean before you made that offer to him.

A No sir.

Q In other words, you made this offer purely as you say out of pity you had in your heart for Mr. Van Pelt and his children?

A Yes, sir, for his family.

Q For his family?

A Yes, sir.

MR. HAMMER: And you still pity him?

WITNESS: I pity his little children. Any man would do that who had any feeling about him at all.

MR. HAMMER: Your pity was measured by the \$150.00?

WITNESS: Sir?

MR. HAMMER: The price of your pity was \$150.00?

WITNESS: Yes, sir. I knew he wasn't able to pay any more, if he was able to pay that

Q I want to ask you a further question, I did not understand you; state again just in what position you were when Mr. Van Pelt shot you.

A I turned right straight around.

Q Were you turning as Van Pelt shot you?

the house or any apartment to you at all?

A No, sir, he did not.

Q Mr. Gurner also stressed the fact that you had said you would take \$150.00 and commutate this case; I will ask you this first; did you say anything to Mr. Hatcher the day after the hearing?

A Yes, in charge of this case about that?

A No, sir.

Q Or did you make mention of that to any?

A No, sir.

Q I want before you make that later in the

A No, sir.

in other words, you made this offer possibly on the day

that he paid the tax to your benefit for Mr. Van Wert and his

children?

A Yes, sir, for his family.

Q For his family?

A Yes, sir.

Q Mr. Hatcher and you will sign this

will you sign this letter together, and you would do that the day after the hearing about him as well?

A Yes, Hatcher, your name was mentioned by the \$150.00?

WYNN: 577

Q Mr. Hatcher, the amount of your gift was \$150.00?

A Yes, sir, I know he would be able to pay any more, if he was able to pay that.

Q I want to ask you a further question, I did not understand

you; escape again just in what position you were when Mr. Van Wert

was shot.

A I turned right straight around.

Q Were you turning as Van Wert shot you?



A No I had done turned around when he shot me.

MR. HAMMER: You had already and were standing squarely in front of him.

WITNESS: I was standing square in front of him.

Q Let me have the picture. If I understand you correctly you were standing about where these poles are?

A Yes, sir, those sticks.

Q And Van Pelt was standing here where this point is on the diagram or picture?

A Yes, sir, seven steps from me.

Q By the letter A on the picture is indicated where Van Pelt was standing and B where you were standing; now, when he pulled his gun and shot, did you turn?

A I turned around after he shot. It sort of blinded me and stunned me.

Q You turned around?

A Yes, sir, I turned around.

MR. HAMMER: You turned when he shot you?

WITNESS: When anything like that blinds you you have to walk around a little.

COURT: You mean you staggered a little bit?

WITNESS: I turned around there a little bit after he shot me.

COURT: But not before?

WITNESS: Yes, sir, I turned around facing him before I was shot.

COURT: You were facing him when he shot you?

WITNESS: I told the girls, I says, "Take the horse out." I was facing the girls then, and I turned around and as I turned around facing him he shot me.



THE COURT: But when he shot you, you said this morning a moment ago, you were standing squarely facing Mr. Van Pelt.

WITNESS: After I turned from the girls I faced him.

THE COURT: And when you were in that position he shot you?

WITNESS: When I was in that position he shot me.

Q When you turned around facing Mr. Van Pelt was he on a direct line to you or on one side of you?

A He was in nearly a direct line, just as near as I could get it.

THE COURT: In front of you?

WITNESS: Yes, sir.

Q Was he to the side of you or in front you you?

A He was south of me and I was north of him.

Q Was he or was he not to the side of you when he shot you?

A No, sir, he was on over near in a straight line to me, south of me.

Q The Court has asked you whether he was directly in front of you and I understood you to say as near as you can come at it he was in front of you?

A Yes, sir, as I turned around were facing one another, right in front.

THE COURT: I think he has answered that as frankly and as definitely as you can expect him to do it.

MR. OTT: I would like to investigate that a little further because of certain facts shown by the picture.

THE COURT: Go ahead.

RAY BROWN

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THE COURT: Now when he shot you, you said this  
 meaning a moment ago, you were standing  
 separately facing Mr. Van Wert.

THE COURT: When I turned from the place I found  
 him.

THE COURT: And when you were in that position he  
 shot you?

THE COURT: When I was in that position he shot me.  
 When you turned around facing Mr. Van Wert was he on a di-  
 rect line to you or on one side of you?

A: He was probably a direct line, that is near as I could  
 say.

THE COURT: In front of you?

THE COURT: Yes, sir.

THE COURT: On the side of you or in front of you?

A: He was right in front of me and I was right in front  
 of him.

THE COURT: He was on the side of you when he shot you?

A: No, sir, he was in front of me in a straight line to me.  
 Directly in front.

THE COURT: Now when you asked you whether he was directly in front  
 of you and I understood you to say he was in front of you  
 he was in front of you?

A: Yes, sir, as I turned around were facing one another, right  
 in front.

THE COURT: I think he has answered that as frankly  
 and as definitely as you can expect him to do it.

MR. DET: I would like to investigate that a little  
 further because of certain facts shown by the  
 picture.

THE COURT: Go ahead.

Q You have told the jury that you were stand at "B"and that Van Pelt was standing at "A"?

A Yes, sir,

Q That is correct is it?

A Yes, sir.

Q And that was the position that he was in and you were in when he shot you?

A When I turned around I was facing him. I turned away from the girls. I told the girls, I said, " Take the horse," and as I turned around square to Van Pelt the girls were moving the horse, and as I turned around to him he shot me.

Q If that was your position were you directly in front of him.

THE COURT: That is a question of how far his body was turned.

A When I turned my body was turned. I turned my feet and body around to him.

THE COURT: You were fronting him? You said that to me.

WITNESS: When I turned around we were facing each other, like that was a straight line there, it might have been that much bent from him over to me. It might have been a straight line. It might have been off a little.

MR. STRICKLER: It might have varied to some extent?

WITNESS: It might have varied to some extent, I am not positive about that.

THE COURT: Of course, he could not be.

MR. OTT: Certainly.

Q It was all done in an instant, was it not?

A All done inside of five minutes.

Witness told to stand aside.

Q The case told the jury that you were alone at "R" and that  
 the girl was standing at "A"?

A Yes, sir.

Q That is correct is it?

A Yes, sir.

Q And that was the position that he was in and you were in  
 when he shot you?

A When I turned around I was facing him. I turned away  
 from the girl. I said she didn't see him. "Look the way," and  
 as I turned around again to Van I said the girl was watching me  
 there, and as I turned around to him he shot me.

Q It was your position were you directly in front of  
 him?

THE COURT: Is a position of how far his body was turned.  
 A When I turned my body was turned. I turned my head and  
 body around to him.

THE COURT: You were facing him? You said that  
 you were.

WITNESS: When I turned around we were facing each  
 other. I think that was a straight line there. It  
 might have been that much back from him over to  
 me. It might have been a straight line. It  
 might have been off a little.

MR. DISTRICT: It might have varied to some extent?  
 WITNESS: It might have varied to some extent, I  
 am not positive about that.

THE COURT: Of course he could not be.  
 MR. DISTRICT: Certainly.

Q It was all done in an instant, was it not?  
 A All done inside of five minutes.  
 WITNESS told to stand aside.

Edith Matheny, sworn, testified:

Q You are Miss Edith Matheny, a daughter of Joseph C. Matheny, here?

A Yes, sir.

Q On the day of this shooting there near your house where were you?

A Sitting on the front porch.

Q By the way, while I think of it, you live in Rockingham County?

A Yes, sir.

Q This shooting took place in Rockingham County?

A Yes, sir.

Q You were sitting on your front porch?

A Yes, sir.

Q Did you see D.N. Van Pelt and his two daughters come up the road that day?

A Yes, sir.

Q Where did you first see them?

A I saw them coming up the road almost directly in front of the house.

Q Did they pass by your house before they got to the stable?

A Oh yes.

Q They came by your house?

A Passed on by our house.

Q Did you notice whether Van Pelt had a gun in his hand?

A No, sir, I did not.

Q You did not notice whether he had or not?

A No, sir.

Miss Hildy, sworn, testified:

Q You are Miss Hildy Hildy, a daughter of George C.

Hildy, born

A Yes, sir.

Q On the day of this shooting there were four boys

there were you?

A I think on the front porch.

Q By the way, while I think of it, you live in Berkeley

County?

A Yes, sir.

Q This shooting took place in Jack's Club house?

A Yes, sir.

Q You were sitting on your front porch?

A Yes, sir.

Q Did you see D.B. Van Wert and his two daughters come up

the front porch?

A Yes, sir.

Q Where did you first see them?

A I saw them coming up the road almost directly in front

of the house.

Q Did they come by your house before they got to the window?

A Oh yes.

Q They came by your house?

A Came to by our house.

Q Did you notice whether Van Wert had a gun in his hand?

A No, sir, I did not.

Q Did you notice whether he had or not?

A No, sir.



Q Where was your father?

A He was back at the back door.

Q At the back door of the house?

A Yes, sir.

Q Did he move from your position when you saw them going towards the stable?

A Yes, sir. After I told him he went back of the house.

Q You told him that Van Pelt was there?

A Yes, sir. I just told him they were coming in the bars.

Q You told him they were coming in the bars?

A Yes, sir.

Q Then he went on down to the bars or in the direction of the stable, is that right?

A Yes, sir.

Q Did you remain there at the house?

A Yes, sir. I went on back and sat down on the porch where I was before I told him.

Q You sat down on the front porch?

A Before I sat down I saw the girls come on to the stable door.

Q Towards the stable door?

A Yes, sir. I saw them break off the board that was against the door.

Q There were a couple of pieces up against the door?

A Yes, sir.

Q You saw them take those down?

A Yes, sir; and then I sat down.

Q Did you hear any of the talk that took place out there?

A All I heard was when my father got up there he told them to get out and stop trespassing.

Q There was your father?  
 A He was back at the back door.  
 Q At the back door of the house?  
 A Yes, sir.  
 Q Did you know your position when you saw them going  
 towards the stable?  
 A Yes, sir. After I told him he went back of the house.  
 Q You told him that you felt was there?  
 A Yes, sir. I just told him they were coming in the house.  
 Q You told him they were coming in the house?  
 A Yes, sir.  
 Q When he went on down to the barn or in the direction of  
 the stable, is that right?  
 A Yes, sir.  
 Q Did you remember that at the house?  
 A Yes, sir. I went on back and out down on the porch stairs  
 I saw before I told him.  
 Q The way down on the front porch?  
 A Before I sat down I saw the girls come on to the stable  
 door.  
 Q Towards the stable door?  
 A Yes, sir. I saw them break off the board that was against  
 the door.  
 Q There were a couple of pieces up against the door?  
 A Yes, sir.  
 Q Yes, sir, then take those down?  
 A Yes, sir; and then I sat down.  
 Q Did you hear any of the talk that took place out there?  
 A All I heard was when my father got up there he told them  
 to get out and stop trespassing.

Q You heard him say to them to get out and stop trespassing?

A Yes, sir, I heard that.

Q Did you hear anything else?

A I heard Van Pelt say, "take that horse out quick." I don't remember how often he repeated it.

Q Do you remember whether he said that more than once?

A I think he did.

Q Did you hear the girls say anything?

A No, sir.

Q Did you hear any loud talking?

A No, sir.

Q Did you hear any swearing?

A I hear no swearing at all.

Q Did you hear the gun go off?

A No, sir, I did not.

Q How long was your father up there do you suppose & before he came home?

A I guess it was all over in five minutes.

Q Did you father come back to the house?

A Yes, sir, he came back to the house.

Q Did you notice whether he was wounded?

A He said he was. I didn't know it until he told me. I was still sitting on the porch when he came around and told me.

Q Was there any signs of his being wounded that you saw?

A Yes, sir.

Q What was that?

A I saw where he was shot; he was bleeding, blood was on his shirt.

Q Tell the jury about the point on his body where you saw the blood.

Q You heard him say to them to get out and stop...  
 A Yes, sir; I heard that.  
 Q Did you hear anything else?  
 A I heard you talk saying that horse was white, I don't  
 remember how often he repeated it.

Q Do you remember whether he said that more than once?  
 A I think he did.  
 Q Did you hear the rifle say anything?  
 A No, sir.  
 Q Did you hear any loud talking?  
 A No, sir.  
 Q Did you hear any shouting?  
 A I hear no shouting at all.  
 Q Did you hear the gun go off?  
 A No, sir, I did not.  
 Q How long was your father up there do you remember before  
 he was shot?

Q I guess it was all over in five minutes.  
 Q Did you father come back to the house?  
 A Yes, sir, he came back to the house.  
 Q Did you notice whether he was wounded?  
 A He said he was. I didn't know if until he told me. I was  
 sitting on the porch when he came around and told me,  
 Q Was there any signs of his being wounded that you saw?

A Yes, sir.  
 Q How was that?  
 A I saw where he was shot; he was bleeding, blood was on  
 the floor.  
 Q Tell the jury about the point on his body where you saw  
 the blood.

A Just on the collar bone, here.

Q Some where on the collar bone?

A Yes, sir.

Q So, you heard no loud talking and no swearing at all?

A There was no swearing at all.

Q If your father had been doing loud talking or loud swearing there, you could have heard it from where you were?

A I certainly could have.

Q So, if there was any swearing or anything of that kind, any abusive language, it must have been said very low, is that right?

A I could have heard anything that was said there. All the rest I heard very plainly and I could have heard if there had been any swearing; there was none.

Q You did not hear the gun go off, you say?

A No, sir.

Q Did you see the gun at any time?

A No, sir, I did not.

Q You saw them go back down the road?

A Yes, sir.

Q Did you see the gun then?

A No, sir, I did not.

Q You did not know whether there was any gun there that had been used until after they went back down the road?

A I knew it, I reckon, as they were starting down the road.

Q Did they go down the road before your father went back to the house?

A I don't remember. I guess they were just about the bars when he came to where I was.

Q Had the VanPelt stock been trespassing on you through this

A Shot on the collar bone, here.

Q Some where on the collar bone?

A Yes, sir.

Q So, you heard no faint talking and no swearing at all?

A There was no swearing at all.

Q If your father had been doing faint talking or loud swear-

ing there, you could have heard it from where you were?

A I certainly could have.

Q So, if there was any swearing or anything of that kind, you

couldn't have heard it, is that right?

A I could have heard anything that was said there. If the

loud I heard very clearly and I could have heard it there had been

any swearing; there was none.

Q You did not hear the gun go off, you say?

A No, sir.

Q Did you see the gun at any time?

A No, sir, I did not.

Q You saw them go back down the road?

A Yes, sir.

Q Did you see the gun there?

A No, sir, I did not.

Q You did not know whether there was any gun there that had been

used until after they went back down the road?

A I know it, I reckon, as they were starting down the road.

Q Did they go down the road before your father went back to

the house?

A I don't remember. I guess they were just about the door

when he came to where I was.

Q Had the family's stock been transported on your truck that

summer?

A Yes, sir. I had run off their cow just one time after another, sometimes three times a day. I was continually following their cow because I knew I had to.

Q Your father was not at home during that time?

A No, sir, he was not there.

Q Who composed your father's family while he was away?

A No one but myself.

BY MR. OTT:

Q Had your father had any trouble with Mr. VanPelt turning his stock in on him or letting his stock run in on him, that is, prior to or before his going to South Carolina?

A Yes, sir; we had trouble before this.

Q On the Sunday that this happened, do you recall what time the horse got in your pasture?

A It was directly after I came home from church; I don't remember just what time it was.

Q It must have been 11 o'clock or 12 o'clock? I guess you had church about 11 o'clock?

A We just had Sunday-school that day without preaching.

Q When you came back from Sunday-school the horse was in the pasture?

A Yes, sir.

Q You say that your father put it up?

A Yes, sir, he took the horse up to the stable and I did not see him put him in there but I saw him take it up.

Q Some statement has been made in reference to a statement <sup>that</sup> alleged to have been made by you ~~or~~ your father was in a rage that day and that you were telling people they had better put their cows up; did you make any such statement as that?

Q

A Yes, sir. I had run off their cow just one time after  
process, sometimes three times a day. I was continually following  
their cow because I knew I had to.

Q Your father was not at home during that time?

A No, sir. He was not there.

Q Who composed your father's family while he was away?

A He was not myself.

Q

A Yes, your father had any trouble with Mr. Vessell during  
his stay in his or letting his stock run in on his, that is,  
going to or before his going to South Carolina?

A Yes, sir, he had trouble before this.

Q On the Sunday that this happened, do you recall what time  
the horse got to your pasture?

A It was directly after I came home from church; I don't  
remember that that time it was.

Q It would have been 11 o'clock or 12 o'clock? I would you  
not attempt to say 11 o'clock?

A Yes, that was about 11 o'clock.

Q He just had Sunday-school that day without preaching.

A That was some week from Sunday-school the horse was in the  
pasture?

Q

A Yes, sir.

Q For say that your father put it up?

A Yes, sir, he took the horse up to the stable and I did not  
see him put him in there but I saw him take it up.

Q Some statement has been made in reference to a statement  
that

alleged to have been made by you or your father was in a type that  
day and that you were telling people they had better not take cows  
up and that you were telling people they had better not take cows

up and that you were telling people they had better not take cows



A I told some one to keep their cows up, but I did not say that he was in a rage or anything of the kind.

Q What was the fact, was your father in a rage that day?

A No, sir, he was quiet. He did not give me a cross word and there were two different neighbors that I spoke to about it. He wasn't cross that day. I remember he came to the dinner table and sat down and ate dinner. I would not have known that the horse was in the stable, except I had know it myself, for he said not one word about it. There was no trouble between us, not one thing.

Q He had not made mention to you that he had put the Van Pelt horse up?

A He never named it while he was sitting at the table, never passed a word about it.

Q What was your father doing when Van Pelt came?

A He was currying the horse.

Q What were you doing when you first saw the Van Pelt's coming along the road?

A Sitting down in a rocking chair.

Q Were you reading or writing?

A I had a letter there.

Q Were you writing or reading, which?

A I don't remember.

Q You saw them coming and did not recognize them, I believe?

A At first I did not.

Q When you did recognized them you communicated to your father that they were there?

A Yes, sir.

Q Then what did you do?

A I came on back on the front porch then.

Q - I said none of them to keep their nose up, but I did not say  
that he was in a rage or anything of the kind.  
A - That was the fact, was your father in a rage that day?  
Q - No, sir, he was quiet. He did not give me a cross word and  
there were two different neighbors that I spoke to about it. He  
wasn't home that day. I remember he came to the dinner table  
and sat down and ate dinner. I would not have known that the  
horse was in the stable, except I had known it myself, for he said  
for me with about it. There was no trouble between us, but the  
thing.  
Q - He had not said anything to you that he had put the  
Van Halp horse up?  
A - He never named it while he was sitting at the table,  
never named a word about it.  
Q - What was your father doing when Van Halp came?  
A - He was carrying the horse.  
Q - What were you doing when you first saw the Van Halp's  
outside of the house?  
A - Sitting down in a rocking chair.  
Q - Were you reading or writing?  
A - I had a letter there.  
Q - Were you writing or reading, which?  
A - I don't remember.  
Q - You saw them coming and did not recognize them, is that right?  
A - At first I did not.  
Q - When you did recognize them you communicated to your  
father that they were there?  
A - Yes, sir.  
Q - Then what did you do?  
A - I went on back to the front porch then.

Q Did you resume what you had been doing before or not?

A Yes, sir, after I sat down.

Q Is that a picture, Miss Matheny, of the stable and corn-crib

A Yes, sir.

Q Your home is situated a little over this way? (Indicating.)

A Yes, sir.

Q And there is a garden with a fence around it that comes up about here? (Indicating.)

A Yes, sir.

Q From the porch there how far do you say it is up to this orchard here or to the corn-crib?

A I don't remember.

Q Can you standing on your porch see what is going on there at the stable?

A I could at that time.

Q I understand you to say that you did not see any difficulty from where you were sitting on the porch but at the point where you were sitting you heard persons talking in a moderate tone of voice up at the stable; was there any difficulty where you were sitting for you to hear persons talking in a moderate tone of voice up at the stable?

A There was not.

Q You have stated that you heard your father ~~tx~~ say to Mr. Van Pelt to get off his premises and not to trespass?

A Yes, sir.

Q And that you heard him say more than once, "Get the horse out quick"?

A Yes, sir.

Q But that you did not hear the shot?

A No sir, I did not.

Q Did you hear any further statement made either by Mr. Van Pelt or by your father?

A I heard nothing until after the shooting.

Q Did you remember that you had been taking before of that?

A Yes, sir, after I got down.

Q Is that a picture, Miss Gandy, of the people and cars-

A Yes, sir.

Q Your name is attached a little over this way (indicating.)

A Yes, sir.

Q And there is a garden with a fence around it that shows

up about here (indicating.)

A Yes, sir.

Q From the porch there how far is the way to the

and the house to the north-west?

A I can't remember.

Q Now you standing on your porch see what is going on there

at the station?

A I would at that time.

Q I understand you to say that you did not see any difficulty

from where you were sitting on the porch but at the point where

you were sitting you heard persons talking in a motorcar some of

whom you at the station was there any difficulty where you were

sitting for you to hear persons talking in a motorcar some of

whom you at the station?

A There was not.

Q You have stated that you heard your father say that he

was going to get off his premises and not to trespass?

A Yes, sir.

Q And that you heard his say more than once, "Get the horses

out quick?"

A Yes, sir.

Q But that you did not hear the shot?

A No, sir, I did not.

Q Did you hear any further statement made either by Mr.

Van Dine or by your father?

A I heard nothing until after the shooting.

Q Until after the shooting?

A No, sir.

Q What did you hear after the shooting; I understood you to say you did not hear the shot?

A I know it was after the shooting because father was coming down the path then. I did not hear the shot but I know it was after the shooting.

Q Did you hear any further remark than what you have told Mr. Strickler you heard; that is what I am getting at.

A Not until he came down the path. I know it was after the shooting because they were coming out.

Q Whatever took place had taken place and your father had started down the path?

A Yes, sir.

Q Did you hear your father say anything to Van Pelt or Van Pelt say anything further to your father?

A After he started down the path?

Q Yes.

A After he started down the path I heard something but there was no swearing.

Q Tell the jury then exactly what it was, even though you do not like to use the language.

A I heard him tell him, I don't remember just exactly how it was, but something about running a whore house down there.

Q Who said that?

A Father said that.

Q Your father said something to Van Pelt about running a whore house down there?

A He did.

Q Did you father say anything else to Mr. Van Pelt that you remember?

A That is all I can remember that was said.

Q Did you see the shooting?

A No, sir.

Q What did you hear after the shooting; I understand you in

and you did not hear the shot?

A I know it was after the shooting because Father was saying  
that the shot was I did not hear the shot but I know it was after  
the shooting.

Q All you hear my further remark from what you have told  
me, whether you heard that is what I am getting at.

A Not until he came down the path. I know it was after the

shooting because they were coming out.

Q What you said about him taking place and your father had  
stated that the shot?

A Yes, sir.

Q Did you hear your father say anything to you about it?

A Yes, sir, he said something further to your father?

Q After he started down the path?

A Yes.

Q After he started down the path I heard something but there  
was no shooting.

Q Tell the jury then exactly what it was, even though you

do not like to use the language.

A I heard him fall first, I don't remember just exactly how it  
was, but something about running a whole bunch down there.

Q The whole party?

A Father said that.

Q Your father said something to you about running a whole

bunch down there?

A Yes, sir.

Q Did you father say anything else to you about that?

Q Yes, sir.

A That is all I can remember that was said.

Q I don't know what brought that up but that is all I can remember.

A Do you remember whether your father called Van Pelt any names or whether Van Pelt called him any names just after or just before the remark about the running of a whore-house?

A I don't remember hearing anything.

THE COURT: Did you hear anyone say anything about being "thieves and liars"?

WITNESS: Do you mean after father started down the path?

THE COURT: Yes,

WITNESS: I am not going to say I did for I don't remember.

THE COURT: Do you mean you do not recollect that?

WITNESS: I don't exactly remember so I am just going to leave that as it is for I can not be positive about it.

Q I understand you are not positive whether your father called Van Pelt a thief or liar?

A No, sir, I am not positive about it.

Q While you were living there by yourself did Mr. Edgar Matheny ever come down and assist you in running the place.

A Yes, sir, I have seen him there often.

Q Was Mr. Newton Carry ever about the place?

A Yes, sir, He was.

CROSS EXAMINATION BY MR. HAMMER.

X Let me see if I understand you Miss Matheny; where were you when you first saw the Van Pelt ~~and~~ girls and Mr. Van Pelt that morning?

A Sitting on the front porch.

X How close was that to the road?

A I do not know. I have no idea.

I don't know what brought that up but that is all I can remember.

A. Do you remember whether he y father called you that day or whether he called him any names just after or just before the week about the coming of a short-haired?

A. I don't remember hearing anything.

Q. Now, you say you don't remember anything about the date "October 11th"?

A. Yes, I don't remember anything about the date "October 11th".

Q. Now, you say you don't remember anything about the date "October 11th"?

A. I don't remember anything about the date "October 11th".

Q. Now, you say you don't remember anything about the date "October 11th"?

A. I don't remember anything about the date "October 11th".

Q. Now, you say you don't remember anything about the date "October 11th"?

A. I don't remember anything about the date "October 11th".

Q. Now, you say you don't remember anything about the date "October 11th"?

A. I don't remember anything about the date "October 11th".

Q. Now, you say you don't remember anything about the date "October 11th"?

A. I don't remember anything about the date "October 11th".



X About how far?

A I have no idea.

X As far as from here across this room?

A Much further than that. (40 feet)

X You were in plain sight of the road, were you not?

A I was.

X You were in plain view of the road up which Mr. Van Pelt and his two daughters were going?

A I certainly was.

X Had you had dinner at that time?

A Yes, sir.

X You say your father at the dinner table did not mention the horse?

A He did not; there wasn't a word passed about the horse.

X When did you first learn that he had locked that horse up?

A I saw him take it.

X What time of the day was it that you went up to Mrs. Taylor's?

A In the afternoon.

X What time in the afternoon?

A Directly after dinner.

X Are you and the Van Pelt's, the Van Pelt girls on good terms?

A I could be on good terms with anybody if they would let me. Sometimes they don't let you try, you know.

X You had not been visiting backward and forward had you?

A No, sir.

X Hadn't you visited over there just before that shooting?

A No, sir, I had not.

X You were not on friendly terms with them?

A They did not speak to me when they passed me on the road and I spoke to them.

X You spoke?

A I spoke when I passed them.

Q About how long?  
A I have no idea.  
Q Is far as from here across this road?  
A Yeah further than that. (40 feet)  
Q And you were in plain sight of the road, were you not?  
A I see.  
Q The view is plain view of the road up which Dr. Zell  
and his two associates were going?  
A I certainly was.  
Q And you had dinner at that time?  
A Yes, sir.  
Q And you were sitting at the dinner table the way you  
the witness?  
A The old one; there wasn't a word passed about the dinner.  
Q Now did you first learn that he had looked that house up  
A I saw him take it.  
Q What time of the day was it that you went up to Mrs. Ferguson's  
A In the afternoon.  
Q What time looks afternoon?  
A Somewhere after dinner.  
Q And you and the Van Zell's, the Van Zell's in good  
company?  
A I would be in good company with anybody if they would let  
me. Sometimes they let me go to the house.  
Q The had not been visiting, had they and forward had they  
A No, sir.  
Q Didn't you visit over there?  
A No, sir, I had not.  
Q You were not in friendly terms with them?  
A They did not speak to me when they passed me on the road  
and I speak to them.  
Q You speak?  
A I speak when I passed them.

You nor your father had told them you had locked up the horse?

A No, sir.

X Where did you go when you went from home about noon?

A I went to Mrs. Taylor's.

X Didn't you go to Mrs. Taylor's and tell her not to let her cows out that day, that your father was out of fix or out of sorts and that he had Van Belt's horse locked up and would lock up her cows if she did not pen them up?

A I said he might pen them up.

X How far does Mr. Taylor live from you?

A I don't know just how far it is; just a short distance.

X As a matter of fact, your father is a very high strung man, isn't he? You know that is a fact, Don't you?

A I refrain from answering that question.

X That is the same question you asked to be excused from testifying to at Dayton in regard to your father?

A Yes, sir.

X What is the reason you do not want to answer that question?

A I don't know, something prompts me not to and I have not answered it yet.

MR. HAMMER: I will not press for an answer.

MR OTT: Go ahead and tell the court and jury.

WITNESS: All I can say is that he is like any body else when he gets mad.

X He is a little more than the average up there?

A I don't think so.

X Did he ever run you away from the house? (Objection sustained.)

X You did not tell your father that Miss Van Belt and her sister, Mrs. Hisey and Mr. Van Belt were out there getting the horse

The man your father had told them you had looked up the

where did you go when you went from home about twenty  
I went to see Taylor's.

Taylor's was in the city. Taylor's was told that he had  
had some one else, that your father was not of six or ten  
in money and that Taylor's house looked up and so did  
look up the case if you did not see that yet.

A I said he might see them in  
I saw the man in Taylor's house but  
I don't know how far it is; just a short distance.  
I am a matter of fact, your father is a very high standing man.  
I don't know that is a fact, but I don't  
I don't know that is a fact, but I don't  
I don't know that is a fact, but I don't  
I don't know that is a fact, but I don't

I don't know that is a fact, but I don't  
I don't know that is a fact, but I don't  
I don't know that is a fact, but I don't  
I don't know that is a fact, but I don't

I don't know that is a fact, but I don't  
I don't know that is a fact, but I don't  
I don't know that is a fact, but I don't  
I don't know that is a fact, but I don't

I don't know that is a fact, but I don't  
I don't know that is a fact, but I don't  
I don't know that is a fact, but I don't  
I don't know that is a fact, but I don't

I don't know that is a fact, but I don't  
I don't know that is a fact, but I don't  
I don't know that is a fact, but I don't  
I don't know that is a fact, but I don't

out of the stable until they had removed those pieces of board from the front door, did you?

