D. n. Varfell

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 represent Certain incline time asked on whose of the accused Which are set und in brief of the accused Which are set und in brief of respirations 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 proneeded by one of the daughters to break 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 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.

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INSTRUCTION NO. 2

An assault with a deadly weapon with intent to main, 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 meming 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 main, 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 sot 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 Lad day of September, 1919.

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J.M. Haas

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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 dendered to the Court the collowing
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 or 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.

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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 rook 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, Flore 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

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the Source transferrate the July that if they believe from the auth his yeald ,ath , systhans wid dily beanes and into annihire Firm Van Bill, were open the lands of Matheup without collection, previous and the same and day described the described and the same areas failt . shrotien of more swalled rairest pain to him trails account multiplied and the first has about your will not be described and as no purposed for the sair of galgoods our and real of planting as as mer'l aveiled redrest padt to the wilet on south stirms or more the welcome that their aid abstitute and minutes of each limit sprin named by anything the olders again the metal targetter, by help a will be from mid my deposits on much bettermin mentals then ad great second and another meet and in dangered the meeting and in the contract of the ADDRESS OF THE PARTY OF THE PARTY WILLIAM STATE AND ADDRESS OF THE PARTY OF demonstration are

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The fact the fact the prisoner, with his deapher, dree filler and dies were the second of the fact the fact that the fact that the fact th

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 prisioner 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 __ day of September, 1919.

JUDGE.

J. M. Haas

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D. M. Varpett 3, aug. Cunt 199.

BE IT REAL BERRED that upon the trial of this case the Commonwealth to maintain the issue upon its part, introduced the following swidence:

JOSEPH C. MATHENY, eworn, testified:

- Q By Mr. Strickler: You are Mr. Joseph C. Matheny?
- A You, sir.
- Q How old are you?
- A Sixty-three.
- Q Where do you live? A At Ottobine, at Restaughten Country
- Q Did the defendant, D. N. VanPelt, who is sitting hore. shoot you sometime recently?
 - A Yes, sir; on the 29th day of June, 1919.
- Q Just tell this jury how it has pened that this shooting occurredi
- A Well, sir, I left this town on New Year's day and I came home on the 18th 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.
 - 2 How long had you been in South Carolina?
 - A Ever since lest 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, nometimes.
 - 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.

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- Q The horse got on your ground?
- A Yen, sir. I got sod below my house.
- Q And you penned the horse up?
- A Yes, sir.
- Q In your stable?
- A Yos, sir.
- Q What time of the day was that?
- A Rleven o'clock.
- Q Eleven o'clock on the 29th day of June, 1919?
- A Yes, eir; I look ed 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 who said something to Mrs. Taylor --
- Q That is hearsay. You do not know smything 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 VanPolt and his two girls.
- VanPolt and his two girls coming to your place to get the horse?

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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-orid; 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 snything in his hand?
- A Yos, 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 rook 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.

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Q How far was he from you?

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- 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 Van Pelt 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

- The cold has girls to take the burns out?
- I you, air. I thought when he got the horse he would throw any the relative yet.
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- A Min SEATS and then filedy.

- 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.

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- 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-orib"
 - A Yes, sir, that is the corn-crib.
- Q From the stable and corn-orin in which direction is your house?
 - A From the stable, in this direction -- south.
- Was there a lot in which there was corn at that time which comes up close to that corn-crib?
- A Yes, Bir. There is the corn-orib 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-orib, and there is your house?
 - A Yes, sir.
- 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?

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- 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 spake of ourrying 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.
- 2 You were not, then, at the stable when you curried 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. Van elt 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 Tes, sir, on the cross porch.

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- A Yes, eir, where I was currying my horse.
- 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 halfway -- I am not certain of that -- from the road to the stable.
- 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 oushion there (indicating).
 - Q Does that oushion 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.
 - A 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 enswer anything; they just bolted sheed.
 - Q Did they go together then, walking three abreast, or did

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A Yes, sir.

By him going to the left, emplain 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-orib, 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.

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.

Where were the girls?

A Close to the stable door.

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- 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 thecorn-crib.
 - Q About this place? (indicating).
 - A Yes, sir; somewhere along there.
 - Q About how far from him?
 - A Twenty-five or 30 yards.
 - 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.
 - 2 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

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These how far year you from his then?

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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-orib 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-orib?
 - 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 corner b or did you come further down?
 - A I stoodright 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

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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

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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 about 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.

A You are getting a little too fast and I will ask you to answer xxxxxxxxx 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. Bir.

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?

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A I see awar yaxan from him when he fired.

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A KHELLERY BELLEY

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A JUROB: Nere you alone enough to them to hit them with

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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 hot anything but a thief and a liar.

A 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 statted 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 dumper I ment to one it now. (Playare hands to jury) of the hand the chart what happened just nother the first of the what?

on the right hand a side of me, and met am pirls and all of thems on the right hand a line and and the pirls and all of thems out. After he got out olose to the bors, I teld him that he whink the white the lot of an illur.

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- A No. sir, I moved down between the corn-orib 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.
 - O 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 snything further to kim?
 - 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.
 - 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 The Carden after they attend over with the norms.

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A Yes, Bir.

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 and fire on Mr. Hammer like Van Pelt did on me, I think, it would stun him.

Did it cause you to fall down ?

A No. sir, it cause me to step around was 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-might 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 be not?

A 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.

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A fee, ate, heavy rocks.

- O 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 men. 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.
 - In which garden I understand there is now standing corn?
 - A Yes, sir, roasting ears.
 - 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.
- Is your front porch in such position that it commands the view of the road alimost down to the VanPelt house?
- A Very near it. There are some trees there and you can not see slong 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 350yds. from my house. I stepped it yesterday.
 - Q How far does G.W. Matheny live from you?
 - A Something like 300 yds.

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A. He lives Mio yes. Has purch in Amoyes, from my levers. I whereast it yesterday.

| Now far inos Q.W. Hotheny live from your

A Sussissing like 300 year.

- Q Ison't there a Mr. Woseph Miller, a bachelor, near you?
- A Yes, sir.
- Q How far does he love 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 yde, South He is a sadler by trade. It is that far from my house to his shop.
 - 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 Not sir; those are the only ones. BY MR. STRICKLER:
 - Q You say, just before you received the shot that you had turned your says towards Van Pelt?
 - A Yes, sir, had turned right squared around to him.
 - Q Were you welking away from him prior to that time?
 - A No. Bir, 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 merder 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.

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- 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 Ho, sir, not to the side of either party.
 - You made no threatening motion?

A No. sir, I made no threatening motion m 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. Strickher in the position of Van Belt to indicate how Van Pelt was standing at the time ho 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 mean 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.

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A T was standing agency to him.

A They told, and you stopped them right there. You objected to their tolling that they objected to Van Pelt's taking the gun but that Mrs. Van Pelt to take the gun.

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

X How do you know that was truo?

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

E 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.

hearing

I You testifiy here that your girl was within 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.

You heard your daughter testify at Dayton?

A. Yes, sir.

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I 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 snything. 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 mak 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.

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

good if he would go in your came 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 melasses. He didn't do anything but have that came out and he taken half of the melasses. I went down and asked him for the melasses or his wife and she didn't make me an answer. You wouldn't

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the to near peace bean a date where there bear a me

- X As neighbors did you visit back and forth each others homes?
 - A His children have.
 - I Which children?
 - A His children.
 - I What children were they, name them?
 - A Florrie has been to our place several times.
 - I 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.
 - I You did not know that of your own knowledge?
 - A Mo. sir.
 - X You were evidently a pretty angry men 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 Mo, 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.

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A How man I were note. They was my girl wan up at were

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I des for wars you from your bound by there;

A few heaterst and fifty gards among there, but I was not up

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

A Mo. sir. I did not.

X Dian't I sek 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 wheres?

A I power called them whores.

X And theres?

A There wasn't an oath swore 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 coused 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 homeand be a man. A man will stay off a man's land, if he is a man.

I Did you think it was a neighborly and manly and right thing to do to look 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

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A Then mis effort the shooting. He taken up come tone.

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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 reakon the neighbors around there told me.

I Who told you that he had been doing anything like that during the last mix months?

A Why, you will find out after a little.

MR. OTT: Toll him.

4

WITHESS: 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. Vem Pelt was trespossing 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?

WITHESS: No. sir: I had just come home.

MR. OTT: What Mr. Hemmer 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 5 o'clock in the evening. I came home just the day before the shooting. I did not hear this before that.