A I told him when they were coming up the road and saw that they were coming in.

X You say you told him when they were coming up the road? And. Yes, sir.

X Where was he when you told him that?

A Around at the back door currying the horse.

X He had not started to the barn yet?

A No, sir.

X Did he say anything about their being a bunch of "branchers"; that they were not VanPelt and his daughters, but that they were some people from up on the branch?

A That is what I thought when I first saw them.

X That is what you thought?

A Yes, sir.

X How far were they from you when you saw them first?

A They were coming up the road and I was sitting on the porch. I don't know how far it was.

X A very short distance?

A A very short distance; yes, sir.

X You knew the two daughters of Mr. VanPelt and knew Mr. VanPelt, both, very well?

A Bessie was walking along with a different bonnet on from what I usually saw her wear. They were walking along like some one doing what they did.

MR. OTT: You mean Mrs. Hizey when you say "Bessie"?

WITNESS: Yes, sir.

X You never said anything, nor did your father whose testimony you heard at Dayton ever say anything about having mistaken Mr.

Q Did you see the stable until they had removed those pieces of board  
from the front door, did you?

A I told him when they were coming up the road and saw  
that they were coming in.

Q You say you told him when they were coming up the  
road, did you, sir?

A There was no time you told him that  
I found at the back door carrying the horse.  
I had not started to the back yet?

A No, sir.

Q Did he say anything about their being a bunch of "bunches" that  
they were out of and his neighbors, but that they were  
some people from up on the property?

A That is what I thought when I first saw them.

Q That is what you thought?

A Yes, sir.

Q How far were they from you when you saw them first?

A They were coming up the road and I was sitting on the porch.

Q How far was that from you?

A A very short distance.

Q A very short distance; yes, sir.

Q You know the two daughters of Mr. Vanhook and Mrs. H.

Vanhook, don't you, sir?

A Yes, I know them. They were walking along with a different bunch on the road  
I usually see her wear. They were walking along like some one else  
the other day did.

Q Now, you saw Mrs. Hisey when you saw "bunches"?

A Yes, sir.

Q You never said anything, nor did your father whose testimony

you heard at Dayton ever say anything about having mistaken Mr.

VanPelt and his two daughters for "branchers," and not recognizing them? (Objection; sustained).

THE COURT: Did you state at the call-trial that they were "branchers" and that you did not know who they were?

WITNESS: No, sir, I did nothing of the kind.

THE COURT: You would not have mentioned it to day if he had not mentioned it?

WITNESS: No, sir, I would not. I did not think of mentioning it.

X You say you heard them talking out at the barn?

A Yes, sir.

X Before your father got out to the barn when you told him there was Mr. Van Pelt and his daughters going to the stable to get the horse, what did he say?

A He said nothing at all to me before he left.

X What did he do?

A He went up the path, and the first thing I heard was, he told them to get out and stop trespassing.

X Was that said in a very loud voice or what kind of voice?

A He said it so I hear it very plainly.

X Did he say it out of his ordinary tone of voice or not?

A He generally talks loud, that is his usual way of talking.

X He talks very loud?

A I have often spoken to him at home, since he has been at home from South Carolina, about talking so loud. He can not hear and that is the reason for his talking loud. He was talking louder than usual.

X Was he talking louder than the report of the gun? How do you account for your hearing his talking and not hearing the report of the gun?

A I heard this talking but I did not hear that gun.

Veroff and his two daughters for "brunchers", and not recognizing  
that objection, mentioned.

THE COURT: Did you state at the call-trial that  
they were "brunchers" and that you did  
not know who they were?

WITNESS: No, sir, I did nothing of the kind.

THE COURT: You would not have mentioned it in  
any if he had not mentioned it?

WITNESS: No, sir, I would not. I did not think  
of mentioning it.

Q For how long had you been talking out at the barn?

A For, sir.

Q Before your father got out to the barn when you told

him there was Mr. Veroff and his daughters going to the stable  
to get the horse, what did he say?

A He said nothing at all to me before he left.

Q What did he say?

A He went on the path, and the first thing I heard was, he

told them to get out and stop trespassing.

Q Now that was in a very loud voice or what kind of voice?

A He said it so I hear it very plainly.

Q Did he say it out of his ordinary tone of voice or not?

A He generally talks loud, that is his usual way of talking.

Q He talks very loud?

A I have often spoken to him at home, since he has been at

home from South Carolina, about talking so loud. He can not hear

and that is the reason for his talking loud. He was talking loudly

then usual.

Q Was he talking louder than the report of the gun? Was he

any louder for your hearing his talking and not hearing the report

of the gun?

A I heard this talking but I did not hear that gun.



Q And you did not see what took place up there?

X No sir, I did not.

Q You did not see what your father was doing when he was out there?

X No, sir.

X You didn't know that he was shot until he came down and told you that he was shot?

A No, sir.

X After he was shot you never saw Van Pelt or his daughters make any disturbance up there, in any way, shape or form?

A No, sir.

X They tried to make no disturbance at all after that?

A No, sir.

X And they made no threats and did ~~not~~ nothing at all after that time within your hearing?

A I don't remember of anything.

X And the only abusive language you hear after the shooting took place was your father accusing Mr. Van Pelt of keeping a whore-house; and you did not hear him say that the Van Pelts, Mr. Van Pelt or his daughters, were thieves and liars; you did not hear that?

A I do not remember of it.

X If it was said was there any reason why you should not have heard it? If you heard part of it you could have heard it all, could you not?

A I guess I could have heard it all but I am not going to own up to anything but what I know I did hear. I will stand for the truth.

Q And you did not see what took place up there?

A No sir, I did not.

Q You did not see what your father was doing when he was

out there?

A No, sir.

Q You didn't know that he was shot until he came down and

told you that he was shot?

A No, sir.

Q After he was shot you never saw Van Pelt or his daughters

make any disturbance up there, in any way, chase or fight?

A No, sir.

Q They tried to make no disturbance at all about that?

A No, sir.

Q And they made no threats and did nothing at all

after that time within your hearing?

A I don't remember of anything.

Q And the only disturbance you hear after the shooting

took place was your father's shouting Mr. Van Pelt of keeping a

short-horned and you did not hear him say that the Van Pelt,

Mr. Van Pelt or his daughters were thieves and liars; you did not

hear that?

A I do not remember of it.

Q If it was said was there any reason why you should not have

heard it? If you heard part of it you could have heard it all.

Would you not?

A I guess I could have heard it all but I am not going to

use up so much time but what I know I did hear. I will stand for

the truth.

X Speaking of standing for the truth, I will ask you this; wasn't your father out there in a bad humor?

A When?

X When he went to the stable?

A Sure he wasn't in any good humor when he went to the stable. You would not expect him to be, would you?

X I will ask you this, why wasn't he in a good humor, what had happened, why did he leave the house in a bad humor?

A I think that is a very easy question to answer.

X Answer it and give us your view of it. Do you know why your father was in a bad humor when he started out where Van Pelt was?

A I reckon anybody who was trespassed on with stock like I was would be in a bad humor; and I had told him when he came home about the stock intruding on us all the time.

X Had you been to Mr. Van Pelt to tell him about his stock?

A Yes, sir.

X When?

A Mrs. Taylor and I went to Spring Creek one day and I stopped and asked them to come and take the stock out; I had started in there to drive the stock out and the mud pulled my rubbers off. When I came back from Spring Creek the cow was still in there.

X When was that?

A When the wheat was that high, (Indicating) something like that.

X Back in the spring?

A Yes, sir.

X You did not say anything to Mr. Van Pelt that day?

A I took the cow down the second time it was in there. The first time I did not take her out but the second time I took her

X Question: If standing in the crowd, I will ask you this:  
Q wasn't your father <sup>to</sup> out there in a bad hurry?

A Yes.

X You go back to the stable?

A Sure he wasn't in any good humor when he went to the  
stable. You would not expect him to be, would you?

X I will ask you this, why wasn't he in a good humor, what  
had happened, why did he leave the house in a bad humor?

A I think that is a very easy question to answer.

X Answer it and give us your view of it. Do you know why  
your father was in a bad humor when he started out where you left  
went?

A I remember anybody who was trepanned on with a saw like I  
was would be in a bad humor; and I had told him when he came home  
about the good interesting on on all the time.

X And you went to Mr. Van Pelt to tell him about his accident?

A Yes, sir.

X What?

A Yes, sir.

X What?

A Mr. Taylor and I went to Spring Creek and my and I stopped  
and asked them to come and take the stock out; I had started to  
there to drive the stock out and the man pulled up towards Mr.  
When I came back from Spring Creek the cow was still in there.

X When was that?

A When the wheat was that high, (indicating) something like  
that.

X Back to the spring?

A Yes, sir.

X You did not say anything to Mr. Van Pelt that day?

A I took the cow down the second time it was in there. The  
first time I did not take her out but the second time I took her

down there and asked them to keep the cow out, that I couldn't stop and come down with the cow because I had my own work to do. Mrs. Van Pelt talked like she was mad but I wasn't mad. I knew they could not pull me down with them.

X You haven't any good will towards the Van Pelts or Mrs. Heisy either; you must entertain your father's bitterness towards them do you not?

A No, sir; the way I feel about it, I have my right to my own views. I have enough courage to live the life that I live and I will not live like some others would like to live. I am above that.

X I am not asking you what you are doing; I ask you if you do not entertain towards these girls?

A I have no bitter feelings towards them. I could go to them this evening and talk to them the same as other neighbors if they would admit it. I have no feeling against a soul; I can not afford to.

X When did you tell your father about this trespassing of stock; when did you all talk over the trouble you had had?

A On Saturday evening. He came in from South Carolina the day before the difficulty.

X You told him that night, did you?

A I told him that evening. He came home about five o'clock, I guess.

X Did you do it, that is what I am asking it?

A Yes, sir, I did.

X And what did your father say when he looked that horse up the next morning?

A What did he say the next morning?

show there and asked them to keep the box, that I couldn't keep  
and come down with the box because I had my own work to do. Mrs.  
You told me that she was and that I wasn't mad. I knew that  
could not help me down with them.

You haven't any good will towards the Van Lewis or Mrs.  
right either; you must entertain your father's bitterness towards  
them do you not?

Yes, sir; the way I feel about it, I have my right to be  
and view. I have enough courage to live the life that I live and  
I will not live like some others would like to live. I am above  
that.

I am not asking you what you are doing; I ask you if you  
do not entertain towards these girls?

I have no bitter feelings towards them. I could go to  
them this evening and talk to them the same as other neighbors  
it they would admit it. I have no feeling against a soul; I  
am not afraid to.

When did you tell your father about this presentation of  
stout: when did you tell him about the trouble you had had?  
A on Saturday evening. He came in from South Carolina the  
day before the difficulty.

You told him that night, did you?  
A I told him that evening. He came home about five o'clock.  
I guess.

Did you do it, that is what I am asking?  
Yes, sir, I did.  
And what did your father say when he looked that house  
up the next morning?  
A What did he say the next morning?

Q Sunday morning that he locked the horse up, what did he say?

A He did not lock it up until along about dinner time?

X What did he say or tell you when ~~it~~ he did that?

A He did not say a word about it.

X He just flew mad when he saw them go to the stable and went out there, that is right is it? That is correct isn't it? He just flew off mad when he found these people there to get their property.

A Yes, sir.

X And he went to talking in a pretty loud manner too, did he not?

A Oa course, you may know he talked a little bit louder ~~th~~ than usual.

X And he called these girls whores, didn't he?

A He called them -- he said something to Mr. Van Belt about his whores -- I mean Florie. I brought that in the trial because that is what he meant.

X He did say that to Mr. Van Belt?

A Yes, sir.

X You were not looking to see what your father was doing at that time?

A I do not know what he could do that could harm them; he was too far away from them then.

X Where was he?

A He was coming down the back path, coming down by the garden and they were going out through the orchard.

X They were going through the orchard?

A Yes, sir, they were going out and father was coming from the ~~stax~~ stable.

Monday morning that he looked the horse up, what did he

Q

A He did not look it up until about almost time

Q What did he say or tell you when at he did that?

A He did not say a word about it.

Q He just flew and when he saw them go to the stable and  
went out there, that is right in it? That is correct isn't it?  
He just flew off and when he found these people there to get  
their property.

A Yes, sir.

Q And he went to talking to a pretty good number too, did

he not?

A Of course, you see, when he talked a little bit under the

tree.

Q And he called these girls whom, didn't he?

A He called them -- he said something to Mr. Van Wert about

the names -- I mean Florida. I brought that in the trial because  
that is what he meant.

Q In this way that to Mr. Van Wert?

A Yes, sir.

Q You were not looking to see what your father was doing at

that time?

A I do not know what he could do that could have been; he

was too far away from them then.

Q Where was he?

A He was coming down the back path, coming down by the garden

and they were going out through the orchard.

Q They were going through the orchard?

A Yes, sir, they were going out and father was coming from

the back stable.



X Hadn't you heard him say the same thing before that time?

THE COURT: That was after the shooting?

WITNESS: After the shooting.

X I am asking what happened before the shooting.

A There wasn't so much happened before the shooting that I heard.

X You do not know what did take place out there before the shooting?

A I have a very good idea of what taken place for I can hear and I think my ears were open and I don't think I had any trouble to hear what was said.

X Though your ears were open you did not take the trouble to stand up and see what occurred at the stable when you knew your father went out there angry?

A I was standing up when they first went to the door and then I sat down.

X You heard before that time your father talking in an angry voice and you knew he was angry when he went to the stable, why didn't you get out of your seat? What caused you to take a seat?

A I had been sitting there before and just went back where I was.

X Miss Matheny, isn't it true that you were in the house and were ~~xx~~ not on the porch at all?

A No, sir, I was out on the porch. There is <sup>One</sup> above who knows I was out there no matter what others try to make it appear.

X You tell this jury that you were on the front porch when these people went up the road?

A Yes, sir, I was.

Q Now you heard him say the same thing before that time?

A Yes, that was after the shooting.

Q Now after the shooting.

A I am asking what happened before the shooting.

Q There wasn't no man happened before the shooting that I

heard.

Q You do not know what his take place was there before the

shooting?

A I have a very good idea of what taken place for I can hear  
and I think my ears were open and I don't think I had any trouble  
to hear what was said.

Q I thought your ears were open when you did not take the trouble  
to stand up and see what occurred at the table when you know

your father went out there angry?

A I was standing up when they first went to the door and

then I sat down.

Q You heard before that time your father talking in an  
angry voice and you knew he was angry when he went to the table,  
why didn't you get out of your seat? What caused you to take a

seat?

A I had been sitting there before and just went back where

I was.

Q Now Anthony, isn't it true that you were in the house

and were not on the porch at all?

A No, sir, I was out on the porch. There is <sup>one</sup> above <sup>the</sup> <sub>the</sub>

knows I was out there no matter what others try to make it

appear.

Q You tell this jury that you were on the front porch when

these people went up the road?

A Yes, sir, I was.

X Who took down the cross pieces from in front of the stable door?

X The girls.

X Who brought the horse out of the stable?

A I don't know who did, I guess the girls did.

X Where was Mr. Van Pelt then?

A I do not know where he was then.

X Where was your father then?

A He was standing there at the corn-crib.

X At the corn-crib?

A How did you happen to see him there?

A I knew he was there when I saw the girls walk up to the stable door.

X You were still standing, then?

A I was not standing when they got the horse out but I know he was standing there as well as if I had seen him because there is where he was when I last saw him.

X The shooting had taken place?

A No, the shooting had not taken place when I sat down, of course not.

X The shooting had taken place when the horse was brought out of the stable, had it not?

A I think the horse was out of the stable when the shooting took place.

X And the two girls were leading the horse out to the road when the shooting took place?

A I don't know whether they were leading the horse out or not.

Q You took down the cross pieces from in front of the stable door?

A The girls.

Q Who brought the horse out of the stable?

A I don't know who did, I guess the girls did.

Q Where was Mr. Van Wert then?

A I do not know where he was then.

Q Where was your father then?

A He was standing there at the cross-pieces.

Q Is the cross-pieces?

A How did you happen to see him there?

A I know he was there when I saw the girls walk up to the stable door.

Q You saw still standing, then?

A I was not standing when they got the horse out but I know he was standing there as well as if I had seen him because there is where he was when I last saw him.

Q The shooting had taken place?

A No, the shooting had not taken place when I saw them, of course not.

Q The shooting had taken place when the horse was brought out of the stable, had it not?

A I think the horse was out of the stable when the shooting took place.

Q And the two girls were leading the horse out to the road when the shooting took place?

A I don't know whether they were leading the horse out or not.

Q Did you see Mr. Van Pelt when you think your father was standing at the corn-crib?

A I saw the girls at the stable door; I was not looking for him.

X You knew that Mr. Van Pelt had a gun in his hands when he went up there?

A No, sir.

REDIRECT EXAMINATION BY MR. OTT.

Q I think I omitted to ask you about the condition of the land about the stable and corn-crib where this difficulty took place;

you have spent the most of your time at home for the last couple of years?

A Yes, sir, I have been there.

Q Just tell the jury whether or not on this day that this happened, before or after the shooting there were any rocks up there.

A Well, I failed to see the rocks there. My aunt who lives just in the next house told me --

MR HAMMER: Never mind telling what somebody told you.

WITNESS: Well, it is true.

MR. OTT: Don't tell what your aunt told you, but speak from your own knowledge.

A Well, the rocks are not there and I don't know how my father could have been in the act of picking up a rock where he was standing if there was no rocks there for him to pick up.

Q Mr. Hammer has asked you about your relations with the Van Pelt girls and I understood you to say that they did not speak to you but you spoke to them?

Q Did you see Mr. Van Pelt when you think your father was standing at the door-  
 A I saw the light at the stable door; I was not looking for him.  
 Q You know that Mr. Van Pelt had a gun in his hands when he went up there?  
 A No, sir.

EXHIBIT IDENTIFICATION BY MR. OTT.

Q I think I omitted to ask you about the condition of the land about the stable and out-  
 A Yes, your honor, the most of your time at home for me  
 I had a couple of cows  
 A Yes, sir, I have been there.  
 Q Just tell the jury whether or not on this day that this happened, before or after the shooting there were any tools or  
 there.

A Well, I failed to see the rocks there. My aunt and I live  
 just in the next house to me --  
 MR. HAMMER: Never mind telling what somebody told  
 you.

ATTORNEY: Well, it is true.  
 MR. OTT: Don't tell what your aunt told you, but speak from your own knowledge.  
 A Well, the rocks are not there and I don't know how my father would have been in the act of picking up a rock when he was standing if there was no rock there for him to pick up.  
 Q Mr. Hammer has asked you about your relations with the Van Pelt firm and I understood you to say that they did not speak to you but you spoke to them.

A I speak to everybody, but it seem that they just simply turn a cold shoulder on me. I just spoke to them, I guess, last week when I passed them. I came down from church yesterday behind these two girls and I would have been willing to have walked up and talked with them but I did not know whether they would talk to me and I just kept walking behind them.

X Do you or do you not associate with these girls on terms of intimacy?

A I do not.

X Do they know that fact, that you wont associate with them?

A I guess they do, or should know it.

X You have your reasons for that?

A Yes, sir, I do.

X Mr. Hamner has asked you about your father getting mad when he started out there; just what was your father's condition when he started; was he in any frenzy? How much was he mad when he started up on the back path there to go to the stable?

A Well, that is a right hard question to answer. Of course, I knew he was mad and couldn't expect him to be anything else because he had reason for it.

X Was there anything in your father's demeanor, I mean in his appearance, as he started up that path to meet the VanPelts to indicate that he was going to fight anybody? Was he so mad at that point that he would fight anybody?

A I cannot tell you because I did not see him, sir. I told him they were there and he went on back, and I did not see what he had or anything at all when he started back there.

X Mr. Hamner has talked about your father fighting; you never heard in all your life of your father fighting anybody?

A I cannot remember of it.

A I speak to everybody, but it seems that they just simply  
 turn a deaf ear to me. I just spoke to them, I guess, last  
 week when I was in the hospital. I was down for almost a week  
 but I think you know and I would have been willing to have  
 waited up and talked with them but I did not know whether they  
 would talk to me and I just sat sitting behind them.  
 I do not see you not associated with these girls and

I do not  
 I do not

I do not know that fact, that you were associated with them  
 I know you do, or should know it.  
 I do have some reasons for that  
 I do not know it.

Mr. Ramsey has asked you about your father's writing and  
 that he started out there; just what was your father's question  
 when he started; was he in my family? How much was he and when  
 he started up on the bank there to go to the station  
 I said that is a right hard question to answer. Of course,  
 I know he was and couldn't expect him to be anything else because  
 he had trouble for it.

I don't think anything in your father's handwriting, I mean in  
 his handwriting, as he started up that path to meet the family to  
 indicate that he was going to fight anybody? Was he so mad at  
 that point that he would fight anybody?

I cannot tell you because I did not see him, sir. I told  
 his boys were there and he went on back, and I did suggest what  
 he had or anything at all when he started back there.

Mr. Ramsey has talked about your father fighting; you never  
 heard in all your life of your father fighting anybody?  
 I cannot remember of it.



Q He generally gets out of the way?

A I don't think anybody needs any self-defense with him; that is all useless.

Q As a matter of fact, after he was shot and came down the back path home, he was not mad then, was he?

A I could not tell whether he was or not.

Q He did not abuse Van Pelt, did he, to you?

A He did not say anything about Van Pelt, but went to the doctor's.

Q He was scared then?

A I think he was.

Q You went out and hitched up his horse and took him to the doctor's?

A I ~~was~~ went out and got the bridle and put it on the horse and I opened the bars for him and he went on.

Q I understand you deny that you told Mrs. Taylor about your father doing any damage to their cattle?

A I did not tell her that he was going to do any damage only that he might pen her cows up and that was no damage.

Q And you mentioned nothing about your father being in a rage.

A No, sir.

CROSS ~~EXAMINATION~~ EXAMINATION RESUMED BY MR. HAMMER.

X You father is pretty handy in ~~the~~ throwing rocks when he gets in trouble, is he not?

A There were no rocks up there.

X He is pretty handy in handling rocks when he gets into controversies or things of that kind?

A I don't much of that. I don't know of his throwing rocks.

Q He generally gets out of the way?  
A I don't think anybody needs any self-defense with him; that  
is all unusual.  
Q As a matter of fact, after he was shot and came down the  
back path from, he was not seen then, was he?  
A I don't recall whether he was or not.  
Q He did not speak Van Wert, did he, is that right?  
A He did not say anything about Van Wert, but went to the  
doctor's.  
Q He was married, wasn't he?  
A I think he was.  
Q How long did he stay in his house and look him to the  
doctor's?  
A I was sent out and got the bride and put it on the  
porch and I opened the door for him and he went on.  
Q I understand you saw that Van Wert, Taylor about  
your father being any damage to their cattle?  
A I did not tell her that he was going to do any damage,  
only that he might get her down up and that was no damage.  
Q And you mentioned nothing about your father being in a  
trouble.  
A No, sir.  
Q WERE THERE ANY OTHERS PRESENT AT THE TIME?  
A The father is pretty handy in the throwing room when he  
gets in trouble, is he not?  
A There were no rocks up there.  
Q He is pretty handy in handling rocks when he gets into  
trouble or things of that kind?  
A I don't know of that. I don't know of his throwing rocks.

X You have heard of it have you not?

A I am not going to say so much about it for I don't remember.

X Haven't you heard of your father throwing rocks time and again in mix-ups? (Objection sustained.)

X Did you say your father was not mad after he was shot or that he was mad?

A I can not tell you; I don't know whether he was or not because he wasn't there but a few minutes until he went to the doctor's.

X When he was denouncing Mr. Van Felt for keeping a whore-house and keeping whores down there, was he doing that as a neighborly act or was he out of fix about that time?

A I think he was still mad then I don't. (Objection sustained.)

Witness told to stand aside.

DR. W.W.KOONTZ, sworn, testified.

Q You are Dr. W.W.Koontz of Spring Creek?

A Yes, sir.

Q You are a practicing physician there?

A Yes, sir.

Q Did Joseph D.Matheny call to see you on the 29th day of June, 1919, professionally?

A Yes, sir.

Q What did you find to be the matter with him?

A I found a flesh wound over the collar bone near the sternum or breast bone.

Q Did you have heard of it have you not?  
A I am not going to say so - and about it for I don't  
remember.

Q Did you hear of your father (Garrison) being  
and again in air-raid (Garrison mentioned).  
I did not see your father was not after he was shot  
at that he was with  
I am not sure; I don't know whether he was or not  
because he wasn't there but a few minutes until he went to the  
doctor's.

Q When he was descending Mr. Van Fall for keeping a  
apartment-house and keeping stores down there, and in fact he  
a neighborly out of was he not at the time that they  
I think he was still out there; I don't know (Garrison  
mentioned).  
Witness told to stand aside.

DR. J. W. KOGAN, sworn, testified.  
Q You are Dr. J. W. Kogan of Spring Creek  
A Yes, sir.  
Q You are a practicing physician there?  
A Yes, sir.  
Q Will Joseph E. Bennett call to see you on the 13th day  
of January, 1912, approximately?  
A Yes, sir.  
Q What did you find to be the matter with him?  
A I found a flesh wound over the collar bone near the  
sternum of breast bone.

Q Could you tell from the wound what cause it?

A It was a bullet wound, I thought.

Q You think it was a bullet wound?

A Yes, sir, I am satisfied it was.

Q Was that wound immediately over this collar bone here?

A Yes, sir on the left side, the left collar bone. I think it was the left collar bone but I am not positive about that.

JOSEPH C. MATHENY: Yes, sir, it was the left side.

Q There is very little flesh there is there not doctor?

A Yes, sir.

Q Do you know whether or not that ball remained in his body?

A No, I think the bullet was deflected and glanced off. I am satisfied it was.

Q You think the bone deflected the ball?

A Yes, sir.

MR. OTT: Still it might be in the body?

WITNESS: It is possible.

Q If that ball had struck, say, an inch higher, would it have missed the collar bone?

A Yes, sir, it would have missed the collar bone.

Q Then if it would have entered the throat, if that ball had cut a vein, the juglar vein, or something like that, would or would not that have cause death?

A It probably if it have severed the juglar vein.

Q Or any artery?

A Yes, sir.

Q. Would you tell me the sound that came from

A. It was a hollow sound, I thought.

Q. You think it was a hollow sound?

A. Yes, sir, I am satisfied it was.

Q. Now that sound immediately over the collar bone here?

A. That was on the left side, the left collar bone. I think

it was the left collar bone but I am not positive about that.

Q. Now, sir, I am satisfied it was the left  
side.

A. There was very little flesh there in that neck?

A. Yes, sir.

Q. Do you know whether or not that ball remained in his

neck?

A. No, I think the ball was reflected and passed by.

I am satisfied it was.

Q. You think the ball reflected the ball?

A. Yes, sir.

Q. Now, sir, it might be in the body?

A. It is possible.

Q. If that ball had struck any, or had passed, would it

have struck the collar bone?

A. Yes, sir, it would have struck the collar bone.

Q. Then if it would have entered the throat, if that ball

had cut a vein, the jugular vein, or something like that, would

it would not that have caused death?

A. It probably if it had severed the jugular vein.

Q. Or any artery?

A. Yes, sir.

Q A gunshot wound in the neck is very dangerous is it not?

A Depends on where it strikes. Of course, if it strikes one of the carotid arteries or a jugular vein it would be serious.

Q It would be a bad wound?

A A serious wound.

Q You probed some to find the ball?

A I could not find the track of the ball at all, but I think from the course of the ball it was deflected and did not enter the body, only the skin and struck the collar bone and glanced off.

Q Can you tell whether or not that ball struck his body in front or how?

A It came obliquely. I think it came across the neck and struck him and in that way glanced off. You could see a burnt place on the neck three-fourths of an inch long.

Q A little burnt place on the side of his neck?

A Yes, sir.

Q And you think that was caused by the ball as it entered and as it left?

A Yes, sir.

Q You think the bullet passed out of the body, probably?

A Yes, sir.

Q But to say positively you would have to have an X-ray examination made?

A Yes, sir, I think you would.

Q However that may be, the fact that the man still suffers from the wound would be an indication that the ball might still be in his body?

A I think it is possible, but I think he would have some other symptoms if it was in there.

A: A gunshot wound in the neck is very dangerous in its nature  
because of the arteries. Of course, if it strikes  
one of the arteries, it is a fatal injury.

Q: It would be a bad wound?

A: A gunshot wound.

Q: The wound was to the neck?

A: I could not find the track of the ball at all, but I think  
from the course of the ball it was deflected and did not enter the  
body, only the skin and struck the collar bone and glanced off.

Q: Can you tell whether or not that ball struck his body in  
front or back?

A: It came obliquely. I think it came across the neck and  
struck the end in that way glanced off. You could see a bullet  
glance on the neck three-fourths of an inch long.

Q: A little wound on the side of his neck?

A: Yes, sir.

Q: The wound that was caused by the ball as it entered  
and as it left?

A: Yes, sir.

Q: You think the bullet passed out of the body, probably?

A: Yes, sir.

Q: But in my opinion you would have to have an X-ray  
examining what?

A: Yes, sir, I think you would.

Q: However that may be, the fact that the man still survives  
from the wound would be an indication that the ball might still  
be in his body?

A: I think it is possible, but I think he would have seen  
other symptoms if it was in there.



MR. HAMMER: Doctor, you have never been called upon to examine him or to give him farther treatment?

A He came down to see me in a day or so and said it was giving him some trouble and I still further examined it but could not locate the ball.

X You have done nothing since then?

A No, sir.

Witness told to stand aside.

MR. STRICKLER: That is the Commonwealth's case, your Honor.

Thereupon, this being all of the evidence introduced or offered to be introduced <sup>in chief</sup> by the Commonwealth to sustain the indictment, and having, by its Attorney, rested, the Defendant, in his defense, introduced the following:

FLORRIE VAN PELT, sworn, testified:

Q By Mr. Hammer: How old are you, Miss VanPelt?