HR. Off: Mr. Hammer wants to know whether you had and complaint before the shooting as to VanPelt's stock trespassing on you: had you? Had anybody told you?

WITHRES: 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 want to South Carolina?

WITHESS: 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 wan there by herself, and she had to go out three and four times a day drive his stock off. windles to the transfer to be the transfer to all there at the ten and the ten at the ten and ten and

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WISHERS: Year and the has been trouponter on an all the time; he has been duing to for years. He has always been mater it.

I was down to louth daraline when the girl men there is berealf, and she had to go out three and four time a day drive his stook off.

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

WITNESS: Yes, sir, efter the shooting.

- X You say you were where when you first saw VanPelt and his daughters?
 - A Where wee I?
 - I Yes, sir.
 - A I was in my yard, sround 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.
 - I You mean some people coming from War Branch?
 - A Yes, sir.
 - I When did you find that they were not branchers?
 - A When they opened the bars and came in the orchard. I went

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A What they sponed the bars and owns in the oronard. I went

back.

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 trospassing 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.
- A 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!
 - I You were not, were you?
 - A Aint you afraid of a bullet in your head?
- I If I was, I don't think I would have walked down there some 30 staps towards him; I would have walked off the other way.
 - A I did not walk up to him.
 - X What aid you do?
 - A I was standing there talking to his girls at the corn-crib

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divo-ares whe was the girls and no but of the continue to I

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

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 giles 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 Mry River?
 - A Four miles.

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- X What creeks go along by your place?
- A No creeks. Briery Branch in 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 Greek soil is it?
 - A Part of it is.
 - X Not really where you were when this difficulty occured?
- A Yes, sir, right where I was there is a branch there that divides the land and runs clean up the ridge and comes down to Bever Greek.
 - X Where your house is is a Alluvial land?
- A There is nothing there but a pond. The only water there is a pond.
- I How close is the channel of te 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.
 - I 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

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- I The creek never overflows your land;
- that heaps all that water southwest from there are not have that branch rocks and the branch action there are not that that that that the that there are

no rooks there anyway, no rocky land. It is sod. I never plawed 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? WITHRSS: 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 rooks in the upper part of the orchard, but there are not many there for I wleaned 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 crohard.

I There are some rooks 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 aid any cursing of these girls that day?

- A Mobody done any cursing. I told you.
- K Hobody?
- A Nobody did there.
- X You did not curse them thera?

A No. sir, I did not. I am no swearing man. You can not find a man in Rookingham 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.

then found their angree, no roady land. It is end. I never placed that Junt but forty yours. I have no their forty forty found no their found form for the first out to the found their to the first and their to the ordered not there?

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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 Moters?

A Yes, sir, I told him that and I don't dony 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 My of that if Van Pelt would give you \$180.00 and pay the costs of this procedution you would not appear against him, is that right?

A I told bim 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 crimmal. There are a lot of people that way and I did pity them. A gentlemen 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 manpy whatever after the way he has acted.

I 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 may it, he was hard up.

I 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

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thing for every man is to tell the truth and never take up for a fellow that will lie. I won't no it.

X fou 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: Den't let us dwell on this. Assualt and battery is a private injury as well as a public of ence, and as a private injury he has a right to settle it. Be has a right to bring suit in court for damages for the assault and battery.

WE. HAVEE: It was this prosecution that he was aske 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.

I Did they have the Moor 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-orib.

X You tried to prevent them from opening thedoor?

A No. sir, I did not.

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

A No. sir, there was no rock there.

I 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 Hrs. Heisy or Miss Flory Van Pelt " damn whores" or "damn bitches"?

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

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A You ald not need thru, Hatey or like Flory Van Pult - dame.

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A 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. mir, 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 glanos?

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

X You heard the doctor may 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 Felt because of the way the hullet came in on your flesh?

A It did not come in on my flash but hit the tope 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;

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

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the horse or say anything to you at all?

- A No. sir. he did not.
- 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.
- In other words, you made this offer purely as you say out of pity you had in your beart for Mr. Van Pelt and his children?
 - A Yes, sir, for his femily.
 - 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 washn'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.
 - A Were you turning as Van Pelt shot you?

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A were you terming as Yan Polt 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.
- 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.

You turned around?

A Yes. sir. I turned around.

MP. 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?

WITHESS: 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 whom he shot you?

WITHESS: 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. and fully ad many horsess became annal has I am a

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WITHINGS: I told the girls, I says, " this the till here to a print the state, and the state that the state the stat

THE COURT: But when he shot you, you said this morning a moment a go, 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?

WITHESS: Yes, sir.

" 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 mear 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 ofbyou?
- 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.

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

A Yes, sir,

Q That is correct is it?

A Yes, sir.

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 hat 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

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. In might have been off a little.

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

WITHESS: 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.

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Edith Matheny, sworn, testified:

- Q You are Miss Edith Matheny, a daughter of Joesph 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.
 - This shooting took place in Rocki gham County?
 - A Yes, sir.
 - I 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.

Edith Mattery, seems, testificati

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- Q Where was your father?
- A He was badk 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.
 - Did you remain there at the house?
- A Yes, Bir. I went on bakk 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.
 - A 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.
 - 2 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.

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to get out and stop and stop of father get up there he tell them

- 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.
 - Did you hear any loud talking?
 - A No. sir.
 - Q Did you hear any swearing?
 - A I hear no swearing at all.
 - Did you hear the gun go off?
 - A No. sir. I did not.
- A 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.

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- A Just on the collar bone, here.
- 3 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.
- 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.
 - You did not hear the gun go off, you say?
 - A No. Bir.
 - 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.
- 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.
 - Had the VanPelt stock been trespassing on you through this

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summer?

- A Yes, sir. I had run off their oow 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.
- 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.
- 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.
- 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.
- Some statement has been made in reference to a statement that alleged to have been made by you mx 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?

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Van Pelt horse up?

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

What was your father doing when Van Pelt came?

- A He was ourrying 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 wrinting 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.

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- 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.
- And there is a garden with a fence around it that comes up about here? (Indicating.)
 - A Yes, mir.
- Q From the porch there how far do you say it is up to this orc. and 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.
- A 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 to 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.

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- O Until after the shooting?
- A Ho, sir.
- Q What did you hear after the shooting; I understood you to say you did not hear the shof?
- A I know it was after the shooting because father was coming down the path then. I did not hear the shoot 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.
- What ver 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 Pett or Van Pelt say anything further to your father?
 - A After he stafted 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.
- Your father said someting 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.

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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"?

WITHESS: 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?

WITHESS: 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 of liar?
 - A No. sir. I am not positive about ki 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 Yen, 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.
- How close was that to the road?
- A I do not know. I have no idea.

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renging on the front porch.

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- X About how far?
- A I have no idea.
- I As far as from here across this room?
- A Much further than that. (40 feet)
- You were in plain sight of the road, were you not?
- I was. A
- I You were in plain view of theroad 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 wann't a word passed about the horse.
 - I 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. Taybor's?
 - A In the afternoon.
 - X What time inthe 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 smybody if they would let Sometimes they don't let you try , you know. I. You had not been visiting backward and forward had you?

 - A No. sir.
 - I Hadn't you visited over there just before that shooting?
 - A No. sir, I had not.
 - 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.

THEORY SELECTION NAME OF THE PARTY OF THE PARTY OF then not used, made and to their state of second and the the side at the ordered the same and same to make the party was the and . County of the same being byon a figure wants pain the all the experience had a sent to the sent to t THE RESERVE NAME OF THE PARTY AND ADDRESS OF THE PARTY AND THEORY OF PERSON NAMED AND POST OFFI MARKETS AFTER ATTEMPTS ten yen mid the Van Beltin; We Tim Feltigirle on good nometrant that he let got til , you know and state town hartest may readed The state of the course related to the same next force one my on beauty tody bases on the finers you had under Chapter than I payent them.

You nor your father had told them you had locked up the horse?

A Wo, Bir.

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 Pelt's horse looked up and would lock up her cows if she did not pen them up?

A I said he might pen them up.

How far does Mr. Taylor live from ou? I don't know just how far it is; just a short distance.

I As a matter offact, 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 promps me not to and I hav not answered it yet.

> MR. HAMMER: I will not press for an answer. MR OTT: Go shead 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.)

I You did not tell your father that Miss Van Pelt and her sister, Mrs. Hisey and Mr. Van lett were out ther getting the horse and on period and may come best and where you may not one

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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 curry ing 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: Wou 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 anythingabout having mistaken Mr.

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 - ME. OTT: WOR MEN. MIN. Hisoy whom you may "Homelev"
 - X for never and engilis, not did your father shows toutings

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.
- I 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.