A I am twenty-two.

Q How far does your father live from Mr. Joseph C. Matheny?

A I can hardly tell you the distance; I reckon a quarter of a mile. I don't know. I have no judgment. About a quarter of a mile, I reckon.

Q On the day of this trouble up there, when did you first miss your horse?

A I suppose it was about 2 o'clock.

Q What was done by you or any other members of the family?

MR. HANCOCK: Now, you have never been called upon to  
 examine him or to give him further treatment?  
 A He came down to see me in a day or so and said it was  
 giving him some trouble and I still further examined it but could  
 not locate the ball.  
 I The time was nothing about that.  
 A Yes, sir.  
 Witness told to stand aside.  
 MR. WICKHAM: That is the Commissioner's case, your Honor.

Thereupon, this being all of the evidence introduced or  
 offered to be introduced by the Commissioner to sustain the indictment,  
 and having, by the attorney, rested, the defendant, in his  
 defense, introduced the following:

CHRISTIE VAN PERS, sworn, testified:  
 Q By Mr. Hancock: How old are you, Miss Van Pers?  
 A I am twenty-two.  
 Q How far does your father live from Mr. Joseph G. Mahoney?  
 A I can hardly tell you the distance; I receive a quarterly  
 check. I don't know. I have no judgment. About a quarter of a  
 mile, I reckon.  
 Q On the day of this trouble up there, when did you travel  
 with your horse?  
 A I suppose it was about 2 o'clock.  
 Q What was done by you or any other members of the family?

A The children went to look after it, went up and down the road and the new road to find it.

Q How did the horse happen to be on the road that day?

A Papa turned it out after he came back from church to go to water.

Q When did the children start to look for it?

A It was about 2 o'clock, I reckon, when they went to look for it.

Q Who found out where the horse was?

A Mrs. Snyder came down from Mrs. Taylor's and we asked her if she had seen the horse, and she said that Edith Matheny had come up to her house and told about it.

Q You cannot tell what she told. You received from Mrs. Snyder information that the horse was where?

A Up at Mr. Joe Matheny's penned up.

Q Who received that information, which members of your family?

A They were all in the yard, all but me; I believe I was on the back porch.

Q Then what occurred?

A Papa got the gun and said "Mama, don't let him take the gun, I know there will be trouble"; but she says "He has got to have something to protect himself." Bessie said "I am going," and I said, "I am going to go, too"; and we went with him.

Q Is this the gun your father had? (Producing gun).

A Yes, sir.

Q Now, then, on that day when your mother said for your father to take the gun along to protect himself, why was he taking it along to protect himself? (Objection, sustained).

(Unanswered).

Q The witness went to look after it, went up and down the road and the road to find it.

Q How did the horse happen to be on the road that night?  
A When I turned it out they he must have been through to go to water.

Q When did the witness start to look for it?  
A It was about 7 o'clock, I reckon, when they went to look for it.

Q The town out where the horse was?  
A Mrs. Taylor came down from Mrs. Taylor's and he asked her if she had seen the horse, and she said that Miss Taylor had seen up in her house and told about it.

Q You cannot tell what she said. You received from Mrs. Taylor information that the horse was there?

Q Yes, at Mr. Taylor's house up.  
Q She received that information, which members of your family?

Q They were all in the yard, all but me; I believe I was on the back porch.

Q Then what happened?  
A When the gun went off, I saw the witness, I saw him take the gun, I saw him say "He has got to have something to protect himself," and I saw him say "I am going," and I said, "I am going to go, too," and we went with him.

Q Is this the gun your father had? (Producing gun).  
A Yes, sir.

Q Now, then, on that day when your mother said for your father to take the gun along to protect himself, why was he taking it along to protect himself? (Objection, sustained).

(Continued).

Q Did you go down for the horse?

A Yes, sir, I went up for the horse.

Q How did you go? Who was in front, or did you all go together?

A We all went together until we got to the bars.

Q Then what occurred?

A I threw off the top bar and jumped over the other, and Papa threw off the other, and in that way I got ahead of them.

Q You were in the lead?

A Yes, sir.

Q Who was next?

A Bessie.

Q How far were you in front of Bessie?

A No distance.

Q When you speak of "Bessie" whom do you mean?

A Mrs. Hizey.

Q How far was Bessie from you?

A Oh, about as far as from here to that chair (indicating about 10 feet).

Q How far was your father behind you?

A He was a little piece. He went behind a tree. I don't think Mr. Matheny saw him when he first came up there. He thought Papa staid in the road, that is my idea.

Q You think from the position that Mr. Matheny was in he did not see your father?

A Yes, sir.

Q Why was that?

A The trees sort of hid Papa.

Q When you went in there what did you and your sister do?

A I went to tearing the board down that was on the stable door.

Q Did you go down for the horse?  
A Yes, sir, I went up for the horse.  
Q How did you get the key to the door, or did you call the janitor?  
A He called me together until we got to the door.  
Q Then what happened?  
A I threw off the top bar and jumped over the other, and then  
I threw up the other, and in that way I got ahead of them.  
Q You were in the lead?  
A Yes, sir.  
Q How was that?  
A Because.  
Q How far were you in front of Bennett?  
A At distance.  
Q What was your speed of "Bennett" when he got away?  
A Not slow.  
Q How far was Bennett from you?  
A Oh, about as far as from here to that chair [indicating  
about 10 feet].  
Q How far was your father behind you?  
A He was a little piece. He went behind a tree. I don't  
know if Mr. Kennedy saw him when he first came up there. He thought  
I was still in the yard, that is my idea.  
Q You think from the position that Mr. Kennedy was in he did  
not see your father?  
A Yes, sir.  
Q Why not that?  
A The fence sort of hid him.  
Q When you went in there what did you and your father do?  
A I went to seeing the board down that was on the white door.

Q And then what occurred?

A He went to hit at Bessie with a curry-comb, and Papa hollared at him; and then he began calling us all those names and reached for a rock to hit me, and then father fired that gun. Father would not have fired the gun on him if he had not tried to hit me with a rock.

Q Had you gotten the horse out?

A About that time.

Q He had tried to hit your sister with a curry-comb?

A Yes, sir; he had a curry-comb in his hand and an old rag.

Q Did he hit your sister with a rock?

A No, he was going to hit me because I was going to get the horse out.

Q What was he doing at the very time your father shot him?

A He was reaching down to get a rock to hit me and that is the reason father shot him and hit him like he did.

Q What do you mean?

A The way the shell hit him; if he had not been down in a stooping position the bullet would have gone through his body.

Q Had he called you any names?

A Yes, sir; he said, "you are bitches, and thieves and nothing but damn whores;" and he said, "there are two of your damned whore;with you. You run a whore-house down there." That is when he went down for the rock. He was blubbering that all at once.

Q What was Mr. Matheny's attitude when he came out where you girls were, was he in a good humor, a bad humor, or how was he?

A He acted like a crazy man, if you know how they act.

Q And then what happened?  
 A He went to hit at Benzie with a curly-whisk, and Benzie  
 belated at him; and then he began calling on all those names  
 and reached for a rock to hit me, and then father flew that gun.  
 Father would not have fired the gun on him if he had not tried to  
 hit me with a rock.

Q And you gotten the horse out?  
 A About that time.  
 Q He had tried to hit your sister with a curly-whisk?  
 A Yes, sir; he had a curly-whisk in his hand and he did

Q Did he hit your sister with a rock?  
 A No, he was going to hit me because I was going to get the  
 horse out.

Q What was he doing at the very time your father shot that  
 gun was reaching down to get a rock to hit me and that is  
 the reason father shot him and hit him like he did.

Q What do you mean?  
 A The way the shell hit him; it had not been down in a  
 position position the bullet would have gone through his body.

Q And he called you my name?  
 A Yes, sir; he said, "you are blinded, and I'll leave you  
 nothing but dead whorves;" and he said, "there are two of your  
 names whorves with you. You run a whole-house down there." That  
 is when he went down for the rock. He was disparaging that all at

Q What was Mr. Keating's attitude when he came out there  
 that time, was he in a good humor, a bad humor, or was he  
 A He acted like a every man, if you know how they act.



THE COURT: Did he tell you not to come on the place?

WITNESS: Yes, sir, he kept hollaring. "don't trespass

Q What else did he say?

A He kept calling these names over and over and over again.

Q What else?

A I reckon that is about all he said. He kept saying, "don't trespass on my land;" after it was over he said, "I will kill you yet," when he started around the stable or garden.

THE COURT: When he told you to quit trespassing what did you, your father and your sister do?

WITNESS: I was going for the horse.

THE COURT: You did not stop when he told you that?

WITNESS: No, sir.

THE COURT: You kept on going?

WITNESS: Yes, sir.

Q You did not feel that you were trespassing?

A No, sir, I did not.

Q Mr. Matheny had never forbidden you coming on the place?

A I am the only one of our folks that he had not forbidden. I went to Mrs. Matheny until Mrs. Matheny went away. I went there every week.

Q When did she go away?

A I don't know when she went away, but I went there once a week. I heard that he did not want me to come, but his girls slipped off and told me when he was going away from home. Mrs. Matheny and I were great friends. They would slip down and tell me that he was gone so that I could go and see Mrs. Matheny when she was sick; Mrs. Matheny sent for me.

THE COURT: Did he tell you not to come in the house?  
 WITNESS: Yes, sir, he kept saying, "Don't come in."  
 Q. What time did he say?  
 A. He kept saying these words over and over and over again.  
 Q. What time?  
 A. I reckon that is about all he said. He kept saying, "Don't  
 come in my house;" after it was over he said, "I will kill you  
 yet." When he started around the stable of horses.  
 THE COURT: When he told you to quit trespassing?  
 WITNESS: Yes, your father and your mother told  
 WITNESS: I was going for the horse.  
 THE COURT: You did not stop when he told you that?  
 WITNESS: No, sir.  
 THE COURT: You kept on going?  
 WITNESS: Yes, sir.  
 Q. For the fact that you were trespassing?  
 A. No, sir, I did not.  
 Q. Mr. Ketchum had never forbidden you coming on the place?  
 A. I am the only one of our folks that he had not forbidden.  
 I went to Mrs. Ketchum until Mrs. Ketchum went away. I went there  
 every day.  
 Q. When did she go away?  
 A. I don't know when she went away, but I went there once a  
 week. I heard that he did not want me to come, but she didn't  
 mind and told me when he was going away from home. She  
 thought and I were great friends. They would slip down and tell me  
 that he was gone.  
 no that I could go and see Mrs. Ketchum when she  
 was with Mrs. Ketchum went for me.

Q Miss Van Pelt, there has been something said here that Mr. Matheny said something about whores and while I don't like to ask the question, I will ask you, are you the mother of a child?

A Yes, sir, I have a child and he is going on four years old.

I want to ask you, what has been your conduct --

MR. STRICKLER: I object to the question.

THE COURT: Objection sustained. That is not a matter of issue in this case.

A If any young man says anything against me since Albert has been born, I want to see ~~their face~~ *his color.*

Q After the shooting there what did Mr. Matheny do?

A He went fanning around the garden fence and said, "I will kill you yet."

Q Where did you and your sister and father go?

A We went home.

Q And that ended it?

Q I want to ask you this: when you went up the road with your sister and your father did you see Miss Edith Matheny?

A No, sir, she wasn't on the outside of the house.

Q If she had been on the front porch could you have seen her?

A Yes, sir, certainly.

Q Was she on the front porch when you went back?

A No, sir, we never saw the sight of her until when we got home and mama was the one to see her then going towards the road when her father went towards the road.

Q Now you said there has been something said here that  
 Mr. [Name] said something about where and while I am's like to  
 and the question, I will ask you, and you the matter of a while  
 A Yes, sir, I have a child and he is going to your house  
 Q I want to ask you, what has been your conduct --  
 A Mr. [Name] I object to the question.  
 THE COURT: Objection sustained. That is not a  
 matter of fact in this case.  
 Q If my father had any objection against me when I went  
 to your house, I want to see ~~the~~ *his* father.  
 A After the question there what did Mr. [Name] say?  
 A He was talking about the father's house and said, "I will  
 tell you what."  
 Q There did you and your father and I father get  
 A He went home.  
 Q And that ended it?  
 A I want to ask you what when you went to the house with  
 your father and your father did you see Miss [Name] sitting  
 A Yes, sir, she was sitting on the outside of the house.  
 Q Did she had been on the front porch would you have seen her?  
 A Yes, sir, certainly.  
 Q Now she on the front porch when you went back?  
 A No, sir, we never saw the sight of her until when we got home  
 and then, was she one to see her then going towards the road when  
 her light went towards the road.

CROSS EXAMINATION BY MR. STRICKLER.

X You say that Mr. Matheny did not throw any rocks?

A No, sir, he did not. He did not get it, but he would have if he had gotten it.

X He had a curry-comb in his hand?

A Yes, sir, and an old rag.

X He did not throw that curry-comb at your sister?

A He went to strike at Bessie with it, Mrs. Hisey with it.

X He did not hit her with it?

A No, sir; papa, I think went up to him -- I won't tell that for truth -- and he stopped.

X Where was this rock in relation to some object in the neighborhood there?

A It was down close to the garden fence, not next to it but it was close to the garden fence that he was reaching for it.

X How big was that rock?

A I don't know, how big it was.

X You saw the rock didn't you?

A No, sir, I did not see the rock; papa and Bessie seen it.

X How do you know where it was?

A I saw him reaching for it.

X And he was reaching towards the garden fence for it?

A Yes, sir. He was right down that way when father threw the gun and he was using these names, and that is the reason father shot him.

X You were closer than either of the others to him?

A No, sir; I was at the stable.

QUESTIONS BY MR. FRIEDMAN.

Q The way that Mr. Watson did and threw my rocks?  
 A No, sir, he did not. He did not get it, but he would have  
 it he had gotten it.

Q He had a carry-over in his hands?  
 A Yes, sir, was on his rag.

Q He did not throw that carry-over at your sister?  
 A He would be afraid to handle with it, Mrs. Hines with it.

Q He did not hit her with it?  
 A No, sir; yes, I think went up to him -- I won't tell that  
 for sure -- and he stopped.

Q There was this talk in relation to some object in the  
 neighborhood there?

Q It was down close to the garden fence, not next to it but  
 it was close to the garden fence that he was reaching for it.

Q How did you find that?  
 A I don't know, but he it was.

Q You saw the rock didn't you?  
 A No, sir, I did not see the rock; rock and handle seen it.

Q How do you know where it was?  
 A I saw him reaching for it.

Q And he was reaching towards the garden fence for it?  
 A Yes, sir, he was right down that way when father threw  
 the gun and he saw what these names, and that is the reason father  
 shot him.

Q You were closer than either of the others to him?  
 A No, sir; I was at the stable.

X Where was your sister then?

A She was about as far from me as from here to you.

X Just a few feet away?

A Yes, sir.

X Where was your father at that time?

A He was out in front of the apple tree.

X Was Matheny between you and your father?

A Like papa was here, Mr. Matheny was there and I was over here. (Indicating.)

X (Using pencil diagram.) Here is the road running along here, we will say, and here is the stable, now where did the bars go in, in front of the stable?

A Yes, sir.

X And you went through the bars in front of the others?

A Yes, sir.

X And your sister Bessie went through behind you?

A Yes, sir.

MR. OTT: The bars are not exactly <sup>in front</sup> of the stable, Mr. Strickler.

MR. STRICKLER: I am not particular about that.

X When you went through the bars you were first and Bessie second and you father third.

A Yes, sir.

X You went up to the stable door and took down the pieces of boards?

A Yes, sir; the first thing I tore off was a board with four spikes in it.

Q Where was your sister then?

A She was about an hour from me on that date in 1900.

Q How far from you?

A Yes, sir.

Q Where was your father at that time?

A He was out in front of the stable then.

Q The distance between you and your father?

A Like you was here, Mr. Hadden was there and I was over

there, (indicating.)

Q (Using pencil diagram.) Here is the road running along

here, as will see, and here is the stable, now where did the horse

go in, in front of the stable?

A Yes, sir.

Q And you went through the barn in front of the stable?

A Yes, sir.

Q And your sister Hattie went through behind you?

A Yes, sir.

in front

MR. Q: The horse was not examined in the stable.  
Mr. Hadden.

MR. HADDEN: I am not particular about that.

Q When you went through the barn you were first and Hattie

second and your father third.

A Yes, sir.

Q You went up to the stable door and took down the horse

at Hadden's

Q Yes, sir; the first thing I saw out was a horse with

dark eyes in it.



X When you started to take off these pieces where was Mr. Matheny?

A That is when he was going to hit Mrs Hizey with a curry-comb.

X Mrs. Hizey was between the stable and the road?

A No; something like this more. (indicating)

X You were here (indicating )?

A Yes, sir.

X And where was your father at that time?

A About along in there. (Indicating on pencil diagram.)

X Along close to the fence?

A No; the fence is a good piece from the stable.

X Your father was there close?

A Yes, sir, he was there close.

X Matheny's house was down this way, someplace?

A Yes, sir.

X Where was he, in here? (Indicating.)

A I can not tell you; he was dancing around there everywhere.

X You did not see any rock there at all?

A No, sir, I did not see the rock.

X You saw him looking towards the place where a rock was?

A I saw him grab for the rock, and father said he should not hit one of us girls with a rock.

X He did not say he was going to hit them with a rock, did he?

A I don't know what he said.

I When you started to take off these glasses where was

Dr. Kennedy?

A That is when he was going to his Mrs. Hisey with a

couple.

I Now, Hisey was between the stable and the house?

A No; somewhere like this more, (indicating)

I You were here (indicating)?

A Yes, sir.

I And where was your father at that time?

A About nine or there. (indicating on pencil diagram.)

I Along since to the house?

A No; the house is a good place from the stable.

I Your father was there close?

A Yes, sir, he was there close.

I Hisey's house was down this way, (indicating)

A Yes, sir.

I Where was he, in front (indicating)?

A I can not tell you; he was standing around there everywhere.

I You did not see any rock there at all?

A No, sir, I did not see the rock.

I You saw him looking towards the place where a rock was?

A I saw him first for the rock, and then he said he didn't

not hit one of us girls with a rock.

I He did not say he was going to hit them with a rock,

did he?

A I don't know what he said.

X He did not swear any there did he?

A I don't know what you call it. It sounded like swearing to me.

X Do you know what cursing is?

A I hear him use plenty of it. I never heard it at home.

X Did he swear any there that day?

A I think he did.

X What were some of the things he said?

A He said, "God-dam~~n~~ for one thing. I don't know what all he said. He spit them out as fast as he could.

X He did not throw the curry-comb?

A He stuck at her with it.

X He had that in his hand when he went back to the house?

A I did not look at him when he went back; I was getting out of there.

X You did not see any rock and did not see anything in his hand but the curry-comb and he did not throw that at anybody?

A He struck at her.

X What did he say when you were getting the horse out?

A "There is your horse".

X He said, "There is your horse"?

A Yes, sir; he did not say, "get it out".

X He said that before the gun went off or afterwards?

A No; I don't think he said that before the gun went off.

X Wasn't the horse about out of the stable?

A Maybe it was coming out; I won't say it was or whether it was not.

X You were at your horse; where was your father when he

Q Did you see any other horses there?  
A I don't know what you call it. It sounded like a mule.

Q Do you know what mule means?  
A I don't know what mule means. I never heard it at home.

Q Did he mean any other kind of mule?  
A I think he did.

Q What was some of the things he said?  
A He said, "Well, look for one thing. I don't know what all he said. He said that he had a mule."

Q He did not know the mule-words?  
A He didn't know the mule-words.

Q He had been in his house when he went back to the house?  
A I did not look at him when he went back; I was getting out of there.

Q You did not see any track and did not see anything in the house but the mule-words and he did not know that he mule-words?  
A He didn't see any.

Q What did he say when you were getting the horse out?  
A "There is your horse."

Q He said, "There is your horse?"  
A Yes, sir; he did not say, "Get it out."

Q He said that before the gun went off or afterwards?  
A Yes; I don't think he said that before the gun went off.

Q When the horse went out of the stable?  
A Maybe it was coming out; I don't say it was or wasn't.

Q You were at your house; where was your father when he

shot?

A He was at the end of the apple tree limb.

X Where is that apple tree, some distance from the stable?

A No sir, just where you have that mark, (indicating on diagram).

X About how far from the stable was the apple tree?

A Not any further than from here to the corner over there.

X You were above the apple tree, at the stable, was Bessie at the stable?

A No, Bessie wasn't at the stable, she was pretty close to my father.

X Bessie was pretty close to your father?

A Yes, sir.

X Your father is an able-bodied man, isn't he?

A No sir; he has a crippled eye, a crippled arm and limb.

X He is strong?

A No, he is not strong; he works but he has to work.

X He had no trouble to keep Mr. Matheny from hitting you girls without using firearms?

A He threatened once before to shoot me and my brother.

THE COURT: Did your father know that?

WITNESS: Yes, sir, he knows it.

X Mr. Matheny did not have any gun there that day, did he?

A I don't remember whether he did or not.

THE COURT: Did your father go on Matheny's place; was he on the land of Mr. Matheny when he shot him?

WITNESS: Yes, sir; all of us were on Mr. Matheny's land.

X Do you mean to say that Mr. Matheny had any gun there that day?

about

A Is that at the end of the table line?  
I There is that table line, some distance from the window  
A Yes sir, just where you have that mark, indicating an

element.

I About how far from the table was the table line?  
A Not very far, just from here to the corner over there.  
I The area above the table line, at the table, was

empty at the window?

A Yes, because what's at the table, she was pretty close

to it.

I Because she pretty close to your father?

A Yes, sir.

I Your father is an able-bodied man, isn't he?

A He is; he has a crippled eye, a crippled arm and leg.

I He is strong?

A No, he is not strong; he works but he has to work.

I He has no trouble to keep Mr. Mahoney from hitting

the table without using a hammer?

A No, because she helps to hold the table up.

THE COURT: Did your father ever say?

Witness: Yes, sir, he knew it.

I Mr. Mahoney did not have any gun there that day, did he?

A I don't remember whether he did or not.

THE COURT: Did your father go on Mahoney's place?

Witness: Yes, sir, he went there when he

shot him.

THE COURT: Yes, sir; all of us were on Mr. Mahoney's

place.

I Do you mean to say that Mr. Mahoney had any gun there that

A I don't remember whether he did or not.

X He didn't say anything about shooting anybody?

A He said, "If you don't get out of here I will shoot you."

X When Mr. Hammer was questioning you you did not say that.

A That was on the day that we went after the walnuts.

X I am talking about when you went for the horse.

A You ask me if he ever threatened to shoot anybody.

A I am talking about the day you went for the horse; he did not threaten to shoot you that day?

A No.

X He did not throw a rock at anybody?

A No, sir.

X He did not throw the curry-comb at anybody?

A He struck at her with it.

X He did not ~~all~~ throw anything that day, did he?

A No, he would have thrown the rock if he could have gotten it.

X He said, "Go and get your horse, go and get your horse," and then he was shot, is not that true?

A I do not remember when he said that. When he was shot was when he was calling us whores and reaching down for the rock. Father said, "No, you are not going to hit my girl with a rock".

X Isn't it a fact that he was going to the house when he called out about the house your father kept?

A No, sir; he called us those names before. And when we went down the road he stood on the back platform and preached a sermon.

Q I don't remember whether he did or not.

A He didn't say anything about shooting anybody.

Q He said, "If you don't get out of here I will shoot you."

A When Mr. Bennett was questioning you you did not say that.

Q That was on the day that we went after the witness.

A I was talking about when you went for the horse.

Q You said he'll be over threatened to shoot anybody.

A I am talking about the day you went for the horse; he did not threaten to shoot you that day.

Q No.

A He did not throw a rock at anybody.

Q No, sir.

A He did not throw the empty-camp at anybody.

Q He threw it at him.

A He did not throw anything that day, did he?

Q No, he would have thrown the rock if he could have gotten it.

A He said, "Go and get your horse, go and get your horse," and then he was shot, is that right?

A I do not remember when he said that. When he was shot, you were in the car and you were talking down the road.

Q That's right, you are not going to hit my girl with a rock.

A That's a fact that he was going to the house when he called out about the horse your father kept?

Q No, sir; he called us there some before. And when he went down the road he stood on the back platform and presented a



X Are you pretty good at drawing?

A No, sir.

X Come here and see if you can not locate these positions a little better; this is the road and I will put the stable here; <sup>south</sup> is the house of Matheny's stable?

A Yes, sir; they are both a good piece from the road.

MR. OTT: The house is to the south of the stable, Mr. Strickler.

X You came up the road and passed by the house?

A Yes, sir.

X And the bars you opened are a little bit before you got opposite the stable, is that right?

A Yes, sir.

X And you went right on in there; where is the garden fence, give us some idea of where the fence is?

A About like that. I don't think there is any fence between the house and the garden; I am not sure. There is no fence anywhere just pieces of one.

X That fence extends about half way to the stable does it?

A Yes, sir, about here.

X The rock he was reaching for was close to this end fence here and not this one around there?

A No.

X The other is tolerable close to the stable?

A Yes, sir, down this way.

X He was cavorting around here between this place and the garden fence?

A Yes, sir.

X And you were at the stable getting out the horse?

I see you pretty good at drawing!

A No, sir.

I have here and see if you can not locate these positions  
a little better; this is the road and I will put the stable here,  
in the house of Heston's stable?

A Yes, sir; they are both a good place from the road.

MR. OTT: The house is to the north of the stable,  
Mr. Heston.

X You saw up the road and pointed by the house?

A Yes, sir.

X And the door you opened are a little bit before you  
and opposite the stable, is that right?

A Yes, sir.

I And you went right on in there, where is the garden  
fence, give me some idea of where the fence is?

A About this line, I don't think there is any fence

between the house and the garden; I am not sure. There is an  
fence anywhere just pieces of one.

I That fence extends about half way to the stable does it?

A Yes, sir, about here.

I The rock he was rambling for was close to this and

there was not this one around there?

A No.

I The other is visible close to the stable?

A Yes, sir, down this way.

I He was rambling around here between this place and the

garden fence?

A Yes, sir.

I And you were at the stable following the house?

A I don't know whether it is a stable or not. It was where he had the horse penned in.

X We will call it a stable to save time describing it otherwise. Now your father was here, give me some idea where he was just before the shooting.

A He was close to the apple tree.

X Close to the tree?

A Not at the body of the tree, he was out at the edge of this way.

X Between the tree and the garden fence?

A Yes, sir, between the tree and the garden.

X He was over this way (indicating)?

A Yes, sir.

X And Bessie was near him?

A Yes, sir.

X Was she near you?

A She was there somewhere.

X Your father was there real close to her, where was she when he struck at your sister Bessie with the curry-comb?

A That was when we first walked in there.

X That was when you first walked in there?

A Yes, sir, I did not see that. I made for the stable.

X And there is where you say he struck at you with the curry-comb?

A No, he struck at Mrs. Hisey.

X And he said several times, "get out and stop trespassing," is that right?

A He said "quit trespassing."

A: I don't know whether it is a window or not. It was

in the same place as the window.

X: It will tell it a window to have the window

otherwise. How your father was here, give me some idea

of how long before the window.

A: He was close to the window.

X: How close to the window?

A: Not at the edge of the window, he was not at the edge

of the window.

X: Between the tree and the window?

A: Yes, sir, between the tree and the window.

X: He was over this way (indicating)?

A: Yes, sir.

X: And he was near that?

A: Yes, sir.

X: You saw him there?

A: Yes, sir, somewhere.

X: Your father was there close to her, there was the

place he stood at your father's house with the window?

A: That was when he first walked in there.

X: That was when you first walked in there?

A: Yes, sir, I did not see that. I was for the window.

X: And there is where you say he stood at you with the

window?

A: No, he stood at the window.

X: And he said several times "Get out and stop trespassing."

Is that right?

A: He said "Get out and stop trespassing."

X But you did not quit but went right on and got the horse out?

A Yes, sir, that is what I went there for and that is what I got.

X Then you saw him reach down for a rock?

A I saw him in a stooping position but I did not see the rock.

X You had gone in the stable to get the horse?

A No, sir, I did not go in the stable.

X You did not have to go in the stable ?

A No, sir, sir.

X You staid out side of the stable that day?

A Yes, sir.

X You were leaving the stable with the horse when you saw him in the act of stooping down?

A He and the horse was just out when that happened.

X He had said that, before that, "get your horse"?

A No, he never told us to get the horse until it was out of the stable; the horse was coming out of the door when he said "get your horse".

X Who said that?

A Mr. Matheny.

X He said that several times?

A I don't know about that.

X Who was he speaking to?

A He was stooping down just as I got the door open and got the horse out; he reached over to get a rock and called us these names and father said to him not to hit his girls with a

rock.

Q But you did not want right on and get the horse  
A Yes, sir, that is what I want there for and that is what  
Q Then you saw him reach down for a rock?  
A I saw him in a stooping position but I did not see the  
Q For had you in the stable to get the horse?  
A No, sir, I did not go in the stable.  
Q For did not have to go in the stable?  
A No, sir.  
Q You stand out side of the stable that day?  
A Yes, sir.  
Q You were leaving the stable with the horse when you  
saw him in the act of stooping down?  
A He and the horse was in- out when that happened.  
Q He had said that, before that, "get your horse?"  
A No, he never told me to get the horse until it was  
out of the stable; the horse was coming out of the door when he  
said "get your horse."  
Q Did you say that?  
A No, sir.  
Q He said that several times?  
A I don't know about that.  
Q Who was he speaking to?  
A He was speaking down just as I got the door open and  
got the horse out; he rounded over to get a rock and called me  
these names and father said to him not to hit his kids with a

X When was it he said to get the horse?

A About the time it was coming out of the stable. It all happened about the time of snapping your finger.

X He had already told you to get the horse out?

A He said that as the horse was coming out of the stable.

X He did not come and try to keep you from getting the horse out of the stable?

A He was fighting papa and Bessie.

X He did not use the curry-comb to strike Bessie?

A Yes, sir.

X He did not strike her then?

A No, sir, because he could not get to her.

X You say you did not see that rock?

A No, sir; I didn't see the rock but seen him stoop over.

X Did the horse have any halter on him?

A No, sir.

X He came on out and you drove him up the road?

A Yes, sir.

X How long were you getting this horse out of there after you came to the bars?

A I don't think over a very few minutes or over a minute.

X You heard the gun crack, didn't you?

A Yes, sir.

X Did he say anything after the gun cracked?

A Who do you mean?

X Matheny.

A He says, "I will kill you yet." I don't whether that is all he said or not until he went to the house and preached down there.

I When was it he said to get the horse?  
 A About the time it was coming out of the stable. It was  
 I He had already told you to get the horse out?  
 A He said that as the horse was coming out of the stable.  
 I He did not come and try to keep you from getting the  
 A He was fighting with the horse.  
 I He did not use the encouragement to strike the horse?  
 A Yes, sir.  
 I He did not strike her then?  
 A No, sir. Because he could not get to her.  
 I You say you did not use that word?  
 A No, sir. I didn't see the look but when he stood over  
 I Did the horse have any halter on that?  
 A No, sir.  
 I He came on out and you drove him up the road?  
 A Yes, sir.  
 I How long were you getting this horse out of the stable?  
 A It was to the point.  
 I I don't think over a very few minutes or over a minute.  
 I You heard the gun crack, didn't you?  
 A Yes, sir.  
 I Did he say anything after the gun cracked?  
 A Yes to you wasn't it?  
 I Nothing.  
 I He says, "I will kill you yet." I don't whether that is  
 all he said or not until he went to the house and reached down there.



X You were not afraid of Matheny?

A I am not a bit of Joe Matheny.

X You went in there first?

A Yes, sir, I did. I would rather he would kill me than my father.

X You were not afraid of his killing you?

A Yes, sir, I was. If he had hit me there with a rock he would have killed me, just the same as if the bullet had went through his body.

X You do not know whether there was any rocks thrown or not?

A I reckon Bessie and papa seen it. Yes, sir, there are rocks on his land.

BY MR. OTT:

X Had you gotten half way up the orchard between the bars and the stable, before Mr. Matheny told you to go back or not?

A We were at the stable when he got to the stable.

X You mean you had gotten to the stable before he said anything to you?

A We were almost at the stable before he said anything.

X All three of you?

A Yes, sir.

X You were not walking abreast?

A No, not all abreast.

X Were you and Mrs. Hizey together?

A No, I was in front.

X You were in front and Mrs. Hizey was behind you?

Q The next day you and Mr. Anthony

A I got a bit of the highway.

Q The next day you and Mr. Anthony

A Yes, sir, I did. I would rather be with him

than be alone.

Q The next day you and Mr. Anthony

A Yes, sir, I was. It had hit me there with a rock

he had thrown at me, but he was on the other side of the

through the body.

Q The next day you and Mr. Anthony

Q

A I couldn't see and I was not

seeing on his head.

Q

Q The next day you and Mr. Anthony

A He was at the stable when he got to the stable.

Q The next day you and Mr. Anthony

A Yes, sir, I was. I was not

anything to you?

A He was almost at the stable before he said anything.

Q All three of you?

A Yes, sir.

Q You were not walking ahead?

A No, not all ahead.

Q Now you and Mr. Tracy together?

A No, I was in front.

Q You were in front and Mr. Tracy was behind you?

A No, she was next and papa next.

X Before you went in the stable he told you not to trespass?

A No, I was breaking the boards down when he said that.

THE COURT: What boards were they?

WITNESS: Big boards set up and boards across the door with big spikes in it.

THE COURT: You broke that open?

WITNESS: Yes, sir, I broke the board off and threw the door down.

THE COURT: Was that the only way to get the horse out of the stable?

WITNESS: Yes, sir, that is the only way

X He had nailed that door up after putting the horse in there?

A Yes, sir.

X That is the stable you are telling about and that is the door. (Indicating on picture.)

A No, sir, that door wasn't hung that day.

X There was a door on that stable, I mean, is that the entrance ~~in~~ where you went in to get the horse?

A I didn't go in.

X That is the stable where you entered?

A That is the stable where I got the horse.

X You say the door was not hung that day?

A No, sir, it was propped up and nailed up.

X It was propped up and nailed?

A Yes, sir.

A No, she was next and says next.

Q Before you went in the stable, did you see the horse?

A No, I was standing the horse down when he said that.

THE COURT: What horse was that?

WITNESS: His horse got up and he said across the door with his eyes in it.

THE COURT: You broke that agent?

WITNESS: Yes, sir, I broke the board off and threw the door down.

THE COURT: Was that the only way to get the horse out of the stable?

WITNESS: Yes, sir, that is the only way.

Q It was called that door up after getting the horse in there?

A Yes, sir.

Q That is the stable you are talking about and that is the door [indicating on picture].

A No, sir, that door wasn't hung that way.

Q There was a door on that stable, I mean, is that the door in which you went in to get the horse?

A I didn't go in.

Q That is the stable where you entered?

A That is the stable where I got the horse.

Q The way the door was not hung that way?

A No, sir, it was opened up and called up.

Q It was opened up and called?

A Yes, sir.

X Although Matheny had told you not to trespass on him and you heard that, instead of stopping you deliberately pulled the boards away from the stable door and went in?

A I think maybe I had the boards off about the time he said "quit your trespassing."

X Did you stop when he said that?

A No, sir I did not.

X Why did you not?

A Because when his stock gets on our place he comes and gets it and that is what I was doing.

X You did not stop?

A No, sir.

X You went ahead and pulled down the entrance to the stable?

A Yes, sir.

X Where was Mr. Matheny in reference to that picture at the time you were trying to get in there to get your horse?

A I can not tell you anything about that picture.

X Isn't that picture a correct description; look it over.

A It don't look that way to me. That place don't look like the picture to me.

X Don't you recognize that crib there as being the corn-crib?

A That looks like the shanty down there.

X You mean his humble home? That is his house near the stable?

A I don't know. I told you the truth, I don't recognize that picture, That don't look like the picture to me.

X Don't you recognize that there as the stable and don't you recall that there is a house near the stable?

A Yes, sir, but it don't look like it to me.

Q Although testimony had told you not to trespass on his  
 and your board foot, instead of stopping you deliberately pulled  
 the handle away from the stable door and went in?  
 A I think maybe I had the handle off about the time he  
 said "cut your trespassing."

Q Did you stop when he said that?

A No, sir I did not.

Q Why did you not?

A Because when the wheel came on my place he came and

took it out that is what I was doing.

Q For all that?

A Yes, sir.

Q You went ahead and pulled down the entrance to the stable?

A Yes, sir.

Q Where was Mr. Hatcher in reference to that picture at

the picture was trying to get in there to get your horse?

A I can not tell you anything about that picture.

Q Don't that picture a correct description; look it over.

A It don't look that way to me. That place don't look

like the picture to me.

Q Don't you recognize that with those in being the copy-

A That looks like the cheaply done there.

Q The more his handle went? That is his horse that the

A I don't know. I told you the truth, I don't recognize

that picture. That don't look like the picture to me.

Q Don't you recognize that there on the stable and don't

you recall that there in a house near the stable?

A Yes, sir, but it don't look like it to me.

X Isn't there a path going down his garden by which he can go to the back of his house to that stable?

A Yes, sir, there is a path around the garden.

X He had come by that path when you got to the stable door?

A Yes, sir.

X You saw him coming there as you went to the door, did you not?

A No, sir; when I got to the stable door he popped around the corner. I couldn't have seen him if I had looked.

X You walk pretty fast?

A Like I always walk.

X Mrs. Hisey was walking pretty fast?

A I don't know, I didn't look around to see.

X Your father came aroundright after, and walked pretty fast?

A He was behind Bessie.

X You say that Mr. Matheny had a curry-comb and a rag in his hands and had been doing something to his horse?

A We saw him currying his horse on the back platform as we went up the road.

X You hear him say, "take the horse out?"

A He told us to get the horse after papa shot him.

X He said tak that after "papa shot him"?

A Yes, sir.

THE COURT: You say it was after you father shot him?

WITNESS: He said "get your horse".

THE COURT: I asked you whether he was not stooping down when he was shot.

WITNESS: He was just before that time; but after

Q Now, there's a path going down his garden by which  
 he goes to the back of his house to that stable?  
 A Yes, sir, there is a path around the garden.  
 Q The path goes by that path when you get into the stable?  
 A Yes, sir.  
 Q Now, his coming there as you went to the door, did you  
 see him?  
 A No, sir; when I got to the stable door he popped around  
 the corner. I couldn't have seen him if I had looked.  
 Q You were sitting there?  
 A Yes, I always walk.  
 Q Now, when you were walking, wasn't that?  
 A I don't know, I didn't look around to see.  
 Q Your father came around right afterwards, didn't he?  
 A He was behind the door.  
 Q You say that Mr. Watson had a curly-top and a top in  
 his hands and was being taken outside to his horse?  
 A He was carrying his horse on the back platform as  
 we went to the road.  
 Q You hear him say, "Take the horse with  
 me, please to get the horse after your horse."  
 A He said that after "your horse" that day?  
 A Yes, sir.  
 Q Now, you say it was after your father that  
 day?  
 A Yes, sir.  
 Q Now, I asked you whether he was not standing  
 down when he was shot.  
 A Yes, sir; he was just before that time; but after



he was shot he said "get your horse".

THE COURT: He came up then after he was shot and said "Get your horse"?

WITNESS: He came around and said "get your horse".

X Can you tell where he was when your father shot him?

A I can not tell you anything about that picture.

X Why not?

A Take that to the witness and they will tell you they don't know anything about that picture.

X Why can not you take that picture in your hand and explain to the jury just where your father stood and where Mr. Matheny soe stood?

A It is not a true picture.

X Point out wherein it is not a true picture?

A It does not look right to se.

X You are familiar with the Matheny place?

A Yes, sir, I went there weekly.

X You have known it all of your life?

A Yes, sir, I have went there all of my life to see Mrs. Matheny; not for his sake though.

X Where this difficulty occurred was near the stable, was it not?

A That don't look like the stable to me. If that is Joe Matheny's stable right there is where it happened.

X You mean to tell the jury that right here, a short distance from the stable door, it happened?

A No, sir, I cannot tell you from that how it happened. He has it mixed up in that picture. He has some of the trees in the orchard and he has them mixed up here. There is one tree that stands out



by itself and there is where it happened.

X Is not the tree back this way in the orchard?

A No sir, it is like I explained it to you on the plat.

Did you ever see Joe Matheny's place?

X You say you can not understand from the picture just where Mr. Matheny stood nor where your father stood?

A No, sir, I can not explain that from the picture.

X If you were going up there to get your horse why was it necessary to take that gun along with you to get your horse?

A He would have have killed me with a rock if papa hadn't taken the gun with us, that is why he taken it.

X You mean he was such a dangerous man?

X Yes, sir.

X Miss Van Pelt you know as well as I do that Joe Matheny never hurt anybody in his life, don't you?

A I don't know whether he ever hurt any person or not but he ruined two or three cows in the neighborhood.

X So you were afraid he would hit you with a rock, and that is the reason you took the gun?

A Yes, sir.

X You say you are twenty-two years old?

A Yes, sir.

X You have lived in the community all of your life?

A Yes, sir.

X Tell the jury how many people you ever heard of Joe Matheny hitting with rocks or anything of the sort in your community.

by itself and there is there it happened.

Q Is not the true fact this way in the evidence?

A No sir, it is like I explained it to you on the stand.

Q All you ever see the photograph?

A Yes sir you can not understand from the picture that

where Mr. Mahoney stood and where your father stood?

A No sir, I can not explain that from the picture.

Q If you were going to there to get your horse why was

it necessary to take that gun along with you to get your horse?

A He would have been killed as with a rock it says

John's name the gun with us, that is why he takes it.

Q You said he was with a dangerous man?

A Yes sir.

Q Now you tell me how you know as well as I do that the Mahoney

never had any gun in his life, that's your

Q I don't know whether he ever had any gun or not but

he raised two or three cows in the neighborhood.

Q So you were afraid he would hit you with a rock, was

that in the reason you took the gun?

A Yes sir.

Q You say you are twenty-two years old?

A Yes sir.

Q The boys lived in the community all of your life?

A Yes sir.

Q Tell the jury how many people you ever heard of the

Mahoney sitting with rock or anything of the sort in your

A I can tell how many he threatened to hit if he had not been prevented.

X How many people did you ever hear of him hitting or whipping?

A He never would hit anybody, he was too big a coward.

X You know he is regarded as a big coward in your community.

A If he gets off an throws rocks what are you going to do with him?

X Yes, but if he is up close. I do not understand exactly where Mrs. Hisey, your sister, was at the time you say Mr. Matheny was about to strike you.

A She was just there close to the body of the tree, closer than papa.

X Which tree, the one back in the orchard or the one near the stable?

A The one near the stable, which tree is not on that picture.

X Did he make any attempt to hit Mrs. Hisey?

A He struck at her with the curry-comb.

X Was that while you were getting in the stable?

A No, sir, it was when we first went up there.

X How far was he from Mrs. Hisey when he struck at her with the curry-comb, indicate in distance across the room.

A About half way across here. (8 or 10 feet)

X How far were you from your sister, Mrs. Hisey, when he struck at her with the curry-comb?

A I did not see that.

X You do not know whether he struck at her or not?

A I am well how many he threatened to hit it he was not

from wounded.

I How many people did you ever hear of his hitting or

whipping

A He never would hit anybody, he was too big a coward.

I You mean he is regarded as a big coward in your

community?

A It is hard to say, but I think you are right in

your opinion.

I Yes, but it is up to you. I do not understand exactly

what you mean, your witness, was at the time you saw Mr. Anthony

the night he was shot.

A Yes, but I am sure close to the body of the man, closer

than any

I Which way, the way back in the window or the way near

the window?

A The one near the window, which time in was in that position.

I Did he ever get within ten feet of the man, right?

A He stayed at least ten feet from the man.

I The fact while you were sitting in the window

and Mr. Anthony was when he first went up there.

I How far was he from the man when he struck at him

with the mury-candy, indicate in distance across the room.

A About half way across here. (9 or 10 feet)

I How far were you from your witness, Mrs. Hickey, when he struck

at her with the mury-candy?

A I did not see that.

I You do not know whether he struck at her or not?

A Papa and Bessie said he did.

X You do not know whether he struck at Mrs. Hisey of your own knowledge?

A I know it is so.

X Because they told you?

A Yes, sir.

X Where did he stoop to get that rock that you thought he was going to hit you with?

A Like this was the tree and like this was the garden fence (indicating), here he stooped down to get the rock.

X Do you mean here near the garden fence?

A He wasn't real close to it -- the rock wasn't close to.

X How far was it from the fence?

A I don't know how far it was.

X How far were you from him when he stooped? If he was at the garden fence where were you?

A I was just bringing the horse out.

X You were at the stable?

A Yes, sir, at the door just coming out.

X How far is the garden fence away from the stable door?

A I don't know exactly.

X It is fully fifty feet away, is it not?

A I won't say.

X You would not say it was not fifty feet away, would you?

A No, I would not say that.

X Do you mean to tell the jury that Joe Matheny, standing down at the garden fence, was reaching down to get a rock to hit you with there at the stable?

A Yes, sir.

A I got the horse out of the stable.

X You do not know whether he struck at Mrs. Henry or not?

Q Now, please?

A I know it is not.

X You saw the horse when you were out?

A Yes, sir.

X When did he stop to get that foot that you thought he was

going to hit you with?

A I saw him when the tree was like this and the garden fence like

this. He was in a place to get the horse.

X Do you mean that the horse struck?

A He wasn't near close to it -- the tree wasn't close to it.

X How far was it from the fence?

A I don't know how far it was.

X How far were you from him when he stopped? Is he the

one at the garden fence there now?

A I am just bringing the horse out.

X You were at the stable?

A Yes, sir, at the door just coming out.

X How far is the garden fence away from the stable door?

A I don't know exactly.

X It is fairly little way, is it not?

A I don't say.

X You would not say it was not little way, would you?

A No, I would not say that.

X Do you mean to tell the jury that the horse, standing

at the garden fence, was reaching down to get a look at the

two with them at the stable?

A Yes, sir.



X And that was when your father shot him?

A When he called us whores and bitches and stooped down for the rock father shot him.

X Was he calling you whores and bitches and stooping for a rock at the same time?

A Yes, sir, at the same time.

X When he was stooping to get a rock he was hollaring and abusing you at the same time?

A Yes, sir; he was doing that all at the same time.

X Where was your father?

A He was near the apple limb.

X You have got Matheny next to his garden fence.

A That is right where he was.

A You were at the stable door?

A Yes, sir.

X Your father was near the apple tree?

A That apple tree isn't on that picture.

X That is the apple tree that is near the stable? You said that a while ago, that it was not far from the stable door.

A It is close there.

X You pulled down the draw bars and came up in the Matheny orchard?

A I threw down one of them and papa the other.

X As you go up there you kind of go between two rows of trees?

A They are not in rows but there are trees on each side if you go straight up towards the stable.

X Now, where was that particular tree that your father was standing by in that orchard when he shot Mr. Matheny who was standing near his garden fence?



A It is not on there.

X How far was it from the stable then?

A Not so far. I could not tell you exactly.

A Could you measure it with your eye by any distance across this room?

K No sir, I don't hardly remember. I know it wasn't so far.

X Were you looking at him when he shot him or not?

A No, sir, I wasn't looking at him.

X How can you tell where he was standing if you were not looking at him?

A I seen it when it was over, I turned around.

X You turned around after you heard the report of the gun?

A Yes, sir, just a little before it went off. I was turned around and facing them when it happened.

X I thought you said you didn't know when it happened.

A I do know when it happened.

X I am sure you said you didn't know when it happened.

You turned around just after it happened, let's get at it.

A I told you he was stooping for a rock.

X That is Mr. Matheny?

A Yes, sir, when he used this language, and papa said when he was stooping for a rock, "you will not hit my girl with a rock."

X You were bringing the horse out of the stable door?

A Yes, sir.

X When he made that remark did your father shoot?

A He made the remarks all the time that we were there.

Q Is it not in there?  
A Now that you say it is, I can't see it.  
Q Could you measure it with your eye by any distance  
course this time?  
A No sir, I can't hardly remember, I know it wasn't in  
there.  
Q Now you're looking at him when he shot him or not?  
A No, sir, I wasn't looking at him.  
Q Now can you tell where he was standing if you were not  
standing at him?  
A I can't tell where he was, I turned around.  
Q You turned around after you heard the report of the gun?  
A Yes, sir, just a little before it was off, I was turned  
around and looking down when it happened.  
Q I thought you said you didn't know when it happened.  
A I do know when it happened.  
Q I do want you to tell me when it happened.  
A The witness started just after it happened, that's all.  
Q I tell you he was waiting for a look.  
A That is Mr. Mahoney?  
A Yes, sir, when he was in the language, and once he said when  
he was standing for a look, you will not hit my girl with a look.  
Q You were bringing the horse out of the stable door?  
A Yes, sir.  
Q When he made that remark did your father shoot?  
A He made the remark all the time that we were there.

X I mean about the time the shooting was done?

A He said that when he was stooping down.

X When did he tell you to go ahead and get the horse?

A After he was shot.

X You already had the horse out, then, did you not?

A He did not know it then, he was so crazy he did not know it.

X He could see you and what was the use of telling you to get the horse after you had already gotten it?

A I don't guess he knew it.

X Now, I believe you said you were the only one permitted to go on the place; that Matheny had notified each of the other members of your family not to come on the place?

A Yes, sir.

X Mrs. Hixey and your father knew they must not trespass on the Matheny place?

A They had to get their horse.

X He had forbidden them coming on the place?

A Yes, sir, years before.

X There was some feeling by you and your father against Mr. Matheny because he did not allow Miss Edith Matheny to associate with you?

A Great lands! My parents would be mighty glad if she never entered the gate. Now come she did not want to associate with me, when she would run down to tell me when her dady was gone so that I could come and associate with Mrs. Matheny.

A JUROR: That is the gun there, is it?

WITNESS: Yes, sir, that is the gun.

JUROR: Your father had the gun?

WITNESS: Yes, sir.

Q I mean about the time the shooting was done?  
 A He said that when he was shooting down.  
 Q When did he tell you to go ahead and get the picture?  
 A After he was shot.  
 Q You already had the picture out, then, did you not?  
 A He did not know it then, he was so crazy he did not know it.  
 Q He would see you and that was the way of getting you to  
 get the picture after you had already gotten it?  
 A I don't know it now it.  
 Q Now, I believe you said you were the only one permitted  
 to go on the plane; that nobody had notified each of the other  
 members of your family not to come on the plane?  
 A Yes, sir.  
 Q Now, Missy and your father knew they were not supposed  
 to go on the plane?  
 A They had to get their papers.  
 Q He had forbidden them coming on the plane?  
 A Yes, sir, years before.  
 Q There was some feeling by you and your father against Mr.  
 Anthony because he did not allow Miss Betty Anthony to associate  
 with you?  
 A I don't know. My parents would be mighty glad if she never  
 entered the gate. But even she did not want to associate with  
 us, when she would run down to tell us when her baby was gone so  
 that I would come and associate with Mrs. Anthony.  
 A JUDGE: That is the way there, is it?  
 WITNESS: Yes, sir, that is the way.  
 JUDGE: Your father had the gun?  
 WITNESS: Yes, sir.

THE JUROR: Your father kept the apple tree, or whatever tree it was, between your neighbor and himself?

WITNESS: Yes, sir.

X You said that when your father started to take that gun with him, and the magazine with it, you said to him "Don't take that gun"?

A Yes, sir, I did; Mama said, "Let him take it, he has to take something to protect himself."

X You were afraid for your father to take that gun, knowing his temperament?

A I knew he would not take anything off of Joe Matheny.

X You know that?

A Yes, sir; he always had run over him and he would stop it.

X You know he had threatened Joe Matheny?

A No, I did not. Papa said that somebody had to lose his life by him and he might as well lose his life by him as anybody else.

Witness told to stand aside.

MRS. BESSIE HIXEY, sworn, testified:

Q You are Mrs. Hixey?

A Yes, sir.

Q You are a daughter of Mr. D. N. VanPelt?

A Yes, sir.

Q You are married; where do you reside?

A I reside at Spring Creek.

Q What is your husband's name?

A William Hixey.

Q Were you at your ~~parent~~ father's home the day that this

THE GIBBS: Your father says the people there are  
enjoying their lives, but I don't know  
whether they are really happy.

WILSON: Yes, sir.

THE GIBBS: The fact that your father wanted to have that  
with him, and the suggestion with it, you will be the first to  
that point.

WILSON: Yes, sir, I told your father, "But his son is, he has to  
some extent to be a success."

THE GIBBS: You were afraid that your father would be that way, were  
the first to suggest it.

WILSON: I don't think you were anything out of the ordinary.  
I was just that.

THE GIBBS: Yes, sir, he always had you with him and he would say so.  
I was sure he had the best of the situation.

WILSON: Yes, sir, that was the way it was, but he was really  
like by the way he might be with his life by the way.

etc.

WILSON: Yes, sir, I think so.

THE GIBBS: Yes, sir, I think so.

WILSON: Yes, sir, I think so.

THE GIBBS: Yes, sir, I think so.

WILSON: Yes, sir, I think so.

THE GIBBS: Yes, sir, I think so.

WILSON: Yes, sir, I think so.

THE GIBBS: Yes, sir, I think so.

WILSON: Yes, sir, I think so.

THE GIBBS: Yes, sir, I think so.

WILSON: Yes, sir, I think so.



trouble occurred?

A Yes, sir.

Q How did you happen to be over there, Mrs. Hizey?

A I came home from church, came over from church. I most always go home from church on Sunday.

Q Had you been to church that morning?

A Yes, sir.

Q Who had been with you?

A I had been to the Spring Creek church and had my <sup>party</sup> ~~kind~~ with me.

Q You stopped there with you father, at his home?

A I came there with my uncle and aunt.

Q With your uncle and aunt?

A Yes, sir, in a car.

Q After you got there when did you learn that the horse was missing?

A As soon as we ate our dinner.

Q As soon as you got through dinner?

A Yes, sir.

Q How did you happen to find that out?

A The children went to hunt for it; they turned it out for water.

Q The children went out to hunt for it and couldn't find it?

A Yes, sir.

Q When did you learn where the horse was?

A It was in the evening, I don't just know what time it was.

Q About what time?

Shouldn't you?

A Yes, sir.

Q Did his father go to the store, his father?

A I don't know from which store, even from which store I don't

know, but I know from which store he went.

Q Did you go to school that morning?

A Yes, sir.

Q Did you go with your

A I had been to the store before school and had to go with

Q Did you go to school with your father, as his name

A I don't know with my name and name.

Q Did you go with your

A Yes, sir, in a car.

Q Did you go there when all your father had the house

A He had no car at that time.

Q As soon as you got through school?

A Yes, sir.

Q Now did you happen to find that man?

A The children went to find for it; they found it and for

Q The children went out to find for it and couldn't find it?

A Yes, sir.

Q When did you learn where the house was?

A It was in the evening, I don't know what time it was.

Q About what time?

A About six o'clock, I think.

Q Then, when you learned where the horse was, what did you and your sister and father do?

A We went up there.

Q Where did you go to when you went up there?

A We went up the road and went into his stable.

Q Whose stable?

A Mr. Matheny's.

Q On the way up the road was anybody between your father's home and the stable of Matheny?

A Mr. Matheny at the back kitchen door carrying his horse.

Q Was the kitchen between you and his stable?

A Yes, sir.

Q He could not see the stable from that point could he?

A No, sir, I don't think so.

Q Where was Edith Matheny?

A I did not see her.

Q Wasn't she sitting on the front porch?

A I did not see her.

Q If she had been there could you have seen her?

A I don't know whether I could or not. I don't go up that way very often and I don't know.

Q When you got down to the draw-bars at Matheny's stable, who was the first one that entered the Matheny premises?

A Florie.

Q Who next?

A Myself.

Q Who next?

A Papa.

A About six o'clock, I think.  
 B Then, when you learned where the house was, what did  
 you and your wife do on Friday day?  
 A We went to school.  
 B What did you do to school on Friday?  
 A We went to the bank and sent into the bank.  
 B About school?  
 A Mr. Johnson's.  
 B On the way to the bank you stopped at Johnson's  
 house on the corner of Broadway?  
 A Yes, Johnson is the man I think that stopped at the house.  
 B Was the kitchen between you and his table?  
 A Yes, sir.  
 B He would not see the table from that point would he?  
 A No, sir, I don't think so.  
 B What was with Johnson?  
 A I did not see her.  
 B Would she be sitting on the front porch?  
 A I did not see her.  
 B If she had been there could you have seen her?  
 A I don't know whether I could or not. I don't go up  
 there very often and I don't know.  
 B How far was that from the bus-stop on Johnson's street?  
 A It was the first one that entered the Johnson premises.

- A. Justice.
- B. The next?
- A. Next.
- B. The next?
- A. Yes.

Q How far ahead of you was your sister Florie?

A I don't know just the distance. I could not have touched her with my arms.

Q How far behind you was your father?

A Some distance I guess, about the same distance.

Q Now, then, who opened the draw bars?

A Well, as near as I know Florie opened the top one and papa the next one.

Q Your sister Florie opened the top one and your father the next one?

A Yes, sir.

Q Then what did you sister Florie, you and your papa do?

A Went on in there.

Q Who opened the stable door?

A Florie.

Q Who brought the horse out of the stable?

A She did.

Q Was that before or after Mr. Matheny appeared on the place?

A That was after he was there.

Q What was the first thing that was said or done when Mr. Matheny came up there; tell the court in your own way what Mr. Matheny said and what he did, and what you all did.

A He came to us and called us two little thieves and two little bitches and two little God-damn whores.

Q Mr. Matheny did?

A Yes, sir.

Q Then what?

CONFIDENTIAL

Q The first point of the first witness testimony  
A I don't know that the witness. I could not have

located her name or name.

Q How far behind you was your witness?

A Two witnesses I guess, about the same distance.

Q How far, how many feet from the driver?

A Well, as far as I know I don't know the distance.

Q How far back?

Q That witness testified against the top was your witness?

Q Yes.

A Yes, sir.

Q Then what did your witness testify, you saw your wife hit

A Yes, sir.

Q The witness testified that?

A Yes, sir.

Q The witness testified that she saw the witness

A Yes, sir.

Q The first witness or other Mr. Hattery testified on the

stand?

A That was after he was there.

Q What was the first thing that was said at that time?

Hattery came up there, fell the court in your own way, what Mr.

Hattery and what he said, and what you all said.

A He came up and called on two little children and two

little children and two little children.

Q Mr. Hattery said?

A Yes, sir.

Q That's all?

A Papa asked him to get his horse out of the stable; and he kept on calling those names, and then he told papa he ran a regular whore-house.

Q Then what?

A He told papa to get the horse after so long a time.

Q Then what? What did he do if anything to you?

A When Mr. Matheny met us he attempted to strike me with a curry-comb and papa warded that blow off and then is when he commenced telling papa what he ran.

Q Then he commenced telling your papa about running this bad house and that you all were not straight?

A Yes, sir.

Q When your papa warded off that blow from you what did Mr. Matheny do?

A He went around the apple tree after Florie then.

Q Then what was Mr. Matheny doing at the time your father shot him?

A Why, he was telling papa what he was doing, what kind of a house he had and then he just put his hand close to the ground to get a large rock.

Q Do you mean that Mr. Matheny was going for the rock?

A He was going for Florie; he was getting a rock to get after Florie and was going after Florie.

Q He was going towards Florie and reached for a rock?

A Yes, sir and looked back at papa.