Vanisht and his two aunghters for "brenchers," and not recognising

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- 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?
 - I 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.
- I 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.
- A And they made no threats and did matih 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 a 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 may 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.

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no parton for me I sad fin il brood even bluce I maem I A nel Amera film I .read bin I wond I tade tod maidryms or us can white and 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 reckong 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.
 - I When?
- A Mrs. Taylor and I went to Spring Creek mns 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.
 - I 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

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A YES, SIX.

I YOU and not not ongthing to Mr. Van Post that Jay?

A I look the ose down the amount time it was in thorn. The

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.

I You haven't any good will towards the Van Pelts or Mrs. Heizy 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?

there shows and naked them to keep the see out, that I dealed has every more than and one show and the same that I had my own wolf to day then you you'll not then were and but I want't nake that I then you'll not down with them.

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A And what did your father my when in looked that heren

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- O 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 at he did that?
 - A He did not say a word about it.
- I 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.
- I And he went to talking in a pretty loud manner too, did he not?
- A Od course, you may know he talked a little bit louder the than usual.
 - X And he called these girls whores, didn't he?
- A He called them -- he said something to Mr. Van Pelt 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 Pelt?
 - 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.
 - I They were going through the orchard?
- A Yes, sir, they were going out and father was coming from the mink stable.

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 - A He sid not may a word about it.
- I IN Just flow and when he new them go to the stable and wint que to the stable and the stable and the fine out took the stable them to get their property.
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 - A I do not know what he doubt do that sould have them; he was too for the contract the same than
 - You new amount X
- A ser was country down the back path, coming down by the garden
 - Threaters and discoult the ores well I
 - The unit stuble.

Hadn't you heard him say the same thing before that time?

THE COURT: That was after the shooting?

WITNESS: After the shooting.

I I am asking what happened before the shooting.

A There wasn't so mauch 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.

I Though your ears were open you did not take the trouble to stand up and see what occured 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.

I 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 gw not on the porch at all?

A No. sir. I was out on the porch. There is 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.

Tents and suched paids some off you and aread one stabilly for the chart the charting?

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A No. air, I was out the perch. There is a chown airs to make it account was out there no matter what others try to make it account.

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A Yes, sir, I was.

4 Who took down the cross pieces from in front of the stable

- A The girls.
- X Who brought the horse out of the stable?
- A I don't know who did. I guess the girls did.
- K 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 gills walk up to the stable door.
 - X You were still standing, them?
- 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.
- I 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.

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Q Did you see Mr. Van Pelt when you think your father was standing at the corn-orib?

A I say 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. QTT.

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

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 ak 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? --50--

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A No. other

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A I speak to everybody, but it soom 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 form 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 assiciate, 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 guesa they do, or should know it.
- X You have your reasons for that?
- A Yes, sir, I do.
- Mr. Hammer 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 snything at all when he started back there.

X Mp. Hammor 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 appear to sent the everybody, but it seem that they just since a test test and the sent test appear to the sent test appear to the sent test appearance the sent test appearance the sent test the sent test appearance the sent test the sent test appearance the sent appearance the sent test appearance the sent appearance the sen

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t Her Hemmer has telles though your father Tighting; you never beard in all your life of your father fighting anybody?

all to recommen former I A

Q He generally gets out of the way?

A I don't think anybody needs any self-defense with him; that is all useless.

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.

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 wan went out and got the bridle and put it on the horse and I opened the wars for him and he want on.

Q I understand you deny that you told Mrs. Taylor about your father doing any damage to their cattle?

A & 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 MIXEE 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.

The generally rets on of the way?

I don't think amphody meads any self-defence with him; that it all meads we will manage the black that

and need home and foot, after he was shot and some day the best just been then the was her

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of wednesder to seeker in seeker to see throwing roots to be noted to the note to be noted.

A There were no rooks up there.

orni eres and near month and the state of the kind?

I den't much of that. I den't know of his throwing rooms.

I You have heard of it have you not?

A I am not going to say so much about it for I don't remember.

I Haven't you heard of your father throwing rocks time and again in mix-ups? (Objection sustained.)

I Did you say your father was not mad after he was shot or that he was mad?

I foun 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.

When he was denouncing Mr. Van Pelt 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 rad them I don't. (Objection sustained.)