A: I have asked him to get his horse out of the stable; but  
he kept on pulling those ropes, and then he said that he was a  
regular horse-trainer.

Q: Then what?

A: He told me to get the horse after an hour or two.

Q: Then what? What did he do in the morning?

A: The Mr. Mahoney was so he attempted to strike an iron  
a horse-trainer and gave several times with him in some  
manner, falling down what he was.

Q: Then he mentioned falling four pages about running down  
the horse and that you all were not straight?

A: Yes, sir.

Q: When your page wanted off that time from the stable did

Mr. Mahoney say?

A: He went around the apple tree after that time.

Q: Then what was Mr. Mahoney doing at the time your horse

was hit?

A: Well, he was pulling rope what he was doing, and I think  
of a horse he had not then he had his hand close to the ground  
to get a large rock.

Q: Do you mean that Mr. Mahoney was going for the rock?

A: He was going for that; he was getting a rock to hit

other things and was going after things.

Q: He was going towards things and wanted for a rock?

A: Yes, sir and looked back of page.



Q What did your papa say?

A Nothing but to get the horse out.

Q What did your papa say when Matheny went to the ground and was reaching for the rock?

A He told papa what kind of a house he ran and that is when he shot him.

Q He was reaching for the rock when he told him that?

A Yes, sir.

Q Was he within striking distance of Florie if he had gotten that rock?

A Yes, sir.

Q How close was he to your sister when he was reaching for the rock?

A I don 't know just what the distance was; right close.

Q After you got the horse away from there, after Mr. Matheny was shot did your father attempt to bother him any more?

A No, sir.

Q Did you girls bother him <sup>in</sup> anyway?

A No, sir; we got out of there.

Q You got out of ther and went on home?

A Yes, sir.

Q Were you at the house started to go out with the girls to get the horse?

A Yes, sir.

CROSS EXAMINATION BY MR. STRICKLER.

X Where was this rock; you saw the rock did you not?



A Yes, sir.

X Where was it located?

A As well as I remember Mr. Matheny and the rock both were right in front of an apple tree.

X Can you locate on this picture here that apple tree? There is no apple tree there, but evidently there must be an apple tree there because the limbs are shown in the picture.

A It is right about here, (indicating.) if I am not mistaken; I don't know; I could not tell you by that picture.

X Here is a little diagram; here we will say is the road running north and south; we will say here are the bars and up here is the stable and we will put the house down here and the little crib or, what ever it is, in here; now you and your sister and your father came up this road past the house?

A Yes, sir.

X And you saw Mr. Matheny back here, (indicating) currying his horse at the back door?    Añ. Yes, sir.

X There is a little garden here?

A Yes, sir

X The garden is between the house and the stable and Mr. Matheny came around from behind that garden; didn't he go around behind that garden when he came out to the stable?

A No, he came around this way.

X You don't go through your garden to get to your house, Mr. Matheny?

MR. MATHENY: No, sir.

X There is no garden between your house and the orchard?

MR. MATHENY: No, sir.

A. Yes, sir.

Q. Where was it located?

A. As well as I remember Mr. Kishner and the other men were

right in front of an open fire.

Q. Did you observe on this picture here that people were

there in an open fire there, but obviously there was no

light from these because the lights are shown in the picture.

A. It is right about here, (indicating). It is not

indicated I don't know; I could not tell you by that picture.

Q. There is a little diagram; here we will see in the

room located north and south; we will see that the house was

up here in the picture and we will see the house down here and the

little sign or what ever it is in here; now you see your picture

and you follow down up this road the house?

A. Yes, sir.

Q. And you saw Mr. Kishner back here, (indicating) pointing

the house at the back court. And, yes, sir.

Q. There is a little picture here?

A. Yes, sir.

Q. The garden is between the house and the street and

Mr. Kishner came around from behind that garden didn't he go

around behind that garden when he came out to the street?

A. No, he came around this way.

Q. You don't go through your garden to get to your house.

Mr. Kishner?

MR. WATKINS: No, sir.

Q. There is no garden between your house and the street?

MR. WATKINS: No, sir.

X There is a garden between the house and stable?

A Yes, sir.

X You don't know which way he came out?

A No, but I think he came out this way. (Indicating.)

X Your sister was working at the stable most of the time?

A Yes, sir.

X You did not work at the stable but staid with your father?           Ans. Yes, sir.

X You and your father came straight up, kind of half way between the stable and the draw bars?

A Yes, sir.

X And your sister was over ther near the stable?

A Yes, sir.

X Give us an idea of where Mr. Matheny was reaching for this rock; where was he when he was reahing for the rock, near this building?

A I don't know anything about this building.

X Well, cut out that building; you don't see the place often enough to know just how it is?

A If I was over there I could tell you where he was standing.

X You say that this rock was near the tree?

A It was near a tree.

X Locate the tree in reference to the stable.

A It looks like it would be right here, as near as I remember.

X The tree was nearer the stable than the house?

A A whole lot nearer.

X Did the the limbs of the tree nearly touch the stable?

Q There is a garden between the house and stable?  
A Yes, sir.  
Q The dog's kennel was in the garden?  
A No, but I think he came out this way. (Indicates)  
Q Your sister was working at the stable end of the fence?  
A Yes, sir.  
Q You did not work at the stable but work with your  
father?  
A Yes, sir. Yes, sir.  
Q The dog's kennel was straight up, kind of half way  
between the stable and the new house?  
A Yes, sir.  
Q The dog's sister was ever that busy the whole day?  
A Yes, sir.  
Q Give us an idea of where Mr. Mahoney was standing the  
time that horse was when he was looking for the cook, was  
this building?  
A I don't know anything about this building.  
Q Well, was not that building? You don't see the place  
often enough to know that how is it?  
A If I was over there I could tell you where he was standing.  
Q You say that this took was near the fence?  
A It was near a tree.  
Q Inside the fence in reference to the stable?  
A It looks like it would be right here, so near as I  
remember.  
Q The tree was nearer the stable than the house?  
A A whole lot nearer.  
Q Did you see the limb of the tree nearly touch the stable?

A I don't know about that.

X It is not far from the stable?

A Not far.

X You say that rock was near the trunk of that tree?

A Yes, sir, -- the rock was not under the tree but near the tree; it wasn't under the tree.

X Where was Mr. Matheny; was he over on that side (indicating on pencil diagram) or on this side or where?

A Like the corner of the stable was here; he was standing right here (indicating).

X Now, were you and your father pretty close to him when he was picking up the rock?

A I think papa was a little closer than I was.

X He did not get to the rock, did he?

A No, sir, but so near it.

X Did you see him have anything else in his hand?

A He had a curry-comb.

X Which hand did he have it in?

A He had the curry-comb in his left hand and the rag in his right hand.

X He struck at you with the curry-comb?

A Yes, sir; he came at me like this (indicating).

X With his left hand?

A Yes, sir.

X Is he left handed?

A I don't know.

X And he had the curry-comb in his left hand?

A Yes, sir.

A I don't know about that.  
Q Is it not far from the window?  
A Not far.  
Q The boy that was near the tower at that time?  
A Yes, sir. -- The man was not under the tree but near  
the tower; it was under the tree.  
Q There was Mr. Webster; was he ever on that side (indistinct-ly)  
any on Powell's diagram) on this side or where?  
A Like the corner of the table was here; he was standing  
about here (indicating).  
Q Now, were you and your father pretty close to him when  
he was standing by the table?  
A I think paper was a little closer than I was.  
Q He did not get to the table, did he?  
A No, sir, but he came up.  
Q Did you see him have anything else in his hand?  
A He had a wavy comb.  
Q Which hand did he have it in?  
A He had the wavy comb in his left hand and the pen in  
his right hand.  
Q He struck at you with the wavy comb?  
A Yes, sir; he came at me like this (indicating).  
Q With the left hand?  
A Yes, sir.  
Q Is he left-handed?  
A I don't know.  
Q And he had the wavy comb in his left hand?  
A Yes, sir.



X When he reached for the rock did he still have the curry-comb in his hand?

A I don't know about that either.

X How was he going to hit your sister with the rock if he did?

A He was making for her.

X He wasn't making for you or your father?

A He was making for her; no, sir.

X Do you mean that he was going along like this, looking for something?

A He was looking back. He was stooping down and looking away from her and going towards her as hard as he could.

X He did not get any rock in his hand?

A He did not get it but he would have.

X At that time was the horse out of the stable when he was reaching for the rock?

A No, sir; she was getting the door open. It was spiked down.

X Did you hear Mr. Matheny say "Go get the horse; go get the horse."

A He said that. I believe Florie had the horse out when he told us to get the horse.

X You believe she had the horse out when he said to get the horse?

A Yes, sir.

X Where was the horse when your father shot Mr. Matheny?

A He was still in the stable.

X The horse was still in the stable when your father shot

Q When he wanted for the work did he will have the work-  
done in his hands?

A I don't know about that either.

Q Now you are going to get your father with the work is he did?

A He was waiting for her.

Q He wasn't waiting for you or your father?

A He was waiting for her, sir.

Q He got down that he was going along the line, looking

for something?

A He was looking back. He was stopping down and looking

over his shoulder and going towards her as well as he could.

Q He did not get any work in his hands?

A He did not get it but he would have.

Q At that time was the horse out of the stable when he was

reaching for the work?

A He did not get the work. It was still

there.

Q Did the horse get the work? Did he get the horse to get

the horse?

A He said that. I believe that's what the horse got when he

got to get the horse.

Q You believe she had the horse and when he said to get

the horse?

A Yes, sir.

Q There was the horse when your father shot Mr. Ketchum?

A He was still in the stable.

Q The horse was still in the stable when your father shot

Matheny?

A I don't know.

X You don't know?

A I don't know how that was.

X Cannot you be more definite about that, where the horse was when the gun went off? You heard the gun crack there? You were standing looking at your father?

A Yes, sir.

X How close were you to your father, as close as I am to you? (About three feet).

A Yes, sir, I reckon I was.

X How far was this tree from the stable?

A I don't know.

X As far as from here as it is down to the other end of this room?

A No, not that far.

X It was not a very large apple tree was it?

A I don't remember; it was a fairly good sized one.

X Is it as far as from here to that end of the table?

A No, it is about as far as from here to that man over there. (indicating).

X You know where the garden fence was, don't you?

A Yes, sir.

X When he was under the tree he was a good ways from the garden fence?

A About twelve feet, I judge. I don't know.

X How far is that garden fence, do you suppose, from the stable?

Interrogation

A I don't know.

Q You don't know?

A I don't know how that was.

Q Would you be more definite about that, please the doctor

and when you were shot? You heard the gun which showed you

was standing looking at your father?

A Yes, sir.

Q How alone were you at that instant, do please as I say to you?

A About three feet.

A Yes, sir, I couldn't see.

Q How far was this from the window?

A I don't know.

Q At that time were you in the room as it is shown to the other end of

the room?

A No, that was not.

Q It was not a very large room, was it?

A I don't remember; it was a fairly good sized one.

Q Is it as far as you have to that end of the building?

A No, it is about as far as you have to that end of the building.

(Sighing)

Q You know where the garden house was, don't you?

A Yes, sir.

Q When he was under the tree he was a good way from the

garden house?

A About twelve feet, I judge. I don't know.

Q How far is that garden house, is that right, from the

building?

A I don't know.

X What happened after Matheny was shot?

A We went out. We went on home. We got our horse and went on home, and he tongue-lashed us as fast as he could. He went on by our home tongue-lashing us.

X Did he say anything right after he was shot, or did he start on to his house without saying anything?

A Who?

X Mr. Matheny.

A No, he did not stop talking.

X He did not stop talking at all?

A No.

X Even though he was shot he did not stop talking?

A No, indeed, he did not check up.

THE COURT: He was a great talker?

WITNESS: A pretty good one.

X You were not afraid of him were you?

A Afraid of his tongue.

BY MR. OTT:

X How large was that rock?

A About as big as that (indicating 3½ inches) I judge.

X As large as a cocconut; you know the size of a cocca-nut?

A Certainly I do. There are different sizes.

X How much does a cocca-nut weigh?

A I don't know about that. It is not quite that large.

X What kind of a stone was it, limestone or sandstone or a nigger-head, or what?

A Sandstone.

A I don't know.

I What happened after that?

A We went out. We went to the house. We got out there and went  
 on back, and he came back in to look at his heels. He went  
 on by our house and he was talking to us.

X Did he say anything right after he was shot, or did he  
 speak to the boys without saying anything?

A Yes.

I Mr. Tolson.

A He did not stop talking.

X He did not stop talking at all?

A No.

X Even though he was shot he did not stop talking?

A No, indeed, he did not speak up.

THE COURT: He was a great talker.

WITNESS: A pretty good one.

I You were not afraid of him were you?

A I don't know.

BY MR. TOLSON:

X How large was that rock?

A About as big as that (indicating 1/2 inch). I judge.

I Is large as a coconut; you know the size of a coconut?

A Certainly I do. There are different sizes.

X How much does a coconut weigh?

A I don't know about that. It is not quite that large.

X What kind of a stone was it, limestone or sandstone or  
 a different kind, or what?

A Sandstone.

X Smooth?

A Not very.

X A rough kind of stone?

A Yes, sir.

X That is the only rock you noticed around there?

A There were plenty there.

X There were plenty of them there?

A There were then.

X Can you tell us anything by an examination of this picture?

A No, sir, there is nothing there.

X You know the stable?

A I know the stable.

X That is the stable (indicating on picture to witness) and that is the little house near the stable. I do not know what it is, but it is a little house near the stable.

A I don't get as far as my home very often and I don't just remember.

MR. HAMMER: Don't you think that picture shows the house at an angle that does not exist, and that gives a false impression?

MR. OTT: It shows the stable and the building as near as they can get.

X That is the stable. You recognize the stable?

A Yes, sir.

X That is the corn-crib or small house?

A I don't know about that.

X There was a house there, wasn't there? When your father shot Mr. Matheny where do I understand you to say Mr. Matheny was? If you cannot show me by this picture, show me outside of the picture.

X Answer?

X Not very.

X A rough kind of crowd

X Yes, sir.

X That is the only work you noticed around there?

X There were plenty there.

X There were plenty of them there?

X There were them.

X Can you tell us anything by an examination of this

picture?

X No, sir, there is nothing there.

X Can you see the stable?

X I know the stable.

X That is the stable (indicating on picture to witness)

and that is the little house near the stable. I do not know

what it is, but it is a little house near the stable.

X I don't get as far as my home very often and I don't

just remember.

Q. Now, don't you think that picture shows  
the house of an angle that was not shown  
and that gives a false impression?

A. Yes, sir. It shows the stable and the building  
as near as they can get.

X That is the stable. You recognize the stable?

X Yes, sir.

X That is the out-crib or well house?

X I don't know about that.

X There was a house there, wasn't there? When you looked

at Mr. Holman's photo do I understand you to say Mr. Holman

was? It was shown to you by this picture, was it not?

the picture.



A Like Florie was at the stable door and Mr. Matheny was going towards her, looking at my father and telling him what kind of a house he was running.

X He was going towards Florie and looking at your father?

A He was looking back, talking to father and to us.

X First, how far was Mr. Matheny from Florie, you say he was going towards her? Florie was up here at the stable, wasn't she?

A Yes, sir.

X Had she gotten the horse out at that time or not?

A No, she had not gotten the horse out.

X Had she opened the door or was it before she got it open?

A She was getting the strip off that was nailed across the door with spikes.

X How far, then, was Mr. Matheny from Florie?

A Well, he was getting right close to her. I don't know what the distance would be.

X Would it be as far as that railing there back of that table or chair?

A Just about. (15 feet).

X That would be right, would it, fifteen feet?

A Yes, sir.

X Now, was Joseph Matheny coming directly towards your sister?

A Yes, sir.

X Now, where was your father, Mr. VanPelt?

A He came around another apple tree behind Mr. Matheny.

X The orchard is this way from the stable, towards the road?

A Yes, sir.

A Mike Fichte was at the stable door and Mr. Mahoney was  
going towards her, looking at my father and falling into  
line of a horse he was tending.  
I He was going towards Fichte and looking at your father?  
A He was looking back, falling to father and to me.  
I Right, how far was Mr. Mahoney from Fichte, how far he  
was going towards her? Fichte was up here at the stable, wasn't  
she?  
A Yes, sir.  
I And the other the horse out of that line as well?  
A No, she had not gotten the horse out.  
I And she opened the door as was it before she got it out?  
A Not yet getting the step out that was called across  
the door with walking.  
I Now Mr. Mahoney, was Mr. Mahoney from Fichte?  
A Well, he was getting right close to her. I don't know  
what the distance would be.  
I Would it be as far as that telling there back of that  
table as that?  
A That would be right, would it, witness look?  
A Yes, sir.  
I Now, was there Mahoney coming directly towards you  
after?  
A Yes, sir.  
I Now, where was your father, Mr. Mahoney?  
I He was around another table free behind Mr. Mahoney.  
I The question is this way from the stable, towards the road?  
A Yes, sir.

X Your father, as Mr. Matheny was going towards Florie, was back of an apple tree?

A Coming around an apple tree.

X Estimate the distance as well as you can how far your father was from Mr. Matheny at that time?

A Well, I do not know just how far it was.

X Now, you estimated the other distances.

A To about that man there.

X Do you mean Mr. Turner?

A Yes, sir.

X That would be about 8 or 10 feet, is that right?

A Yes, sir.

X Do you tell the jury that he was no further than that; that he was back here coming around an apple tree?

A He came around an apple tree, following Mr. Matheny.

X Do you mean that when he shot he had gotten within 8 or 10 feet of him? Is that what you mean?

A Yes, sir.

X How far was Mr. Matheny, then, from that fence around the garden when your father shot him?

A I don't know how far it was.

X Was he near the fence or away from the fence when your father shot him?

A He wasn't so close. It is not so far from that to the stable.

X Can you give some estimate, or do you know? If you don't know say you don't know.

A I don't know.

Q Your father, as Mr. Mahoney was going towards there, was  
down at an apple tree?

A Coming around an apple tree.

Q Estimate the distance as well as you can how far your

father was from Mr. Mahoney at that time?

A Well, I do not know how far it was.

Q Now, you estimated the other distance.

A To about that man there.

Q Do you know Mr. Mahoney?

A Yes, sir.

Q That would be about 5 or 10 feet, is that right?

A Yes, sir.

Q Is your bill the fact that he was no further than that; that

is the best part coming around an apple tree?

A He came around an apple tree, following Mr. Mahoney.

Q Do you mean that when he shot he had gotten within 10 or

20 feet of him? Is that what you mean?

A Yes, sir.

Q How far was Mr. Mahoney, then, from that fence around

the garden when your father shot him?

A I don't know how far it was.

Q Was he near the fence or away from the fence when your

father shot him?

A He wasn't so close. It is not so far from that as the

apple.

Q Can you give some estimate, or do you know, if you don't

know, how far you don't know.

A I don't know.

X Do you think he was even near the fence?

A No, he wasn't so close to it.

X If I understood you before, you said he had gotten within <sup>fifteen</sup> about <sup>feet</sup> of your sister: that would have taken him a considerable distance from this fence, wouldn't it?

A Yes, sir. I don't know. I am not a good judge of distance.

X You know whether or not he was to the garden fence?

A He was closer to the stable than he was to the garden fence.

X He was closer to the stable than he was to the garden fence?

A Yes, sir.

X If I understand you correctly, you say Mr. Matheny kept abusing you all, kept calling you abusive names?

A Yes, sir.

X He was going towards Florie and looked back at your father?

A At times.

X So when your father pointed the gun Mr. Matheny must have had his back towards him?

A No, sir, he was going sideways.

X He was reaching to get a rock?

A Yes, sir.

X How do you know he was reaching for a rock? How far was he to the rock?

A He had his fingers that close to it? (Indicating a few inches).

X What did your father say to him?

A He did not say anything to him, except asked him to get

X Do you think he was even near the kennel?

A No, he wasn't so close to it.

X If I understood you before, you said he had gotten within

about 200 feet of your window; that would have taken him a considerable

time to get from the kennel, wouldn't it?

A Yes, sir, I don't know, I am not a good judge of

distances.

X You know whether or not he was in the garden kennel?

A He was closer to the stable than he was to the garden

kennel.

X He was closer to the stable than he was to the garden

kennel?

A Yes, sir.

X If I understand you correctly, you say Mr. Mahoney kept

speaking you all kept calling you abusive names?

A Yes, sir.

X He was going towards Florida and looked back at your father

at 12 o'clock.

X Do you think your father pointed the gun at Mr. Mahoney when he

had his back towards him?

A No, sir, he was going always.

X He was reaching to get a sock?

A Yes, sir.

X How do you know he was reaching for a sock? How far was

he to the sock?

A He had his fingers that close to it? (Imitating a few

inches).

X What did your father say to him?

A He did not say anything to him, except asked him to get

the horse out.

X He did not say anything to him at that time when he was about to shoot him?

A All father said there was that he should get the horse out.

X You had heard Mr. Matheny tell you previously that you could have the horse?

A He said -- he kept on saying at different times that we could get it.

X Was that before the shooting that he told you that you could get the horse out or not?

A I don't know.

BY MR. STRICKLER:

X He did not say that after he was shot, did he, but after you had gotten the horse out that you could get it? You had the horse out; and after the shot was fired, he did not tell you to get the horse out then, did he?

A No, we had the horse out then.

X When he kept saying "get the horse" and going on, that must have been before he was shot, wasn't it?

A Yes, I guess so.

BY MR. OTT:

X When he kept saying to get the horse out, who got it out?

A Florie was getting the horse as quick as she could.

X How did Mr. Matheny happen to make an attack upon you with a curry-comb?

A He met me as I went in.

X Where were you?

A Between the stable and the road.

the horse out.

X He did not say anything to him at that time when he was

about to shoot him?

A All I remember is that he should get the horse

out.

X You had heard Mr. Ketchum tell you previously that you

could have the horse?

A He said -- he kept on saying at different times that he

could get it.

X Was that before the shooting that he said you that you

could get the horse out or not?

A I don't know.

BY MR. WOODWARD:

X He did not say that after he was shot, did he, but after

you had gotten the horse and that you could get it? You had

the horse out; and after the shot was fired, he did not tell you

to get the horse out then, did he?

A No, he did not say that.

X What he kept saying "get the horse" and going on, that

what he said before he was shot, wasn't it?

A Yes, I guess so.

BY MR. WOOD:

X Then he kept saying to get the horse out, who got it out?

A He said you getting the horse out after he was shot.

X Now did Mr. Ketchum happen to make an attack upon you with

a group of men?

A He said as he I went in.

X Where were you?

A Between the stable and the road.



X That was when you came through the orchard from the draw-bars going to the stable and he came up between two rows of trees like?

A Yes, sir.

X Was it about half-way between the draw-bars and the stable that Mr. Matheny met you or where?

A I don't know; he was a little over half-way.

X Mr. Matheny came up and met you about half-way between the road and the stable, or the draw-bars and the stable; who was with you when he met you?

A Florie was on ahead of me and Papa was back of me.

X Florie was ahead of you, going towards the stable, and how far behind you was your Papa?

A Not very far.

X How far in front of you was Florie?

A I don't know -- four or five or six steps.

X And your father alike number of steps behind you, was he?

A Yes, sir, I guess so.

X And you mean to tell the jury that Mr. Matheny met you there and attempted to strike you with the curry-comb and a rag he had in his hand?

A Yes, sir.

X He did not strike you?

A No, sir, he did not.

X What prevented him?

A Just then Papa kind of came around this way and I got father away, and then he made for Florie.

X That was when you came through the window from the door-  
been going to the stable and he came up between two rows of trees

lines:

A Yes, sir.

X Was it about half-way between the two-horn and the

stable that Mr. Hathorn met you on Monday?

A I don't know; he was a little over half-way.

X Mr. Hathorn came up and met you about half-way between

the road and the stable, or the two-horn and the stable; who

was with you then he met you?

A Xipole was in front of me and I was back of me.

A Xipole was about 25 feet, going towards the stable, and

how far behind you was your party?

A Not very far.

X How far in front of you was Xipole?

A I don't know -- four or five or six steps.

X Let your father give a number of steps behind you, was that

A Yes, sir, I guess so.

X And you mean to tell the jury that Mr. Hathorn met you

there and attempted to strike you with the whip-end and a

rod he had in his hand?

A Yes, sir.

X He was not within party?

A No, sir, he was not.

X That prevented that

A That that kept him at some distance this way and I got

rather away, and that he was for Xipole.

X Then he made for Florie. Florie hadn't gotten up to the stable, then, had she?

A She was just about there.

X If you were down there about middle of the way between the draw-bars and the stable when Mr. Matheny made this attack on you, your sister was 5 or 6 feet, you said, in front of you?

A Steps.

X Steps in front of you; and your father was a like distance in the rear of you, how could Florie be up at the stable which was a considerable distance beyond you?

A She was going to the stable and I was going and we were all moving that way.

X I thought you said that Mr. Matheny made this attack on you?

A I moved over to one side and he went over after her.

X You mean he threatened you with the carry-comb?

A He had it raised.

X And you stepped to one side and then he went after Florie, you said?

A He was making after Florie.

X What did you say when he started to make this attack on you with the carry-comb and the rag?

A I did not say anything.

X What did your father say?

A He did not say anything, but "Get the horse out of the stable."

X After that you did not say a word, and he deliberately turned around and went towards Florie at that time?

A Yes, sir.

Q Then he rode for Florida. Florida didn't get up to

the stable, then, had that?

A She was just about there.

Q If you were down there about middle of the way between the

grove-hill and the stable when Mr. Mahony made this attack on

you, your pistol was 3 or 4 feet, was it, in front of you?

A Yes.

Q Steps in front of you; and your father was a little distance

in the rear of you, how would Florida be up at the stable when

was a considerable distance beyond you?

A She was going to the stable and I was going and we were

all moving that way.

Q I thought you said that Mr. Mahony made this attack on

you?

A I must have been on one side and he must have been on the

other side, is that right?

A He had it raised.

Q And you stopped to one side and then he went after Florida,

is that right?

A He was riding after Florida.

Q That is you say when he started to make this attack on

you with the carry-rod and the rest?

A I did not say anything.

Q What did your father say?

A He did not say anything, but "Get the horse out of the

stable."

Q After that you did not say a word, and he deliberately

turned around and went towards Florida at that time?

A Yes, sir.

X Then when did he tell Florie and the rest of you -- when did Mr. Matheny tell you to take the horse?

A I don't just know when he told us that, but I remember he told us that.

X You don't just remember when he told you to get the horse?

A No.

X You were all very close together there from your statement; did your father or any one of you say anything to Mr. Matheny and ask him if you could get the horses? Did you tell him your horse was in the stable and you would like to get it and take it home?

A He did not give us any chance.

X Why didn't you say "Mr. Matheny, we would like to get our horse"?

A It was hard to ask him anything like that when he was running his tongue like that, all that stuff he was saying.

X He was doing all the talking and you were not saying a thing?

A I did not say a word and I don't think that Florie said anything, and all that Papa said to him was to get the horse out.

MR. HANNER: Your father asked, "Let's get the horse out"?

WITNESS: Yes, sir.

X You know you had been prohibited from going on the place don't you?

A No, sir, I never had been.

X How?

A I have never been prohibited by him from going there.



X You were not told by him not to trespass on him?

A No, sir.

X Your father took that gun, loaded it up and took it with him to shoot Joe Matheny?

A He took the gun for self-protection.

X And that self-protection was to shoot Joe Matheny, wasn't it? You knew your father had been very bitter towards Joe Matheny for some years, didn't you?

A No, sir, I did not.

X You knew further that Joe Matheny was as inoffensive as any man in that country? You were raised up there before your marriage and live there now, don't you?

A No, sir.

X I suppose you married when you were about 18, 19 or 20 years old?

A When I was twenty-one.

X Up until you were 21 you were a member of your father's family in the neighborhood?

A No, sir, not all the time.

X You were there the best part of the time?

A I have not been living at home for awhile. I have been married six years nearly, and I went to school. I have not been at home much for 10 or 14 years.

A You staid around there all the time, and you all lived in the community in which Joe Matheny lived?

A Not all of my life. I think I was nine years old when we moved there.

X Up until 21 you lived in the community if not in your father's home?

Q You were not told by him not to investigate on this

A No, sir.

Q Your father took that gun, loaded it up and took it with

him to school for Saturday?

A He took the gun for self-protection.

Q And that self-protection was to shoot Joe Hatfield, wasn't it?

Q You know your father had been very bitter against Joe Hatfield

for some years, didn't you?

A No, sir, I did not.

Q You know further that Joe Hatfield was an indigent as

any one in that country? You were raised up there before your

marriage and live there now, don't you?

A No, sir.

Q I suppose you married when you were about 25, is it not so?

Yes, sir.

Q When I was twenty-one.

Q Up until now were all you were a member of your father's

family in the neighborhood?

A No, sir, not all the time.

Q You were there the best part of the time?

A I have not been living at home for weeks. I have been

married six years now, and I went to school. I have not been

at home much for 10 or 12 years.

Q You still remain there all the time, and you still live

in the community in which Joe Hatfield lived?

A Not all of my life. I think I was nine years old when

we moved there.

Q Up until all you lived in the community it was in your

father's house?



A Not in that community. I live in Spring Creek.

X Spring Creek is how far from your father's home?

A Two and a half miles.

X You went back frequently to see your father and mother?

A Certainly.

X You were acquainted with the people there and with Mr. Matheny?

A Yes, sir.

X You know, as a matter of fact, that Mr. Matheny is as inoffensive a man as there is in that community, now, don't you?

A What do you mean?

X I mean that Joe Matheny was never known to have had a fight with anybody and that he was known to be a coward up there; that is what I mean?

A I think I have heard of his having fights.

X With whom?

A If I am not mistaken, with Ben Croner.

X Did Croner fight him or did he fight Croner?

A I think he helped a little bit too.

X Who else did you ever hear of his having a fight with? That fight was over a road?

A I have known lots of of his tongue fights.

X You know that it is well known in that community that Joe Matheny won't fight? You know that, don't you?

A No, sir.

X It is not know that he will fight, is it? I mean, out side of what you call "tongue-fights"?

A I wouldn't trust him.

A Not in that community. I live in Spring Creek.  
 X Spring Creek is not the same your father's home?  
 A Yes, it is a little different.  
 X Yes, but your responsibility is not your father and mother?  
 A Certainly.  
 X For you are acquainted with the people there and with Mr.

Maloney?

A Yes, sir.  
 X Yes, now, as a matter of fact, this Mr. Maloney is the  
 individual who was in charge in that community, now, don't you?  
 A Yes, sir.  
 X I mean that Mr. Maloney was never known to have had a  
 right with anybody and that he was known to be a smart up state?  
 A Yes, sir.

A I think I have heard of his having rights.  
 X Right?  
 A If I do not mistake, with Ben Green.  
 X The lawyer right him or did he right Green?  
 A I think he helped a little bit too.  
 X How else did you ever hear of his having a right with  
 that right was over a year?

A I have known him of of his lawyer rights.  
 X You know that is well known in that community that  
 the Maloney was right? You know that, don't you?

A Yes, sir.  
 X It is not known that he will right, is it? I mean, out  
 side of what you call "justice-righting"?  
 A I wouldn't trust him.

X What?

A I would not trust him.

X You still don't answer my question. I am asking, not what you would do but what is known up there in that community?

A I expect he would.

X You mean by that, that you do not know how the people regard him with regard to fighting?

A I think, as a general rule, they think he would fight.

X You all have talked this case over down there at home have you not?

A No, sir, it has not been talked any more than can be helped.

X You and your father and Miss Florie have gone over several times these occurrences, have you not?

A No, I don't know that we have several times.

X Well, how many times have you gone over them?

A In fact, I don't know that we have ever gone over it.

X You have been interviewed about it; your father has talked to you about it, has he not?

A No, sir; I don't know that he has.

X Miss Florie has not talked to you about it?

A No, sir; I have been at home once or twice.

X And you came on the witness-stand today without your father's counsel having talked to you and asked you what you knew about it?

A Do you mean today?

X Yes, today.

A No, sir, he did not.

X He put you on the stand without having talked to you?

A Yes, sir.

Q What?

A I would not trust him.

Q The still two's answer by question. I am asking, and what you think he put what is known by those in that community?

A I expect he would.

Q The man by that, that you do not know the man again?

A I think, as a general rule, they think he would fight.

Q The FBI have talked this man over some years of time?

A Yes, sir, it has been talked up some years ago he talked.

Q The man your father and this man have been over several times these conversations, have you not?

A No, I don't think that we have several times.

Q Well, how many times have you gone over them?

A In fact, I don't know that we have ever gone over it.

Q You have been interviewed about it; your father has talked to you about it, has he not?

A No, sir, I don't know that he has.

Q Your father has not talked to you about it?

A No, sir, I have been at home once or twice.

Q And you came to the witness stand today without your father's counsel having talked to you and asked you what you knew about it?

A No, sir, today.

Q Yes, today.

A No, sir, he did not.

Q He put you on the stand without having talked to you?

A Yes, sir.

MR. HAMMER: You testified at Dayton and your father's counsel had a transcript of what they all said out there?

WITNESS: Yes, sir.

Witness told to stand aside.

D. H. VAN FELT, in his own behalf, sworn, testified:

Q How old are you Mr. VanFelt?

A Fifty-three.

Q Are you a man of family?

A Seven children.

Q How many make their home with you?

A Five, I think, still make their home there -- they are not there very much. Only two of them and oftentimes I haven't but one at home.

Q What is your physical condition, good or bad?

A My health is not good at all.

Q What is the matter?

A I have a broken shoulder; a horse fell on me and broke my shoulder, and since then I have been knocked out.

Q You are charged here with having maliciously shot and wounded Mr. Joseph C. Matheny on the 29th day of June, and I want you to tell the jury, tell these gentlemen there, beginning in the morning when you first found your horse was missing, when you turned it out in the road to go to water, and tell them in your own way what occurred up there between you and Mr. Matheny and your daughters -- you and your daughters on the one hand and Mr. Matheny upon the other; go on with it in your own way.

MR. HARRIS: You testified at Dayton and you  
testify a woman had a knowledge of what  
they all said and they

WITNESS: Yes, sir.

Witness told to stand aside.

Q. Now, you testified in his own behalf, correct, testified?

A. Yes, sir, in my own behalf.

Q. Now, you testified

Q. And you were of family?

A. Never married.

Q. Now, you were their boss all your

A. Yes, I think, until they left their home -- they are not

there very much. Only two or three and sometimes I have a few

one at home.

Q. What is your physical condition, good or bad?

A. My health is not good at all.

Q. What is the matter?

A. I have a broken shoulder; I have pain in the neck

and elsewhere, and since then I have been knocked out.

Q. You are charged here with having maliciously and

wrongfully Mr. Joseph G. Haddock on the 15th day of June, and I want

you to tell the jury, tell those gentlemen there, beginning in

the morning when you first found your horse was missing, when

you turned it out in the yard to go to water, and tell them in

your own way what occurred to cause between you and Mr. Haddock

and your daughter -- you and your daughter on the one hand and

Mr. Haddock upon the other; go on with it in your own way.

A About half-past eleven I turned my horse and cow out to water -- to water at a little branch near there -- and the cow came back but the horse did not. I was called in to dinner and after dinner I generally take a little nap on Sunday. I laid down and never thought about the horse until I woke up. I asked the children where the horse was and they did not know and I put them to looking for it and they could not find it. After awhile Mrs. Snyder came down and said that Edith Matheny came up to the Taylors and told that Mr. Matheny had my horse penned up in his stable. And, so, as I was disabled and couldn't throw rocks and knew how Mr. Matheny could throw rocks, I did not think it would be safe for me to go up there without some protection and I taken my gun along and went up there. When we went to the bars, Florie let one bar down and I let the other and we went on in, the girls, both, were kind of ahead of me, Florie in front; and when we got in nearly to the stable, Matheny came running around the garden path out towards the stable, and when he got out there he commenced hollaring, and, he says, "Get out of here you thieves and bitches and God damned whores or I will kill the last one of you"; and he went to grab a rock to hit my daughter who was opening the door, and then the shooting was done when he was down ready to take hold of a rock one-half as big as that spittoon.

Q He says that when he was shot he was facing you directly, squarely?

A He was not; he was stooping down after the rock.

Q Did he make any attack on your other daughter, Mrs. Hisey?

A She claimed that he struck at her with a curry-comb, and that I walked around and warded it off. I did not notice that

A faint half-page appears I turned up lines and saw out to  
 water -- go water of a little hand near there -- and the eye  
 some dark but the water did not. I was called in to dinner and  
 after dinner I generally take a little nap on Sunday. I had been  
 and never thought about the house until I was up. I asked the  
 children about the house and they all said they had I got some  
 to looking for it and they could not find it. After getting up  
 report made them and said that Betty had been seen up to the top  
 and this time Mr. Harvey had my horse named up in his name.  
 I said, as I was thinking the woman's three years and now her  
 to thinking about the house. I did not think it would be such  
 top as to go up there without some protection and I took up an  
 horse and went up there. When we went to the house, Betty had  
 the door open and I let her out and we went in, the girls  
 both were kind of afraid of me, Betty in front; and when we got  
 in nearly to the stable, Harvey was running around the garden  
 half out towards the stable, and then he got out there he was  
 running backwards. And he says, "Get out of here you slaves and  
 children and get away where as I will kill the last one of you."  
 and he went to grab a rock to hit my daughter and was coming the  
 door, and then she shouting was down when he was that early in  
 that hold of a rock and half on his in that position.  
 He says that when he was that he was looking for Betty.  
 Harvey  
 A He was not to be stopping then after the rock.  
 He did not make any attack on your other children, Mrs. Harvey  
 A She claimed that he threw at her with a curly-hand, and  
 that I walked around and would it off. I did not notice that



myself; I cannot say that positively for I don't know.

Q When you came around was your good eye or your bad eye next to him?

A When I came around there my blind eye was next to him, at the time she says he struck at her with the curry-comb. She says that is what ledged him off.

Q You said something about that you know of his throwing rocks; tell what you know about his throwing rocks?

A Well, he can throw rocks equal to the Germans throwing shells out of their big cannon.

Q He is an expert on that is he?

A He is expert on it. The man is in danger who is any way close to him when he gets fits of throwing rocks; he can throw.

Q What is his disposition in the way of temper; is he a peaceable, law-abiding man or the contrary?

A The contrary.

Q You knew that when you went up there for the horse?

A Yes, sir; I have known it for years.

Q Did you know that and was that in your mind when he was looking for a rock for your daughter?

A Yes, sir.

Q After you shot him there did you attempt to do anything farther to him?

A No, sir.

Q After you shot him, then, where did you go and where did he go?

A Well, I told him -- just as the shooting was done, I told him to get that horse out and get it out quick, and at that



second my daughter had gotten her out, and he shot around the garden the back way to his house, and when he got to the platform he commenced hollaring at us again like he did.

MR. OTT: You said he "shot", do you mean he shot a gun at you?

WITNESS: He ran.

Q Well, Mr. Matheny has testified here, and you heard him, that there were no rocks around there; tell the jury whether that is true?

A That is not true. Rocks were there then.

Q Had Mr. Matheny ever complained to you before this of your stock trespassing on him?

A Yes, sir, he had, in the past years.

Q He had complained to you?

A Yes, sir.

Q Had you and he ever had any trouble before this?

A Yes, sir, we had some little spats.

Q They never resulted in anything before this?

A No, sir.

Q On this occasion, if he had not attempted to throw that rock to strike your daughter would you have shot?

A No, sir.

Q Why did you shoot?

A For the protection of my daughter.

CROSS-EXAMINATION BY MR. OTT:

X Mr. VanPelt, you have had trouble with this neighbor of yours, Mr. Matheny?

A Yes, sir; we have had some little spats.

X You were continually letting your horse or cow, as the

... and he had ...  
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case might be, get out in the public road and get out on his land and trespass on his land, haven't you?

A Not a bit more than I could help. He had no fence and I couldn't help it.

X You made no effort to keep your stock up in your own enclosure, off his land?

A Well, sir, I had our children right after the cow and the horse to watch them and they were not in there but very little.

X And Mr. Matheny's daughter had made frequent complaint to you about it, when her father was away from home, of your cow getting into their wheat?

A She only came twice. She told on the stand that she came there on her way to Spring Creek and told us to get the cow out, and we did it. The cow went around in the woods and got in at another place, that we did not know about. There were only two times that the cow ever got in their wheat.

X These are all that you know of; you don't know how many more times your cow got in there do you?

A She was never on them any more that I know of.

X You work out do you not?

A Yes, sir, but I was not working out at anytime while that was going on.

X You don't mean that you were at home all the time during the last six or eight months do you?

A Most of the time.

X You have to go away from home like most men on business, do you not?

A I am away in the forenoon but there in the afternoon.

was right by, but not in the public mind and not on the land

and treatment as the land, however's part

I am sure that I could help. It had to be done and I

couldn't help it.

I am sure no effort to help your sleep up is possible

enough, all his hands

I am sure, sir, I had our children right after the war and

the boys to make them and they were not in their last year

again.

I am sure, Mr. Watson's daughter had some treatment beginning

in her early life, when her father was away from home, or your own

getting into their hands?

A The only man before. She told on the state that she was

there on her way to Spring Creek and told us to get the car out,

and we did it. The car was around in the woods and got in

at another place, that we did not know about. There was only

one place that she ever got in that woods.

I think she did that you know it; you know it's true for me

and think you are not in there to get

A The one where on that day says that I know it.

I am sure not to get out

A Yes, sir, but I was not working out of my own will

and was going on.

I am sure that you were at home all the time during

the time in or right outside to get?

A Not at the time.

A You don't go away from home like most of the men,

do you not?

A I am sure in the forenoon but there in the afternoon.

X Some years ago you met Mr. Matheny in the public road and you asked him about some statement that he had made about your children and he told you that he had not said anything about your children, or words to that effect, in a pleasant way, and you went to your buggy and got out your mallet and he left and went away from you and you after him threatening to kill him, saying that no man should call your children a liar, or something of the kind?

A No, sir.

X You did threaten to strike him on that occasion, didn't you, Mr. VanPelt?

A No, sir, I never tackled him at all. He rode by me and waited until he got by me and then called me a damned black liar and I got my mallet out of the wagon and, of course, he left.

X And you were going to get him if he hadn't gotten away?

A Yes, sir, I would have gotten him if he hadn't gotten out of the way.

X You have told people in the last couple of years that if you ever got Matheny you would kill him?

A Not a word of that so, sir.

X Do you mean to tell the gentlemen of the jury that you never threatened to kill Joe Matheny?

A Yes, sir, I mean to tell the jury that I never threatened to kill Joe Matheny. It never entered my mind to kill any man.

X You knew Joe was harmless, didn't you?

A No; and no other man knows it.

X Who did he ever whip?

A He never whipped anybody, but if he could get a chance at

Q How many times did you see Mr. Kennedy in the public view  
 and you called him about some statement that he had made about  
 your children and he told you that he had not said anything  
 about your children, or words to that effect, in a glassed way  
 and you went to your house and got out your wallet and he said  
 and you were very close to him after his threatening to kill  
 him, saying that he was afraid your children's life was some-  
 thing of the kind?

A No, sir.

Q The first question to which you said you were not  
 sure, Mr. Kennedy?

A No, sir. I never looked at him at all. He came by me and  
 when I was in the car by me and then called me a damned black  
 and I got my hands out of the window and he said, "No, sir."

Q And you were going to get him if he had a better way?  
 A Yes, sir. I would have gotten him if he had a better  
 out of the way.

Q You have told people in the last couple of years that  
 it was your intention to kill Mr. Kennedy?

A Not a word of that at all, sir.

Q He has been to tell the gentleman of the jury that you  
 never threatened to kill Mr. Kennedy?

A Yes, sir. I mean to tell the jury that I never threatened  
 to kill Mr. Kennedy. It never entered my mind to kill any man.

Q You know Joe was harmless, didn't you?

A No, and no other man knows it.

Q Who did he ever hurt?

A He never whipped anybody, but it he could get a chance of



you with a rock you will think he is harmless, you know.

X Who did he ever hit with a rock?

A I don't know of his hitting anybody, but he had tried to do it mighty often.

X You have known him for forty years?

A No, sir.

X How many, then?

A Twenty maybe.

X Your house is a little beyond his house? It faces his house, don't it?

A Yes, sir.

X In all these twenty years you cannot tell the jury of one man Joe Matheny ever struck with a rock?

A No, I cannot tell you of any one who he has hit, but he tried mighty hard to hit them.

X You know the further fact that he is regarded in that neighborhood as a man who will take to his heels on the sign of a fight, and is the biggest coward in that community?

A But when he got a man he could whip he stuck to him.

X You never saw him fight with a man he could whip?

A No, I don't know that I did.

X Knowing the fact that he is a man who wouldn't fight, you tell the jury here that on Sunday afternoon you took that loaded gun and went up there to get your horse with that gun in your possession.

A Because I couldn't throw rocks with him, that is the reason. I have a crippled arm and cannot throw rocks.

you with a neck you will think in the business, you know.

I. The old is over his with a neck?

A. I don't know of his fitting anybody, but he had filed  
 to do so many others.

I. The more money his for doing better?

A. No, sir.

I. How many times?

A. Twenty maybe.

I. That makes in a little beyond his house? It seems like  
 there, don't it?

A. Yes, sir.

I. In all these twenty years you haven't told the jury he  
 was not the person ever struck with a neck?

A. No, I haven't told you of any one who is not his, but he  
 would not go back to his then.

I. You know the further fact that he is reported in that  
 neighborhood as a man who will take to his heels on any sign of  
 a fight, and in the slightest quarrel in that neighborhood?

A. But when he got a man he could whip he would go to his  
 heels and never see his fight with a man he could whip?

A. No, I don't know that I did.

I. Knowing the fact that he is a man who would fight, you  
 tell the jury that on Sunday afternoon you saw that man  
 and went up there to get your horse with that gun in your  
 hand?

A. Because I couldn't throw rocks with him, that is the  
 reason, I have a couple of six and seven shot guns.

X You knew he was crippled up in his right arm with the rheumatism?

A No, sir.

X Is not that a fact?

A No, sir. If you see him throw rocks you wouldn't think he was crippled up.

X Tell us when you saw him throw rocks?

A Ever since I have been up there. Coming down the road one day my cow was outside in the road and not bothering him and he hit her on the bag and spoiled her tit and I lost twenty-five or thirty dollars.

X What other throwing did he do?

A Threw rocks at everybody he could.

X Name some of them. Let us have the names of some of them?

A He threw rocks at Cromer.

X That is your brother-in-law?

A No, sir, my nephew.

X That was trouble over the road question, was it not? They run a road through his land?

A Yes, sir.

X Well, who else?

A He threw a rock at me once.

X How long ago has that been?

A A year and a half.

X What had you done?

A Nothing. I was going for the cow.

X Did he throw at you or the cow?

A At me.

Q The man he was talking up in his right arm with the man-  
woman?

A Yes, sir.

Q Is not that a lobby?

A Yes, sir. If you see his three coats you wouldn't think

he was talking up.

Q Tell me when you saw his three coats?

A Well, when I have been up there. Coming down the road  
and up the road outside in the road and not following the wall  
he did not see the bag and walked but I saw three coats  
of thirty dollars.

Q What other things did he do?

A Three coats of everybody he could.

Q How close of them, did he have the money at that time?

A He showed coats of twenty.

Q That is your highest-in-law?

A Yes, sir, my neighbor.

Q How did you handle over the road question, was it not?

That was a road through his family?

A Yes, sir.

Q Well, who else?

A He showed a coat of ten more.

Q How long was that coat?

A A year and a half.

Q That had your name?

A Nothing. I was going for the coat.

Q Did he know as you or the coat?

A Yes, sir.

X Did he hit you?

A No, sir.

X Who else did he throw at?

A I can't just say now. I can't say anybody else just now.

X Those are all you can tell us?

A Yes, sir.

X You came up with your gun and your girls to get your horse?

A Yes, sir.

X You knew you had had trouble with Matheny, and you knew Matheny had told you never to come on his place, didn't you?

A Yes, sir, I knew that.

X Yet you armed yourself with the gun and walked up there?

A Yes, sir.

X And you took down the bars and went in?

A Yes, sir.

X Why didn't you go to his house and ask him to give you your horse?

A For the simple reason he lays around with his picture machine and does this penning up of stock to make a living on. He want's somebody else's horse to pen up to many money to live on.

X You think that is an explanation?

A Yes, sir.

X You knew that Mrs. Matheny was away, sick, having been send down to a hospital in South Carolina, didn't you?

A Yes, sir.

Q Did he tell you?

A No, sir.

Q Who else did he show you?

A I don't know any more. I don't see anybody else there.

Q Where was he when you saw him?

A Yes, sir.

Q You were up with your gun and your knife at that time?

Yes, sir.

A Yes, sir.

Q You saw him get into the car with the woman, and you saw

him get into the car with the woman, didn't you?

A Yes, sir, I saw that.

Q Did you see anything with the gun and knife up there?

A Yes, sir.

Q Did you see the man and woman get in?

A Yes, sir.

Q Did you see him go to his house and see him to give you

your money?

A Yes, the whole reason he came around with the pleasure

machine and that thing pointing up at them to make a living on

the man's money, that's how he got up to my money to live

on.

Q You think that is an explanation?

A Yes, sir.

Q You know that man, whether you say, also, having been

sent down to a hospital in South Carolina, didn't you?

A Yes, sir.

X And you went up there and did not go to him and ask for your horse because he was running around with a picture machine, and runs around trying to get people's stock to pen up?

A Yes, sir.

X He takes them in and keeps them shut up, you mean?

A Yes, sir, that is it.

X You were walking up there through this orchard when you first saw him?

A He came up along the garden when I first saw him.

X You can recognize this place as the stable and that crib as the corn-crib (exhibiting picture to witness)?

A Yes, sir, that is the stable and the corn-crib, but they don't look like they were setting right to me on this picture; the picture looks kind of peculiar.

X There are the stable and the cornerib?

A Looks like the corn-crib ought to be up here, behind the stable. That is the way it looks from the road.

X Over to this side is the garden fence?

A The garden fence ought to be up this way.

X It comes up there a little ways, and then there is a path back of the house or around the garden fence, going back to the house; it goes around the back side of the house and comes out in front of the house?

A Yes, sir.

X When you went in the draw-bars with your two girls, you walked up through this orchard?

A It is right up there, if you call it an orchard.

Q And you want to know what he did not do in the case  
the next day because he was running around with a witness  
machine, and some amount trying to get people's work in the way

A Yes, sir.

Q He takes them in and knows them that you, you mean?

A Yes, sir, that is it.

Q You were walking up there through this witness that you

know him?

A He was up almost the greatest when I first saw him.

Q Now you recognize this place on the table and that with

as the one-way (indicating witness in witness)?

A Yes, sir, that is the table and the one-way, but that

don't look like they were walking right in on this witness

the picture looks kind of peculiar.

Q There are the table and the one-way?

A Looks like the one-way ought to be up here, behind the

table. That is the way it looks from the rear.

Q Over to this side is the garden fence?

A The garden fence ought to be on this side.

Q It looks up there a little ways, and there is a path

back at the house or around the garden fence, going back to the

house; it goes around the back side of the house and comes out in

front of the house?

A Yes, sir.

Q When you want in the front door with your two girls, you

walk up through this one-way?

A It is right up there, it you will let me explain.



X Are not there trees in there and apples growing on them?

A Few apples there.

X They have apples there?

A I think they have.

X It is an humble home, Mr. VanPelt, but we can't all have means. Where did you meet Mr. Matheny?

A Right in at that apple tree, at the corner of that shanty.

X You mean at the corner of that corn-crib?

A At that tree back there, right there (indicating).

X How far apart were you when you met him? You say you met him at the corner of the corn-crib?

A No, at the apple tree.

X Away back there (indicating)?

A Not way back there. Can't you see that apple tree?

X Which way from the house?

A That way (indicating) from the apple tree.

X You mean back towards the road?

A No, the apple tree is back in from the house, from the road. Here is a path and he runs around through that when he runs in here.

X How far apart were you when you met him?

A Something like from here to the rail.

X Fifteen feet apart; that the first time you saw him and he saw you?

A I saw him coming up by the garden.

X Had he seen you?

A I don't think he had.

X Did he say anything to you?

A No, sir. The first thing he said was when he saw the

E He had those trees in there and apples growing on them?

A Yes, apples there.

E They have apples there?

A I think they have.

E It is an apple farm, Mr. VanDyke, but we don't all have

names. Where did you meet Mr. VanDyke?

A Right in at that apple tree, at the corner of that street.

E You mean at the corner of that street?

A At that tree back there, right there (indicating).

E How far apart was you when you met him? How far you

met him at the corner of the street?

A No, not the apple tree.

E How far back there (indicating)?

A Not very back there. Oh, you know that apple tree?

E Which way from the house?

A That way (indicating) from the apple tree.

E You mean back towards the road?

A No, the apple tree is back in from the house. From the

road. There is a path and he runs across through that when he

comes in here.

E How far apart were you when you met him?

A Something like ten feet to the wall.

E Would that be right? That the first time you saw him was

in the yard?

A I saw him coming up by the garden.

E Had he been hurt?

A I don't think he had.

E Did he say anything to you?

A No, sir. The first thing he said was when he spoke

girls he commenced calling names.

X He comes up this back path and when he gets within fifteen feet from you, or the distance from here to that rail, what was the first thing he said?

A He saw these girls and called them names.

X He called the girls ugly names?

A Yes, sir.

X Where were the girls?

A One was getting the stable open and the other was close to me.

X How far were you and the girl apart who was trying to open the stable door?

A I don't know. You can see the <sup>not</sup> from the picture. Something like back to where that man sits (indicating).

X That is something like 18 or 20 feet; how far were you from Mrs. Hisey, your other daughter?

A She was standing close to me.

X I understood you to say to Mr. Hammer that you could not say of your own knowledge anything about Mr. Matheny making an attack on Mrs. Hisey?

A No, sir.

X You don't know whether he made an attack on her, so far as your own personal knowledge is concerned?

A I did not notice that at all.

X Your daughter, then, was up here towards the stable?

A Yes, sir.

X Didn't he tell you to get the horse out?

A No, sir.

Q Did he comment on being named?

A He came up this back path and when he got within fifteen feet from you, or the distance from here to that wall, what was

the first thing he said?

A He saw these girls and called them names.

Q He called the girls ugly names?

A Yes, sir.

Q Where were the girls?

A One was getting the stable door and the other was close

to me.

Q How far were you and the girl when she was trying to

open the stable door?

and

A I can't say. You can see the track the horses are running

the track is about that way also (indicating).

Q That is something like 10 or 15 feet; how far was you from

the stable door, your other daughter?

A She was standing close to me.

Q I explained you to me in Mr. Brown that you could not

see or hear any knowledge anything about Mr. Brown's name as

stated in the diary?

A No, sir.

Q The fact that whether he came in either in the car

or your own personal knowledge is immaterial?

A I did not notice him at all.

Q Your daughter, then, was up here outside the stable?

A Yes, sir.

Q Didn't he tell you to get the horse out?

A No, sir.

X You never heard him tell you that you could take the horse out?

A Not until after the shooting was done.

X Not until after you shot?

A No, sir.

X Explain to us; you are fifteen feet apart, had he begun to say anything to your daughters or to you, then?

A Well, he said that as he ran up there past me, yes, sir.

X Did not you hear him tell you not to trespass on him before that?

A I don't remember that at all.

X You would not say that he did not tell you that?

A No, I would not say that he did. The girls say he did. I don't remember hearing it.

X How were you carrying that gun as you went through the orchard; did you have it raised or in a position of defense?

A Hanging down by my side.

X It was cocked and ready to shoot, was it not?

A No, not cocked.

X It was automatic and you did not have to cock it.

A You have to cock it.

X When did you cock it?

A I don't know myself when I did cock it.

X You had it loaded before you brought it up?

A Yes, sir.

X You did not have to put in any load?

A No, sir.



X Now, what did you tell the jury prompted you to shoot that man?

A Because he was reaching for a rock to hit my daughter with.

X When he was 15 feet from you and how far from your daughter?

A I don't know.

X How far from your daughter, Miss Florie, who was trying to get the horse out of the stable?

A About as far as from here to that post -- the last jurymen there.

X You mean from here to that post about where Mr. Beery is sitting?

A Yes, sir. (About 12 feet).

X About 12 or 15 feet from you?

A Yes, sir.

X Describe, if you can, in just what position Matheny was when you fired the shot? Indicate with your body the exact position of Matheny.

A He was stooping down this way (indicating) reaching for a rock.

X Suppose I am Matheny and stooping down for a rock, now what was your position?

A I was standing up straight.

X How did you have your gun?

A I had it up that way (indicating).

X I am stooping now.

A Yes, sir.

X Do you mean to tell the jury, in that position you shot and the shot lodged where it did?

Q Now, what did you tell the jury prompted you to shoot

that man?

A Because he was reaching for a rifle to hit my daughter with.

Q When he was in front of you and how far from your daughter?

A I don't know.

Q How far from your daughter, Miss Morris, was she sitting?

A She was sitting out of the doorway.

Q About as far as from here to that point -- the last doorway?

A Yes.

Q You mean from here to that point about where the heavy is

sitting?

A Yes, sir. (about 15 feet).

Q About 15 or 20 feet from you?

A Yes, sir.

Q Now, if you can, in that what position Anthony was

when you fired the shot? Indicate with your body the exact position

of Anthony.

A He was standing down the way (indicating) towards the

door.

Q Suppose I am Anthony and stepping down for a rifle, was

that your position?

A I was standing up straight.

Q How did you have your feet?

A I had it to that way (indicating).

Q I am stepping now.

A Yes, sir.

Q Do you mean to tell the jury, in that position you were

and the shot lodged where it did?



A Yes, sir.

X Where was he going to get that rock from?

A Off the ground there.

X You said it was a rock half as big as that spittoon there?

A Yes, sir.

X Did you see the rock?

A Yes, sir, I saw it. He had his fingers justabout on it, too.

X Did he say anything to you as he stooped down?

A No, sir; he made these threats before.

X He did not say a word when he stooped down?

A No, sir.

X He was not near the garden fence?

A Not so near the garden fence; half-way between the garden fence and the stable.

X Half-way between the garden fence and the stable?

A Yes, sir.

X Did he make any threats that he was going to hit her?

A Told them to get out of there or he would kill them; that is all he said.

X Mrs. Hisey wasn't starting to go in the stable, was she?

A No, sir.

X Then he could not tell her to get out of there?

A Means for them to get out off' of his place, is what he told them.

X What did he threaten to do with you?

A Yes, sir.

X Where was he going to get that rock from?

A Out the ground there.

X The rock is not a rock half an inch in diameter?

Answer

A Yes, sir.

X Did you see the rock?

A Yes, sir. I saw it. He had his fingers twisted on it.

Q

X Did he say anything to you on his second arrest?

A No, sir; he made three phrases before.

X He did not say a word when he stopped there?

A No, sir.

X He was not near the garden fence?

A Not so near the garden fence; half-way between the garden fence and the stable.

X Half-way between the garden fence and the stable?

A Yes, sir.

X Did he make any threats that he was going to hit you?

A I told them to get out of there or he would kill them; that is all he said.

X Mrs. Kinsky wasn't standing to go in the stable, was she?

A No, sir.

X Then he would not tell her to get out of there?

A He was for them to get out of his place, is that he told them.

X That did he threaten to do with you?

A He just said that to all of us. He said "All of you get out of here or I will kill the last one of you."

X He turned and took his spite out on Miss Florie by stooping to get a rock which was half as big as this spittoon?

A He wanted to stop her from getting the horse.

X How old are you?

A Fifty-three.

X You have lost one eye?

A Yes, sir.

X Is there any reason why you could not have gone and gotten that man as he was stooping over to get that rock?

A I could not have done anything with him. He is too stout for me. I could not handle him.

X Even though you tell us he is a coward?

A Yes, he is a coward, but you better not corner him, if you don't want to be whipped.

X Did you ever hear of anybody cornering him in that neighborhood?

A Haven't cornered him, but you better not corner him if you don't want to be whipped.

X You took that gun and you shot to kill him?

A No, sir.

X It would have killed him if you had hit him in the right place?

A It would have if it hit him in the right place but it didn't hit him in the right place.

X You shot to strike in a vital place?

A No, sir; just to keep him from hitting my daughter.

A He first said that to all of us. He said "All of you get

out of here or I will kill you all one by one."

A He turned and looked at us and he said "I will kill you

all if you do not get out of here now. Get out of here now."

A He turned and looked at us and he said "I will kill you

all if you do not get out of here now."

A He turned and looked at us and he said "I will kill you

all if you do not get out of here now."

A He turned and looked at us and he said "I will kill you

all if you do not get out of here now. Get out of here now."

A He turned and looked at us and he said "I will kill you

all if you do not get out of here now. Get out of here now."

A He turned and looked at us and he said "I will kill you

all if you do not get out of here now. Get out of here now."

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all if you do not get out of here now. Get out of here now."

A He turned and looked at us and he said "I will kill you

all if you do not get out of here now. Get out of here now."

A He turned and looked at us and he said "I will kill you

all if you do not get out of here now. Get out of here now."

X You did not shoot up in the air?

A No, sir.

X You did not shoot at his arm or his leg, but you shot where, if you had struck an artery or a large vein, or, a little lower, in the heart, it would have killed him?

A I don't know about that.

X You did not care whether you killed him or not?

A It did not enter my mind to kill him.

X Did you try, in the aiming of your gun to aim it so it would not kill him?

A Not particular, I didn't.

X You were not particular whether you killed him or would not?

A I wouldn't want to kill him at all. I did not mean to kill him.

THE COURT: Do I understand that when you started from your home to go up to Mr. Matheny's you thought your going there would be liable to bring on a difficulty with him?

WITNESS: Yes, sir.

THE COURT: And you took the gun for your protection?

WITNESS: Yes, sir, that is right.

THE COURT: Well, did you realize that you might kill him or do him serious injury with the gun?

WITNESS: No, sir; I did not mean to do him any serious injury at all.

THE COURT: Did you think you had a right to go there and get your property and bring on a difficulty in which you might have to shoot him?

WITNESS: Well, I don't reckon I did. I don't know about that.



THE COURT: You don't reckon you did? No, you would not have a right to do that. That would be a big mistake for a man to think that.

X You know that that was Mr. Matheny's place, didn't you?

A Oh, yes, sir.

X You knew you had no right on there?

A Yes, sir.

X You knew that your going there, after having been ordered to stay away, would provoke a difficulty?

A Yes, sir.

X You went prepared for a difficulty? After Joe Matheny was shot, he ran like a turkey down that back path to his own home, didn't he?

A Yes, sir, he went down there

BY MR. SPRICKLER:

X He said, "Get your horse, get your horse," and away he went?

A Yes, sir.

X Where was this rock you speak of located with reference to some object on the ground?

A It was right behind that apple tree that is shown on the picture, right in behind that apple tree lying on the ground.

X How far from the trunk of the tree?

A Not more than a couple of steps.

X A couple of steps from the trunk of the tree?

A Yes, sir.

X What kind of a rock was it?

A What we call a "branch rock, a kind of sandstone.

X Smooth?

THE COURT: The law's intention is to give you the right to have a right to be heard. That would be a big mistake for a man to think that.

Q Now then that that was the intention of the law, that's your

A Oh, yes, sir.

Q Now then you say that it's right to be heard?

A Yes, sir.

Q Now then that your being heard, after having been advised

in that way, would provide a sufficient

basis for the law.

Q And you're prepared for a sufficient basis for the law?

A Yes, sir. I mean I have a feeling that that's the way

that it's done.

Q Now, sir, is that your feeling?

A Yes, sir.

Q Now, sir, "that your hearing, and your being

heard."

A Yes, sir.

Q Now then you say that you're not of limited ability?

A No, sir.

Q Now then you say that you're not of limited ability?

A No, sir. I mean I'm not of limited ability.

Q Now then you say that you're not of limited ability?

A Yes, sir.

Q Now then you say that you're not of limited ability?

A Yes, sir.

Q Now then you say that you're not of limited ability?

A Yes, sir. I mean I'm not of limited ability.

Q Now then you say that you're not of limited ability?

A Yes, sir.



A Tolerable only, they are a little rough; they are not ragged rock but they are rough. Branch rocks are kind of half way between a nigger-head rock and a sand-rock, if you know anything about nigger-head rock.

X Why didn't you hit him over the head with the butt of your gun?

A That just did not enter my mind, I guess.

BY A JUROR:

Q Did you send your daughters ahead of you?

A No, sir.

Q Or did they just go ahead of you?

A Yes, sir.

Q You were standing behind an apple tree?

A Not particularly behind an apple tree, but I got below the apple tree.

Q You did want to have the apple tree between you and your enemy?

A No, sir.

BY MR. STRICKLER:

Q Did you see the curry-comb in the old man's hand?

A Yes, sir.

Q Do you know which hand he had it in?

A No, I could not be positive.

Q Did he have a rag?

A He had something besides the curry-comb but I could not say positively what that was.

Q He never attempted to hit you with the curry-comb?

A No, sir.

A: I believe only they are a little rough, they are not  
rougher than they are rough. I believe they are just as hard  
anywhere. I believe they are a hard-look. It is just a  
thing about slight-ness.

I: I don't see it over the head with the fact of

your name

A: That fact is not clear to me, I guess.

IT IS YOUR:

I: All you see your daughter about it?

A: No, sir.

I: Or do they have no idea of you?

A: Yes, sir.

I: You have standing around an apple tree?

A: Not particularly being an apple tree, but I got below

the apple tree.

I: You did want to have the apple tree between you and your

daughter?

A: No, sir.

IT IS YOURS:

I: Did you see the curly-hair in the old man's hands?

A: Yes, sir.

I: Is that man's name not so?

A: No, I would not be positive.

I: Did he have a wife?

A: He had something besides the curly-hair but I could not

say positively what that was.

I: He never attempted to hit you with the curly-hair?

A: No, sir.

W. W. EDGERS, sworn, testified:

Q Dr. Keentz, you are a practicing physician, I believe, and reside at Spring Creek?

A Yes, sir.

Q You practice your profession there in the neighborhood where Mr. VanFelt lives and also in the same neighborhood where Mr. Matheny lives?

A Yes, sir.

Q How long have you known Mr. VanFelt here?

A About thirteen years.

Q Do you know his daughter, Mrs. Hisey and his daughter, Miss Florie?

A Yes, sir.

Q I want you to tell the jury if you know the reputation which each of these parties bears, Mr. VanFelt, Miss Florie and Mrs. Hisey, for truth in the community in which they live?

MR. OTT: You know what general reputation means, what the people generally say about them.

A It is good. Their reputation for truth is good.

Q Do you know the general reputation of Mr. Joseph S. Matheny in that community as a law-abiding citizen?

A Well, I know he has a good deal of trouble. He has some altercations with his neighbors. I don't know as he ever got into many fights, but he is fussy.

Q He has the reputation of being a fussy and a contentious man?

MR. OTT: He did not say that.

Q. Now, you say that you are a practicing physician, I believe.  
A. Yes, sir.

Q. Now, you say that you are a practicing physician, I believe.  
A. Yes, sir.

Q. Now, you say that you are a practicing physician, I believe.  
A. Yes, sir.

Q. Now, you say that you are a practicing physician, I believe.  
A. Yes, sir.

Q. Now, you say that you are a practicing physician, I believe.  
A. Yes, sir.

Q. Now, you say that you are a practicing physician, I believe.  
A. Yes, sir.

Q. Now, you say that you are a practicing physician, I believe.  
A. Yes, sir.

Q. Now, you say that you are a practicing physician, I believe.  
A. Yes, sir.

MR. BRICKLER: He said he had gotten into a great deal of fuss in that neighborhood.

Q Do you know the reputation he bears in that community as a truthful man?

A As far as I know it is good.

CROSS-EXAMINATION BY MR. OTT:

X You spoke of the reputation of Mr. Matheny for getting into trouble; is not that limited to a certain trouble that arose over the location of a road with the Croser family of which Mr. VanPelt married one, in which he did not want them to take certain part of his land for a road? Isn't that the trouble you are referring to when you say that he has the reputation of being in trouble with his neighbors?

A That is not all the trouble.

X It is one of the difficulties?

A Yes, sir.

X There are a great many of the Croser people and they all stick together, and that is one of the troubles you are talking about, is it not?

A Yes, sir.

X There was no attack made by Mr. Matheny on any of them was there?

A Not as I know of.

X Although you have been in the county for thirteen years you have never heard of Joe Matheny whipping anybody at all have you?

A No, sir.

X But on the other hand you have heard that Joe Matheny was a man who would run if he got in a difficulty, and that he was

THE PRESIDENT: He said he had written to the  
State of Texas in that connection.

Q. Now, would the proposition be heard in that connection as

a political matter?

A. As far as I know it is good.

QUESTIONS-ANSWERS BY MR. GARY:

Q. Now, would the proposition of Mr. Nathan for getting

into the State in that connection be a certain political party?

A. It would be a party with the same interests which

the party would have, in that he did not want to have

control of the State for a party. That is the trouble you

are talking about when you say that he has the proposition of being

in trouble with his neighbors?

A. Yes, he has all the trouble.

Q. Now, would the proposition be

a political party?

A. It would be a party with the same interests which

the party would have, in that he did not want to have

control of the State for a party.

A. Yes, he has all the trouble.

Q. Now, would the proposition be

a political party?

A. It would be a party with the same interests which

the party would have, in that he did not want to have

control of the State for a party.

Q. Now, would the proposition be

a political party?

A. It would be a party with the same interests which

the party would have, in that he did not want to have

control of the State for a party.

Q. Now, would the proposition be

a political party?

one of the biggest cowards in the Ottobine section?

A He gets out of the way when he gets up a racket.

X Now, what other difficulties outside of the Cromer family -- what other difficulties have you ever heard of his having with his neighbors?

A He had a difficulty with Mr. Long.

X That is the gentleman who lives at the house there near him?

A Yes, sir.

X What was that one about?

A Over the road, possibly.

X He did not want them to take his land for the road?

A That is the difficulty he had with Cromer.

X From the reputation, was that a personal difficulty or just a quarrel?

A I think, just a quarrel.

X It was not a fight?

A I don't think it was a fight.

X Now, about the Long difficulty, what was the nature of that?

A It was over the road. That was just a rumor. I did not see it.

X That is what you are testifying to, to rumor, and I am investigating rumor.

A He never had any fight.

X With Mr. Long?

A No, sir, not that I know of. He generally kept at a good distance.

one of the highest amounts in the Ontario counties

A He gets out of the way when he gets up a ladder.

X Now, were there other witnesses besides the driver family --

What other witnesses have you ever heard of the family with

his neighbors

A He had a difficulty with Mr. Lang.

X That is the gentleman who lives at the house there next

him

A Yes, sir.

X That was that one about

A Over the road, possibly.

X He did not want them to take his land for the road

A That is the difficulty he had with them.

X From the reputation, was that a personal difficulty or

just a quarrel

A I think, just a quarrel.

X It was not a fight

A I don't think it was a fight.

X Now, about the long difficulty, what was the matter at

that

A It was over the road. That was just a quarrel. I did not

see it.

X That is what you are testifying to, is that, and I am

investigating matter.

A He never had any fight.

X With Mr. Lang?

A No, sir, not that I know of. He generally kept at a

good distance.



X What other troubles did you hear of his having?

A I don't know that I heard of any others.

X You had heard about Mr. Long throwing rocks at Mr. Matheny, had you not?

A No, sir, I did not hear that.

X You had heard of Mr. VanPelt being very bitter towards Mr. Matheny had you not?

A I did not think he was bitter towards him.

X I am not asking you what you think, but as to what you heard; you heard that he was bitter towards Mr. Matheny?

A I never heard that; no, sir.

X You know further, as a practicing physician of thirteen years standing there, that the people of that community have had a way of picking out old man Matheny as the butt of their jokes and picked at him considerably, isn't that so?

A I don't know. I know the boys hollared at his buggy and horse.

X And that did not stop at the boys, now, did it?

A I don't know about that.

X You had heard that VanPelt had threatened to kill him?

A I never heard that.

X You knew that VanPelt did not like Joe Matheny?

A I knew they had some difficulty.

X You said, I believe, that his reputation for truth was good in that community?

A As far as I know, it is.

X If he would make a statement under oath in a case there



would be no reason why you would not believe him, would there?

A No, sir.

X You stated that the reputation of Miss Florie VanPelt for truth was good; after the trouble took place that she has told here, was not her reputation for truth shaken in that community to some extent?

A I think since then she has conducted herself --

X I am not asking you along that line of inquiry, but I am asking as to her reputation for truth. Mr. Hamner asked her about the occurrence to which I have referred, and I am asking you, if after that occurrence it is not a fact that her reputation for truth and veracity was shaken in the community?

A I don't think so, gentlemen.

Witness told to stand aside.

DR. B. H. BEYDLER, sworn, testified:

Q Dr. Beydler, you are a practicing physician, residing at Bridgewater, I believe?

A Yes, sir.

Q You also practice in the community in which Mr. Matheny and Mr. VanPelt live?

A Yes, sir.

Q You knew the people of that community well?

A Yes, sir.

Q How long have you known Mr. VanPelt?

MR. OTT: How far do you live from their community?

WITNESS: About five miles, at this time.



MR. OFF: Do you practice regularly out there in that vicinity?

WITNESS: I am in there every week in that section or practically every week.

MR. OFF: I object to the introduction of this witness, because he lived too remote from that community.

THE COURT: How far do you live from VanPelt, Doctor?

WITNESS: Five miles.

THE COURT: You live in Bridgewater?

WITNESS: Yes, sir.

MR. STRICKLER: You did live in Spring Creek at one time?

WITNESS: Yes, sir.

THE COURT: How far is that from VanPelt's community?

WITNESS: That is about two miles, I suppose.

MR. OFF: That has been five years ago.

THE COURT: I think the Doctor may answer.

Q Do you know Mr. VanPelt here?

A Yes, sir.

Q Do you know his daughters, Flora VanPelt and Mrs. Hixey?

A Yes, sir.

Q Do you know what the general reputation of each of these people is for truth in the community in which they live?

A I never heard it questioned.

Q MR. OFF: Do you know what he asked you, first? Do you know what their reputations are?

WITNESS: Their general reputation for truth is good.

Q Do you know Mr. Joe Matheny?

A I do.

MR. GUY: Do you provide regularly for them in that  
community?

WITNESS: I do in that every week in that section  
as provided every week.

MR. GUY: I object to the introduction of this wit-  
ness because he lives in the same town that  
community.

THE COURT: Now for do you live from Vanhoose, Deane  
WITNESS: Yes, sir.

THE COURT: You live in Highgate?

WITNESS: Yes, sir.

MR. GUY: You live in Spring Brook at the  
place?

WITNESS: Yes, sir.

THE COURT: Now for is that from Vanhoose's community?  
WITNESS: That is about the same, I suppose.

MR. GUY: That has been five years ago.

THE COURT: I think the doctor was wrong.

Q Do you know Mr. Vanhoose's name?

A Yes, sir.

Q Do you know his daughter, Miss Vanhoose and Mrs. Shady?

A Yes, sir.

Q Do you know what the general reputation of each of those  
people in the town in the community in which they live?

A I have heard it questioned.

MR. GUY: Do you know what he asked you, didn't  
he ask you what their reputations are?

WITNESS: Their general reputation for such is  
good.

Q Do you know Mr. Vanhoose's name?

A Yes, sir.

Q Do you know his reputation as a law-abiding man?

A I have known very little about Mr. Matheny for the last ten years, excepting what I hear from other people.

Q That is what I am asking, what other people say about him. That is exactly the test, what other people say about him.

A The impression is that he is a little irritable and probably contentious.

Q How about him as a truthful man?

A I never heard his veracity questioned.

CROSS-EXAMINATION BY MR. OTT:

X Doctor, you say that you have heard that Mr. Matheny was a little irritable and contentious; you never heard of him getting into a fight in your life?

A I heard of him getting into controversies.

X And these controversies were chiefly about that road up there that took part of his land, and that was with the Growers of whom Mr. VanPelt married one?

A I don't know, sir. I couldn't just tell you what they were.

X You don't remember what the controversies were?

A No, sir.

X You never heard of him getting into any personal encounter with anybody, did you?

A No, sir. I heard of threats he made against people, just neighborhood talk, you understand, I learned in talking with people of the community.

X Which threats he never carried out?

A Not to my knowledge, no, sir.

Q Do you have his registration as a law-abiding man?  
A I have known very little about Mr. [redacted] for the last  
ten years, knowing what I know from other people.  
Q That is what I am asking, what other people say about him.  
That is exactly the fact, what other people say about him.  
A The impression is that he is a little [redacted] and  
[redacted] character.

Q How about him as a [redacted] man?  
A I never heard his [redacted] [redacted].

CONFIDENTIAL - MR. [redacted]

Q Doctor, you say that you have heard that Mr. [redacted] was  
a little [redacted] and [redacted]; you never know of his getting  
into a [redacted] in your life?  
A I heard of him getting into [redacted].  
Q And these [redacted] were chiefly about that and up  
there that your part of his [redacted], and that you with the [redacted]  
of whom Mr. [redacted] married was?

A I don't know, sir. I wouldn't just tell you what they  
were.

Q You don't remember that the [redacted] were?  
A No, sir.

Q You never heard of his getting into any [redacted] [redacted]  
with anybody, did you?

A No, sir. I heard of [redacted] he made [redacted] people,  
and neighborhood talk, you understand, I learned in talking with  
people of the community.

Q Which [redacted] he never married any?  
A Not to my knowledge, no, sir.



X On the other hand, you have heard that he would run like a turkey if people got after him?

A I have heard that he was a big coward.

X You have said that his reputation for truth was good; of course, you mean by that, that in a matter where he had given his testimony under oath you, of course, would believe him?

A I never heard his veracity questioned, sir.

X You do know that Mr. VanPelt felt very bitter towards Mr. Matheny?

A No, sir, I did not until the last few weeks.

X You mean, since this trial?

A Yes, sir, since this.

X Speaking about the reputation for truth of Miss Florie, some question has been asked her by Mr. Hammer about some trouble she had of which you are no doubt acquainted; now, since that occurrence has not her reputation for truth been shaken in that community?

A Those things can occur without injuring your truth or veracity.

X I am not asking you whether they can; I am asking you whether it did?

A Not to my knowledge, it did not.

X As a matter of fact, do you really know the reputation of these young girls for truth and veracity is one way or the other?

A I have not heard anything to the contrary.

X Mrs. Hisey got married here six years ago, didn't she, and moved over to Spring Creek?

A Yes, sir.

Q On the other hand, you have heard that he would not like

a party if he had any other kind.

A I have heard that he was a big party.

Q You have said that his reputation for truth was good;

of course, you mean by that, that in a matter where he had given

his testimony under oath you, of course, would believe him.

A I never heard his veracity questioned, sir.

Q You do know that Mr. Tolson's wife was a very nice woman?

Yes, sir.

A Yes, sir, I did not recall the last few words.

Q The name, since this trial?

A Yes, sir, since this.

Q Speaking about the reputation for truth of Miss Gandy,

was mention has been made by Mr. Tolson that Miss Gandy

was the only one in the whole government who, since that

time, has not had any reputation for truth taken away in any

circumstances?

A There might be some without knowing your facts or

possibly.

Q I am not asking you whether they are; I am asking you

whether or not.

A Not to my knowledge, if I do not.

Q It is a matter of fact, as you really know the reputation

of these young girls for truth and veracity is one way or the

other?

A I have not heard anything to the contrary.

Q Now, Miss Gandy has married two or three times, and

never had any reputation taken away for being untruthful?

A Yes, sir.

X She did not stay at home very much from the time she was ten years old, I believe she said though she was around in the neighborhood, that is, Mrs. Hisey; and Miss Florie, I reckon, has been at home during the while, but you don't come in contact very much with people and don't know very much about these young people's reputations, do you?

A Yes, sir; I come in contact with these people a great deal over there.

X What you mean to say is this; that the young girl at home with her people and married don't usually make very much reputation one way or the other.

A Not as a general rule; no, sir.

X So you do not really know what their general reputation for truth and veracity is?

A Just as I said; I never heard it questioned.

Witness told to stand aside.

W. T. REKRODES, sworn, testified:

Q You are a deputy sheriff of the county and live in the Ottobine section?

A Yes, sir.

Q How far do you live from Mr. Matheny and Mr. VanPelt here?

A Little over a mile, probably a mile and a half.

Q How long have you known Mr. VanPelt and his two daughters, Miss Florie and Mrs. Hisey?

A Their reputation is good.

Q But how long have you known them?

A I have known Mr. VanPelt, I reckon, fifteen years.

I The old way of doing things was very much the same as it is  
now. I believe the only thing that has changed is the  
method. That is, the Black and the White. I believe, the  
best of both worlds is the one, but you don't see it any more.  
You see the people and the things that are going on.

Q Yes, sir; I am in contact with some people in  
the same way.

Q How do you mean to say in that way that you say it  
is with the people and the things that are going on very much  
the same as the old way.

A Not on a general basis, no, sir.  
I do not see any really new things that are going on.

Q How do you mean to say in that way that you say it  
is with the people and the things that are going on very much  
the same as the old way.

Q I am not a lawyer, but I am sure you are. I am sure  
you are a lawyer, but I am sure you are.

A Yes, sir.  
Q How do you mean to say in that way that you say it  
is with the people and the things that are going on very much  
the same as the old way.

A Little over a mile, probably a mile and a half.  
Q How long have you known Mr. Venable and his two daughters,  
Miss Stella and Mrs. Black?

A Their residence is good.

Q How long have you known them?

A I have known Mr. Venable, I believe, fifteen years.

Q What is his reputation as a peaceable, law-abiding citizen?

A Why, it is good.

Q What is the reputation of Mr. VanPelt here and his two daughters for truth in that community?

A I never heard it questioned.

Q Would you believe what they said under oath, knowing them as you do?

A Yes, sir; I would have to.

CROSS-EXAMINATION BY MR. OTT:

X What would you say as to Mr. Matheny, what is his reputation for truth and veracity in that community in which he lives?

A It is good.

X Would you believe what he said under oath in a trial in which he was interested?

A Yes, sir.

X Do you happen to know what the feeling of Mr. VanPelt has been towards Mr. Matheny?

A No, sir, I do not.

X What is the reputation of Mr. Matheny as a peaceable, law-abiding man in his community, if you know it?

A Why, it is very good, except like some others stated here, he has had some little difficulties.

X You mean with his neighbors?

A Yes, sir, some little difficulties.

X Has he ever had any personal encounters with any one?

A No, sir; I never heard of any.

X Ever hear of his getting into fights?

A No.

Q What is the reputation on a person's law-abiding character?

A Yes, it is good.

Q What is the reputation of Mr. Vanels here and his law-abiding character?

A I never heard of him.

Q Would you believe that they said under oath, knowing that

on your part

A Yes, sir; I would have so.

EXHIBIT-EXAMINATION BY MR. QTY.

Q What would you say as to Mr. Mahoney, what is his reputation for truth and veracity in that community in which he

lives?

A It is good.

Q Would you believe what he said under oath in a trial

in which he was interested?

A Yes, sir.

Q Would you believe he knew what the feeling of Mr. Vanels

was toward Mr. Mahoney?

A No, sir, I do not.

Q What is the reputation of Mr. Mahoney as a person's law-abiding

character and in the community, if you know it?

A Yes, it is very good, except like some other people

there, he has had some little difficulties.

Q The man with his neighbors?

A Yes, sir, some little difficulties.

Q Has he ever had any personal encounters with any one?

A No, sir, I never heard of any.

Q Ever heard of his getting into fights?

A No.

X These controversies that you mention with his neighbors were in the form of quarrels were they not?

A Yes, sir.

X As a matter of fact, he is regarded as being a coward, up, there, is he not, and as a man who would not fight?

A Yes, sir.

X Were those disputes chiefly over that road?

A Yes, sir, over the road that went through his place.

X Was it chiefly with the Cromer family of whom Mr. Vanpelt married one?

A He did have some trouble with Mr. Cromer over that road.

X Then, what else?

A I think Mr. Long, or some others, he had trouble with over the road.

X But he never went to any knocks, he never got into any knocks with anybody.

A No, sir.

MR. HAMMER: What is his reputation for rock throwing up there when he gets into difficulties?

WITNESS: I don't believe I ever heard of his throwing rocks at any one.

X What is his reputation as a God fearing man who does not swear? (Question objected to)

THE COURT: Is he a swearing man, you know whether he swears or not?

WITNESS: Not to my knowledge.

X Have you ever been in his house frequently?

A Yes, sir.

X You have lived in that community twenty-five or thirty years?

A Yes, sir.

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Q. These conversations that you mention with his wife...

...were with the same individuals who were...

A. Yes, sir.

Q. In a matter of fact, he is regarded as being a coward,

is he not, in the eyes of a man who would not fight?

A. Yes, sir.

Q. With these admissions chiefly over that road?

A. Yes, sir, over the road that went through his place.

Q. And it is chiefly with the Brown family of whom Mr.

...mentioned earlier now?

A. He did have some trouble with Mr. Brown over that road.

Q. Then, what about...

A. I think Mr. ... of some ... in the ... with

over the road.

Q. But he never went to any ... he never got into any

trouble with anybody.

A. No, sir.

MR. HARRIS: That is his reputation for some  
... he never got into any

trouble with anybody. I don't believe I ever heard of his  
travelling ... at any time.

Q. What is his reputation as a God-fearing man who does

not ... (Question objected to)

THE COURT: Is he a ... man, you know whether  
he swears or not?

ATTORNEY: Not to my knowledge.

Q. Have you ever been in his house ...

A. Yes, sir.

Q. You have lived in that community twenty-five or thirty

years?

A. Yes, sir.



X Did you ever hear him swear an oath in your life?

A I never heard him swear.

Witness told to stand aside.

This being all the evidence introduced, or offered to be introduced on behalf of the accused, his counsel thereupon rested and the Commonwealth to further sustain the indictment in this case, introduced the following testimony in rebuttal.

Witness: Newton Curry

Q Where do you live now Mr. Curry?

A Hone Quarry.

Q When did you move there or about when?

A About seven months ago.

Q Where did you live before you moved there?

A Close to Spring Creek.

Q Did you have occasion to be with Mr. Matheny and work for him?

A I farmed for him some and worked with him some.

Q Did you ever hear him swear?

A No, sir.

Q What about his reputation as a peaceable man and a law abiding man?

A I never knew him to break the law in any way that I knew of.

Q What do the people generally say, how do they regard him in that community as a peaceable, law-abiding man?

A As far as I know, they regard him as such.

Q Now Mr. Curry, did you come down there shortly before

X Did you ever hear him swear in your life?  
A I never heard him swear.  
Witness told as above said.

This being all the evidence introduced, or offered in  
the testimony on behalf of the accused, his counsel requested  
that the Court withhold its judgment until the evidence  
is all in, and that the Court withhold its judgment until  
the evidence is all in.

Q When did you see Mr. Curry?  
A About 1907.  
Q How did you see him or about what  
A About seven months ago.  
Q Where did you live before you moved there?  
A I was in Spring Creek.  
Q Did you have occasion to be with Mr. Latham and wife  
at that time?

A I talked for him once and worked at his home.  
Q Did you ever hear him swear?  
A No, sir.  
Q What about his reputation as a respectable man and a  
law-abiding man?

A I never knew him to break the law in any way.  
Q Now of  
Q What do the people generally say, now do they regard  
him as that community as a respectable law-abiding man?  
A As far as I know, they regard him as such.  
Q Now Mr. Curry, did you come down there shortly before

this difficulty happened which we are investigating?

A Yes, sir.

Q How long before it happened?

A I think it was on Friday evening.

Q How did you happen to come there on Friday evening?

A I wanted a tap off of a wagon skein, and he had an old wagon up there and I went up there to get a tap off of it and that is the reason why I was there.

Q Was that the Friday evening before the Sunday on which this shooting occurred?

A Yes, sir.

Q To find that tap was it necessary for you to make an examination of the premises about the stable and orchard?

A The tap was on the wagon tight, it had not been greased for some time and when I went to get it off I tried to find an iron to set against it to use a cold chisel to jar the tap loose, and I was looking for a piece of iron.

Q Did you see any rocks there on the ground?

A No, sir.

CROSS EXAMINATION BY MR. HAMMER.

X Was anyone out there at that time with you?

A No, sir, his daughter was down to the house.

X Where did you look for the rocks?

A I wasn't looking for rocks, I was looking for a piece of iron.

X You did not look for any rocks at all?

A No, sir.

X You don't know whether there were any rocks there on the ground at all?

A There were none that I saw and I was around his corn

Q This billiard happened which we are investigating?

A Yes, sir.

Q How long before it happened?

A I think it was on Friday evening.

Q How did you happen to come there on Friday evening?

A I wanted a tap off of a wagon wheel, and he had an old

wagon or horse and I went up there to get a tap off of it and

that is the reason why I was there.

Q Was that the Friday evening before the Monday on which

this shooting occurred?

A Yes, sir.

Q To find that tap was it necessary for you to make an

examination of the rim of the wheel and around it?

A The tap was on the wagon light, it had not been ground

up smooth and when I went to get it off I tried to find an iron

to get against it to use a cold chisel to get the tap loose, and

I was looking for a piece of iron.

Q Did you see any rocks there on the ground?

A No, sir.

CHIEF EXAMINATION BY MR. HANSEN.

Q Was anyone out there at that time with you?

A No, sir, his daughter was down in the house.

Q Where did you look for the rocks?

A I wasn't looking for rocks, I was looking for a piece

of iron.

Q You did not look for any rocks at all?

A No, sir.

Q You don't know whether there were any rocks there on

the ground at all?

A There were some that I saw and I saw around his turn

crib.

DIRECT EXAMINATION BY MR. OTT.

Q What is Mr. Matheny's general reputation for truth and veracity?

A He is a truthful man, as far as I know.

Q How do the people in that community regard him, as a truthful man, or otherwise?

A I never heard anything to condemn him.

Witness told to stand aside.

C.Y. Beard sworn, testified.

Q Where do you live Mr. Beard?

A I live, I hardly know where.

Q You live near Spring Creek?

A Yes, sir, but not close to Rushville.

Q How far do you live from Mr. Jos. C. Matheny?

A Three quarters of a mile.

Q Were you frequently at Mr. Matheny's home?

A Yes, sir.

Q How long have you known him?

A All my life.

Q Do you know his general reputation in that community for truth and veracity, and if so, is it good or bad?

A Good.

Q Do you know his general reputation in that community as a peaceable and law abiding man, if so, is it good or bad?

A Good.

Q Do you know whether or not he is a swearing man?

A No, sir, he is not.



Q Did you ever hear him swear in your life?

A No, sir.

Q Did you ever have occasion to notice the ground in his orchard there, about the stable and corn crib, on either side of the yard fence?

A Yes, sir, the fence between the garden and the stable.

Q Did you ever see any rocks there?

A No, sir, I never saw any rocks there.

Q Have you looked at this ground since the shooting?

A Yes, sir.

Q Did you look to see whether there were any rocks there?

A No, I just looked any how. I had heard a good deal of it and I looked a good while to see if there were any rocks there.

Q Were you at the call-trial?

A I was at Dayton.

Q You heard at that trial that there were rocks on the ground somewhere and were reached for that day?

A Yes, sir.

Q You were there after the call trial?

A Yes, sir, after and before both.

Q Did you look for rocks before that trial?

A No, sir.

Q But after the call trial you did look for rocks around there?

A Yes, sir.

Q Did you see any appearance in the sod there indicating where rocks had been removed?

A No, sir.

Q Did you ever hear him swear in your life?

A No, sir.

Q Did you ever have occasion to notice the ground

in his yard, about the stable and some other, on either

side of the yard fence?

A Yes, sir, the fence between the garden and the

stable.

Q Did you ever see any tracks there?

A No, sir, I never saw any tracks there.

Q Have you looked at this ground since the occasion?

A Yes, sir.

Q Did you look to see whether there were any tracks there?

A No, I just looked my way. I had heard a good deal of it

and I wanted a good walk to see if there were any tracks there.

Q Were you at the call-trail?

A I was at Dayton.

Q You heard at that trial that there were tracks on the

ground immediately west of the call-trail?

A Yes, sir.

Q Two were there after the call-trail?

A Yes, sir, after and before both.

Q Did you look for tracks before that trial?

A No, sir.

Q But after the call-trial you did look for tracks around

there?

A Yes, sir.

Q Did you see any appearance in the soil there indicating

where tracks had been removed?

A No, sir.



Q It is sod there I believe, old orchard sod?

A Yes, sir.

CROSS EXAMINATION BY MR. HAMMER.

X There are some rocks up in that part of the county just like in the rest of the county, are there not?

A Certainly.

X There are some around old man Joe Matheny's place, too?

A Yes, sir.

X You say he is not a cursing man, have you ever seen him when he was mad?

A No, sir, I don't think he is hardly that kind of a man.

X Did you ever see him angry? How about that? How is his temper? When he would get a little huffy, was he careful in what he said?

A I always saw him about the same thing.

X You never saw him when he was mad?

A No, sir.

Witness told to stand aside.

ABRAM PAUL, sworn, testified.

Q Mr. Paul, you live at Ottobine?

A Yes, sir.

Q How far is that from Mr. Joe Matheny's home?

A I suppose the big end of a mile.

Q How long have you known Mr. Matheny?

A I don't know how many years. Since he was a boy.

Q Do you know his general reputation for truth and veracity in that community, and if so is it good or bad?

A I don't know as I ever heard it questioned; it was always good with me.

Q It is not true I believe, is it not?

A Yes, sir.

THE EXAMINATION BY MR. HARRIS.

Q There are some rooms up in that part of the county

that like in the rest of the county, are there any

A Certainly.

Q There are some around old man Jos. Kennedy's place, too?

A Yes, sir.

Q You say he is not a cunning man, have you ever seen

him since you was well?

A No, sir. I don't think he is hardly that kind of a man.

Q Did you ever see him angry? How about that? Has he

any temper? When he would get a little huffy, was he angry?

It was he angry?

A I always saw him about the same thing.

Q You never saw him when he was well?

A No, sir.

Witness John to stand aside.

ADAM PAUL, sworn, testified.

Q Mr. Paul, you live at O'Connell's?

A Yes, sir.

Q Now, that is that farm Mr. Jos. Kennedy's house?

A I suppose the big one of a mile.

Q How long have you known Mr. Kennedy?

A I don't know how many years. Since he was a boy.

Q Do you know his general reputation for truth and veracity

in that community, and if so, is it good or bad?

A I don't know as I ever heard it questioned; it was always

good with me.

Q Do you know his general reputation in that community with regard to being a peaceable, law-abiding man?

A Yes, sir. I have not heard anything to the contrary.

Q What about his being a swearing man, is he a swearing man?

A I never heard him swear gentlemen. I never heard him swear an oath, and I have known him, I expect, for fifty years.

Q He is a man about sixty-three years old and I believe you have known him about fifty years anyhow?

A Yes, sir.

CROSS EXAMINATION BY MR. HAMMER.

X You know Mr. Vanpelt here, too, do you not?

A Yes, sir.

X Do you know his general reputation in that community for truth?

A I never heard it questioned.

X How about the reputation of his daughters, Mrs. Hizey, and Miss Florie Vanpelt for truth in that community?

A I never heard that questioned I don't think.

Witness told to stand aside.

EDGAR MATHENY, sworn and testified.

Q Mr. Matheny have you had occasion recently to look at the ground behind Mr. Matheny's house and his stable to see whether there are any rocks around there?

A Yes, sir.

Q How recently?

A Since April.

Q You were not there shortly before this shooting?

A It was along about April that I remember being there



I guess.

Q Did anything call your attention to the rocks there, whether there were rocks there?

A Yes, sir.

Q What?

A There at the old cart, where I went, there was a chain on it that I wanted.

Q Is that the old cart sitting there, shown in this picture?

A Yes, sir, that is the old cart. There was a chain on this cart and it was tied in a knot, and I wanted that chain.

It was a twisted link chain with a hook to it and I wanted the hook, and I looked around there for a rock to use to get it loose but I could not find any there. I did not run around so far but I did not see any where I looked.

Q Was the cart located where it is now?

A It was kind of to the west side of the corn crib.

Q And you looked around there for a rock?

A Yes, sir.

Q How far around did you look?

A Not far, about ten feet.

Q You did not see a rock anywhere?

A No, sir, I didn't see a rock.

Q Did you say it was in April?

A Yes, sir, when I was plowing the corn-ground.

Q Were you there shortly after the shooting?

A No, sir.

Q You do get down to the Matheny home every week or so?

A I don't go there, but I could go there.

Q You are a nephew of Mr. Matheny, are you not?

A Yes, sir.

I guess.

Q Did anything call your attention to the man there?

A Yes, sir.

Q Where?

A There at the old cart, where I went, there was a chair on it that I wanted.

Q Is that the old cart sitting there, when in this district?

A Yes, sir, that is the old cart. There was a chair on the back and it was tied in a heap, and I wanted that chair.

Q It was a different kind of chair with a back to it and I wanted the back, and I looked around there for a chair to use in the cart.

A Yes, sir, I went out that way there. I did not see anyone as far as I can see any where I looked.

Q Was the man I looked where it is now?

A It was kind of on the west side of the door with the chair.

Q Did you look around there for a chair?

A Yes, sir.

Q How far around did you look?

A Not far, about ten feet.

Q Was the man see a man anywhere?

A No, sir, I didn't see a man.

Q Did you say it was in April?

A Yes, sir, when I was fixing the carriages.

Q Have you done anything after the shooting?

A No, sir.

Q Did he get down in the hallway when every seat at all?

A I don't know, but I could go there.

Q You are a nephew of Mr. Mahoney, are you not?

A Yes, sir.

Q And while Mr. Matheny was down south you went down and helped his daughter with the work of the place, didn't you?

A Yes, sir, I was down there quite a bit.

Q You are familiar with the stable, with the crib, and whether or not there are any rocks on the place around there?

A Yes, sir.

Q Did you find any rocks there on this day you were looking for one?

A No, I never found any there but I picked up a stick and beat the chain off.

Q Did you ever hear your Uncle swear?

A No, sir.

Q How long have you known him?

A Ever since I can remember I guess.

CROSS EXAMINATION BY MR. HAMPTER.

X What kind of an examination did you make there for rocks?

A I never made a particular examination.

X You don't mean to tell the jury that there were no rocks there?

A There were none there where I went to look.

X Where were you when you went to look?

A Around the cart there is where I was looking for rocks.

X Like other Bry River land, there are some rocks there are there not?

A Yes, sir, down towards the house there are plenty of them.

X You were examining the old cart there and that is the reason you were looking, you wanted to buy the cart?

A No, I wanted a chain off the cart.





BY MR. OTT: What we were talking about was the space about the stable and corn crib where that cart was - along there and whether you ever saw any rocks there when you were there.

WITNESS: I never saw any, but to tell the fact about it, I never looked for any. I looked for some right around there, around about that part there.

MR. HAMMER: Let me see if I understand you: You lost a tap off of your wagon and you went over there to this old cart to try to get a tap off of the cart?

WITNESS: That is what I said.

MR. STRICKLER: I thought you said it was a wagon and not a cart?

WITNESS: It is the front part of a wagon made into a cart. It was an old wagon once and the front part was used for a cart.

GEORGE RITCHIE: sworn, testified.

Q Mr. Ritchie, you live about three hundred and fifty yards from the Matheny stable?

A Yes, sir, I suppose that would be as near the distance as I could tell.

Q As you go to Church, which way do you usually go?

A Well, if I walked I usually come by there through the stable, and by the yard. I have no direct route.

Q That way would take you by this corn crib and near that stable there, of Mr. Matheny's?

A Yes, sir, if I go that way or through the yard. I have travelled both ways.

Q Tell the jury whether you ever noticed any rocks on the ground there about the stable and corn crib and down there towards that garden fence or not?

A No, sir, I have not noticed any rocks there. It is



nice piece of sod all around there.

Q Did you ever hear Mr. Matheny swear?

A No, sir, I never heard him swear.

Q The evening of this occurrence on the 29th of June, did you hear any voices over there?

A Yes, sir.

Q Where were you? -When you heard the voices?

A I was sitting on my front porch.

Q Could you make out what was being said?

A No, sir.

Q Was there a good deal of talking or not so much?

A Not so much. Not so long conversation that I heard any-way.

Q Do you know the general reputation of Mr. Matheny in that community for truth and veracity?

A I think it is all right so far as I ever heard. I never heard anything against any one of them, he or his daughter. They are both good.

CROSS EXAMINATION BY MR. HAMMER.

X You do not mean to say that there were not rocks around that barn yard?

A No, I meant to say I did not see any when I passed by. There might be rocks there but I never noticed any there.

By a juror: Q Did you hear the report of the gun?

A Yes, sir, I heard the report of the gun but I did not know at the time it was there.

Q I understand you never heard him swear?

A I never heard him swear. That day I heard voices there but I did not know what they said.

also please of and all around there.

Q Did you ever meet Mr. Salinger again?

A No, sir, I never heard him again.

Q The evening of this occurrence on the 22nd of June,

did you hear any voices ever there?

A Yes, sir.

Q Where were you? - Then you heard the voices?

A I was sitting on my front porch.

Q Could you make out what was being said?

A No, sir.

Q Did they sound like a conversation or was it more like

A Yes, sir, but no long conversation that I heard any-

Q Do you know the general reputation of Mr. Salinger in

that community for truth and veracity?

A I think it is well known to me as I ever heard of

anybody saying anything against any one of them, he is the

most honest man.

EXHIBIT EXAMINATION BY MR. HANSEN.

Q You do not mean to say that there were no other persons

that night there?

A No, I want to say I did not see any when I passed by.

There might be people there but I never noticed any there.

Q Do you have the report of the jury?

A Yes, sir, I have the report of the jury and I

do not know at the time it was there.

Q I understand you never heard him again?

A I never heard him again. That day I heard voices

there but I did not know what they said.

## DIRECT EXAMINATION BY MR. OTT

Q I understood you to say you did not hear very much talk.

A I heard very little talk.

Q How soon after it happened did you hear what had occurred over there?

A I did not know of it until after dark, about dark.

Q Can you tell the jury about how many voices you heard?

A I did not hear but one or two voices.

Q Did you hear more than one or two sentences?

A No, sir, I don't think I did. -- a very short conversation, all I heard of it. There could have been more as I was a little distance from them and was sitting on the porch and could not see any of it at all and could only hear.

Witness told to stand aside.

B. G. SOLE: Sworn and testified,

Q Mr. Sole where do you live?

A Clover Hill section near Ottobine.

Q How far do you live from Mr. Matheny?

A One mile.

Q How long have you known him?

A Practically all of my life.

Q Do you know his general reputation in that community for truth and if so is it good or bad?

A Good as far as I know.

Q Do you know his general reputation as a peaceable law abiding man and if so is it good or bad?

A Good as far as I know.

Q Do you know whether or not he is a swearing man?

A I never heard him swear in my presence.

WITNESS EXAMINATION BY MR. DIT

Q I understand you to say you did not hear very much talk.

A I heard very little talk.

Q Now when after it happened did you hear that had occurred

over there?

A I did not know of it until after dark, about dark.

Q Now you tell me just about how many voices you heard?

A I did not hear but one or two voices.

Q Did you hear more than one or two voices?

A No, sir, I don't think I did. -- a very short conversation.

Q Now, did I hear at all that there could have been more than one or two

little voices from them and was sitting on the porch and could

not see any of it at all and could only hear.

Q Now you said to stand aside.

A Yes, sir, I did. I went and stood aside.

Q Now, did you see Mr. Harvey?

A I never saw him near the house.

Q How far do you live from Mr. Harvey?

A One mile.

Q How long have you known him?

A Practically all of my life.

Q Do you know his general reputation in that community?

Q Now, did you see it as if good or bad?

A Good as far as I know.

Q Do you know his general reputation as a gentleman?

Q Now, did you see it as if good or bad?

A Good as far as I know.

Q Do you know whether or not he is a wealthy man?

A I never heard him swear in my presence.

Q I judge you are a man forty-five years of age?

A Fifty.

MR. HAMMER: Do you know the general reputation of Mr. Vanpelt here for truth and veracity?

WITNESS It is good as far as I know.

MR. HAMMER: Also as to his being a law-abiding citizen?

Witness Also good.

Witness told to stand aside.

A. G. GLICK, sworn, testified.

Q Mr. Glick you are a surveyor of Rockingham County and do a good deal of surveying?

A A good bit of it, yes, sir.

Q You are a farmer also?

A Yes, sir.

Q You live about four miles from where Mr. Matheny lives?

A Something like that.

Q Were you ever called upon to make a survey of a road up near his place?

A Yes, sir.

Q Did any of these surveys take in any part of Mr. Matheny's place?

A Yes, sir, in constructing the road they cut across the line.

Q Where they had no right to go?

A No, they should not have gone there.

(Question objected to on the ground that it is immaterial)

Objection sustained.

Witness told to stand aside.

Q I asked you for a map forty-five years ago.

A Yes.

Q Now, you know the general reputation of Mr. Yonah's farm for fruit and vegetable?

A Yes, it is good as far as I know.

Q Also as to his being a fair-acting witness?

A Yes.

Q Now, you are a surveyor?

A Yes, I am.

Q Now, you are a surveyor of Rockingham County and

in a road near of ...

A Yes, sir.

Q Now, you are a surveyor?

A Yes, sir.

Q Now, you are a surveyor from where Mr. ...

A Yes, sir.

Q Now, you have called upon to make a survey of a road

near the ...

A Yes, sir.

Q Did any of those surveys take in any part of Mr. ...

Yes.

Q Yes, sir, in constructing the road they cut across the

line.

Q Where they had no right to cut?

A No, they should not have done there.

(Question objected to as the ground that it is immaterial)

Objection sustained.

Witness told to stand aside.



D. N. VANPELT recalled, and testified on examination by the court as follows:

Mr. Vanpelt what kind of a gun is that? What calibre?

A It is a twenty-two calibre.

Q What make of gun?

A I don't know that; it has been re-modeled.

Q It is a Winchester rifle?

A It is supposed to be that, but the old barrel gave out and a fellow made the barrel that is in it now out of another old rifle.

Q It is a repeating rifle or magazine rifle?

A Repeater.

Q The magazine holds how many?

A Sixteen loads.

Q Twenty two long or twenty-two shorts does it shoot?

A Shorts

Q Either one can be used in it?

A No, sir. It will not shoot a long <sup>only</sup> short.

Q It shoots only the short?

A Yes, sir.

Q What use do you make of it? What purpose do you use it for

A For killing ~~rubbish and shooting~~ <sup>rats and</sup> hogs and things like that

That is about all.

Q And squirrels?

A No, sir, you cannot hit a squirrel with it.

Q This shooting occurred in Rockingham County?

A Yes, sir.

Witness told to stand aside.

J. H. VANDERBILT, and testified as examination

by the court as follows:

Q. Would you please state what kind of a gun it was that was used?

A. It is a twenty-two caliber.

Q. What kind of gun?

A. I don't know that; it has been re-arranged.

Q. It is a Winchester rifle?

A. It is supposed to be that, but the old barrel was not

and a better made the barrel that is in it now out of another

barrel.

Q. It is a repeating rifle or magazine rifle?

A. Repeating.

Q. The magazine holds how many?

A. About loads.

Q. Would you please say how many loads it holds?

A. About

Q. How many can be used in it?

A. No, sir. It will not shoot a long way short.

Q. It shoots only the short?

A. Yes, sir.

Q. What was the gun name of it? What purpose do you use it for?

A. For killing ~~game and things like that~~ *game and things like that*

That is about all.

Q. And everything?

A. No, sir, you cannot hit a squirrel with it.

Q. This shooting occurred in Beckman's country?

A. Yes, sir.

Witness told to stand aside.

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This being all the evidence introduced on behalf of the Commonwealth, or on behalf of the accused in the case, the Court, *ex mere motu*, gave to the jury the following instructions; *on denying the instructions asked on the behalf of the defence.*  
INSTRUCTION No. \_\_\_\_\_

A man can only resort to violent means of self-defence when that course is necessary to his protection from death or serious bodily harm, and he cannot do it then if he was himself at fault in bringing on the difficulty or the situation where he finds himself in danger, unless he first seeks to retire from the difficulty and retreats as far as he can with safety. The same principle governs where a defendant claims that the act for which he stands indicted was done in defence of a member of his family. If, therefore, the jury believe from the evidence that the defendant went armed to the place of J.C. Matheny to recover possession of his horse in the expectation of having ~~any~~ trouble with Matheny and entered upon the premises of Matheny with his daughters against the warning and protest of Matheny, and proceeded by one of the daughters to break <sup>open</sup> ~~upon~~ the stable door in order to remove the horse, then, the court instructs the jury, the defendant was in such fault in bringing on the trouble that the plea of self-defence, or the defense of the daughter, is not available to him to justify his action in shooting Matheny even though the jury believe from the evidence that Matheny was in the act of picking up a rock as if to throw at one of the Van Pelt's when the shot was fired.

This being all the evidence introduced on behalf of the  
 defendant, or on behalf of the accused in the case, the Court,  
 as was said, gave to the jury the following instructions *in English*  
*the instructions were in the English language.*  
 INSTRUCTIONS No. 1

I am not only sworn to report the facts as I see them, but  
 to report them in a way that is necessary to his protection from  
 any wrong being done, and he cannot do it then if he can himself  
 as fairly as he can, on the difficulty of the situation where he  
 finds himself in danger, unless he first seeks to retire from the  
 difficulty and retreat as far as he can with safety. The same  
 rule applies to a witness where a defendant claims that the act for  
 which he stands indicted was done in defence of a member of his  
 family. It, therefore, the jury believe from the evidence that the  
 defendant was under the impression of L.O. Mahony to recover  
 possession of his horse in the expectation of having *W* trouble with  
 Mahony and retired from the presence of Mahony with his horse  
 against the warning and protest of Mahony, and proceeded to use  
 the language in which <sup>the</sup> the act was done in order to recover the  
 horse, then, the jury consider the jury, the defendant was in  
 such a state of defence on the trouble that the plea of self-defence  
 as the defence of the daughter, is not available to him in justification  
 of the action in causing Mahony even though the jury believe  
 from the evidence that Mahony was in the act of taking up  
 arms as to three of one of the Van Pelt when the shot was

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INSTRUCTION No. 2

An assault with a deadly weapon with intent to maim, disfigure, disable or kill, if not justifiable on the ground of self-defence or the defence of a near relative, must be either malicious or unlawful assault with such intent, within the meaning of the charge given to the jury. If it is committed in the heat of sudden passion arising on a sufficient provocation or in the heat of mutual combat, it is an unlawful assault, otherwise a malicious assault. The difference between malicious assault with intent to maim, disfigure, disable or kill, and unlawful assault with the same intent is the same as the difference between murder and voluntary manslaughter. The lower grade of the offence is characterized by the absence of malice and exists only when the act is done on a sudden heat arising in mutual combat or on a sufficient provocation.

INSTRUCTION No. 3

The Court instruct the jury that if they have a reasonable doubt as to the grade of offence of which the accused may be guilty, they should resolve the doubt in favor of the accused and give him the benefit of the lower grade.

To the giving of which instructions, and each of them, the accused, by counsel, objected; but the Court overruled said objection and gave said instructions, and each of them; to which action of the Court in overruling said objections to said instructions and each of them and to the giving of said instructions and each of them, the accused, by counsel, excepted.

INSTRUCTION NO. 5

An assault with a deadly weapon with intent to maim, disfigure, disable or kill, is not justifiable on the ground of self-defense or the defense of a near relative, must be either maintenance or unlawful assault with such intent, within the meaning of the charge given to the jury. If it is intended in the heat of passion arising on a sudden combat or in the heat of mental conflict, it is an unlawful assault, otherwise a malicious assault. The difference between malicious assault with intent to maim, disfigure, disable or kill, and unlawful assault with the same intent is the same as the difference between murder and voluntary manslaughter. The lower grade of the offense is characterized by the absence of malice and exists only when the act is done on a sudden heat arising in sudden combat or in a sudden provocation.

INSTRUCTION NO. 6

The jury instruct the jury that if they have a reasonable doubt as to the grade of offense of which the accused may be guilty, they shall receive the benefit in favor of the accused and give him the benefit of the lower grade.

To the extent of which instructions, and each of them, are amended, by amendment, objected; but the court overruled said objection and gave said instructions, and each of them, to the jury of the Court in overruling said objection to said instructions and each of them and to the giving of said instructions and each of them, the same, by counsel, excepted.

~~Thereupon the accused, by counsel, tendered to the court the following instructions:~~ *The following are the instructions asked on behalf of defendant, which the court refused.*

(1)

The Court instructs the jury that if they believe from the evidence that the accused at the time he shot Matheny, acted under reasonable belief that his daughter, Mrs. Hisey, and Miss Van Pelt or either of them were in imminent danger of serious bodily harm at the hands of said Matheny and that to avoid serious bodily harm being done them by said Matheny, it was necessary for him to defend them from an assault, which was apparently imminent, then they are instructed that the accused was justifiable in defending them by such means as were reasonably necessary, even to the extent of shooting said Matheny, and they must find the accused not guilty.

(2)

The Court instructs the jury that the accused is presumed to be innocent until every <sup>fact</sup> essential to his conviction is established beyond all reasonable doubt, and to the exclusion of every reasonable hypothesis consistent with his innocence.





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3

The Court instructs the jury that if they believe from the evidence that Matheny did any act or that there were any circumstances brought about by him of such a character as to afford the accused a reasonable ground for believing that Matheny designed to kill accused or either of his daughters, or to inflict on them or either of them great bodily harm, and there was imminent danger of his carrying such design into immediate execution, then, under these circumstances the shooting is excusable, and the jury must acquit the accused.

4

The Court instructs the jury that if they believe from the evidence that the accused with his daughters, Mrs. Hisey and Miss Flora Van Pelt, were upon the lands of Matheny without authority, and that Matheny approached them and ordered them to leave his premises, and the accused and his daughters, did not do so, even in that event, the said Matheny had no right to resort to force to remove them. And if they further believe from the evidence, that Matheny then further approached Mrs. Hisey in a threatening manner and struck at her with a Curry Comb, and declared his intention to kill all of them and was stooping in the act of picking up a rock to strike Flora Van Pelt, and if they further believe, from the evidence that from the attitude and manner of said Matheny, the prisoner believed that the said Matheny was going to kill or inflict serious ~~an~~ bodily injury upon his said daughter, he had a right to resist such an attempt and meet force with force to save his said daughter from the expected bodily injury, and if the injury to said Matheny resulted from an attempt on the part of the accused to de-

2

The Court instructs the jury that if they believe from the evidence that Hattery did not or that there were any circumstances which would lead to a reasonable ground for believing that Hattery believed in the guilt of either of his daughters, or to believe that either of them were guilty, and that there was sufficient evidence to justify such belief, the jury should find Hattery not guilty of the crime charged.

3

The Court instructs the jury that if they believe from the evidence that the accused with his daughters, Mrs. Hattery and Miss Hattery, were with the body of Hattery without any other person, and that Hattery approached them and ordered them to leave his premises, and the accused and his daughters, did not do so, then in that event, the said Hattery had no right to resort to force to restrain them, and if they further believe from the evidence, that Hattery then further approached Mrs. Hattery in a threatening manner and struck her with a heavy club, and declared his intention to kill all of them and was stopping in the act of striking her, then the said Hattery was justified in using such force as he deemed necessary to protect himself from the attack and manner of said Hattery. The Court further instructs the jury that if they believe from the evidence that the accused with his daughters, Mrs. Hattery and Miss Hattery, were with the body of Hattery without any other person, and that Hattery approached them and ordered them to leave his premises, and the accused and his daughters, did not do so, then in that event, the said Hattery had no right to resort to force to restrain them, and if they further believe from the evidence, that Hattery then further approached Mrs. Hattery in a threatening manner and struck her with a heavy club, and declared his intention to kill all of them and was stopping in the act of striking her, then the said Hattery was justified in using such force as he deemed necessary to protect himself from the attack and manner of said Hattery. The Court further instructs the jury that if they believe from the evidence that the accused with his daughters, Mrs. Hattery and Miss Hattery, were with the body of Hattery without any other person, and that Hattery approached them and ordered them to leave his premises, and the accused and his daughters, did not do so, then in that event, the said Hattery had no right to resort to force to restrain them, and if they further believe from the evidence, that Hattery then further approached Mrs. Hattery in a threatening manner and struck her with a heavy club, and declared his intention to kill all of them and was stopping in the act of striking her, then the said Hattery was justified in using such force as he deemed necessary to protect himself from the attack and manner of said Hattery.

defend his daughter, Flora from serious bodily injury at the hands of Matheny, which was then imminent, then the accused was justified in shooting Matheny and is not guilty as charged in the indictment.

3

The Court instructs the jury that if they believe from the evidence that the prisoner, with his daughter, Mrs. Hisey and Miss Flora Van Pelt, were trespassers upon the lands of Matheny and that they ought to have promptly left when ordered to do so, still this did not justify an assault upon them, or either of them, even though Matheny could not otherwise effect the removal of them from his lands, and, if the jury further believes from the evidence that the said Matheny did start towards Mrs. Hisey and strike at her with a Curry Comb and declared his intention to kill the accused and his daughters, or either of them, and was in the act of carrying such declaration into effect and was then and there stooping over, reaching for a rock for the purpose of striking Flora Van Pelt, then the prisoner was justifiable in defending her from a tack, and if he believed that her life was in danger or that she was in danger of great bodily harm at the hands of Matheny, then his right to defend his said daughter extended to the killing of Matheny, if necessary to protect his daughter, and he is not guilty.

To the giving of which instructions and each of them the attorney for the Commonwealth objected, which objection the court sustained, and refused to give said instructions, or either of them; to which action of the court in sustaining said ~~objection~~ objection of the Commonwealth and in refusing to give to the jury said instructions as tendered, the accused, by counsel, excepted.




Thereupon, after argument being heard, the jury retired to consider of their verdict, and, shortly thereafter, returned into court and rendered the following verdict:

"We the jury find the accused, D. W. VanPelt, guilty of unlawfully shooting Joseph C. Matheny in manner and form as charged in the indictment and ascertain his punishment at confinement in jail for six months and a fine of \$200.00. H. L. Burtner, Foreman."

Thereupon, the accused, by counsel, moved the court to set aside the verdict and grant a new trial on the grounds that said verdict was contrary to the law and the evidence, which motion the court overruled and entered judgment upon said verdict in accordance therewith; to which action of the court in refusing to grant said motion and set aside said verdict, and in entering said judgment, the accused, by counsel, excepted, and prays that this his <sup>First</sup> Bill of Exception may be signed, sealed and enrolled and made a part of the record in this case, which is accordingly done this 12<sup>th</sup> day of September, 1919, and within 30 days from the date of the entry of said judgment.

J. H. Haas

Judge. 

The first of these is the fact that the law is not  
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