Witness told to stand aside.

DR. W.W.KOONTE, sworn, testified.

Q You are Dr. W.W. Moontz of Spring Greek?

A Yes, sir.

Q You are a practicing physician there?

A Tes, str.

Q Did Jeseph D.Matheny call to use 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 would over the collar bone near the sternum or brest bone.

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This did you find to be the matter with him?

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- Could you tell from the would what cause it?
- A It was a bullet wound, I thought.
- Q You think it was a bullet wound?
- A Yes, air, I am auticated it was.
- Q Was that sound immediately over this coller bone here?
- A Year 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 G. MATHEMY: Yes, sir, it was the left side.

- Q There is very little flash there is ther 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 out 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.
 - or any artery?
 - A Yes, sir.

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A 16 probably if it have exerted the judice vein.

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- 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 erteries or a jugular vein it would be serious.
 - It would be a bad wound?
 - A A serious wound.
 - 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.
- 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 neak three-fourths of an inch long.
 - Q A little burnt place on the side of his neck?
 - 4 Yen, sir.
- And you think that was caused by the ball as it entered and as it left?
 - A Yes, eir.
 - I You think the bullet passed out of the body, probably?
 - A Yes, sir.
- But to may 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 Depute on where it strikes, of course, it strikes a beginn a bettern.

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MR. HAMNER: Doctor, 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.

X You have done nothing since then?

A No. sir.

Witness told to stand uside.

MR. STRICKLER: That is the Commonwealth's onse, your Honor.

Thereupon, this being all of the evidence introduced or offered to be introduced by the Commonwealth to sustain the indictment, and having, by its Attorney, rested, the Defendant, in his defense, introduced the following:

FLORRIE VAN PRLT, sworn, testified:

- 4 By Mr. Hammer: How old are you, Miss VanPelt?
- A I am twenty-two.
- 2 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.
 - What was done by you or any other members of the family?

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- iff Mr. Bearer: New old are you, Minn Vanighti
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- I How for does your father live Mr. Joseph G. Hackeny:
- a to refresh a sucher I ; sometable and soy first gland new I a selle. I then I should a quoriter of a selle.
 - on the day of this tronble up there, when did you first miss your horself.
 - Anola'o a roods naw it asonque I &
 - rations not to another regio per to man by and any fact by

A The children went to look after it, went up and down the road and the new road to find it.

- 4 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 maked her if she had seen the horse, and she said that Edith Matheny had come up to her house and told about it.
- You cannot tell what she told. You received from Mrs. Snyder information that the horse was where?
 - A Up at Mr. Jos Matheny's penned up.
 - 4 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, den'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.
 - 2 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).

A The obligate week to look after it, west up and down the

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there there will be troubled; but his supe "se has got to new the fact to him and the tree to him the fact to him the fact, "I see going to go, too"; and we sent with him.

O IN this the gun your father had? (Froquetag gun).

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Q Now, then, on that day when your matter ents for your father to folke the your father to foke the con finnelf, why was he take .

· Lional Hammer ()

- 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 want 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 shead of them.
 - You were in the lead?
 - A Yes, sir.
 - Who was next?
 - A Bessie.
 - 4 How far were you in front of Bessie?
 - A No distance.
 - 1 When you speak of "Bessie" whom do you mean?
 - A Mrs. Hisey.
 - 1 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, Bir.
 - Q Why was that?
 - A The trees sort of hid Papa.
 - 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.

C DER you my last the the horse?

A Yes, sir, I sent up the two horse.

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A description together until we got we the barn.

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- 4 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. Futher would not have fired the gun on him if he had not tried to hit me with a rock.
 - 4 Had you gotten the horse out?
 - A About that time.
 - Q He had tried to hit your slater with a curry-comb?
- A Yes, sir; he had a curry-comb in his hand and an old rag.
 - Q Did he hit your mister 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 may 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.

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THE COURT: Bid he tell you not to come on the place? WITHESS: Yes, sir, he kept hollsring. "don't trespass

- Q What cles did he say?
- A He kept calling these numes over and over again.
- Q What else?

A I reakon 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?

WITEESS: 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 tresepssing?
- 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.
 - 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 COURTS DEC 16 to Large and to once its state of the s

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Q Miss Van Pelt, there has been something said here that Mr. Matheny said something about whores and while I den'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.

has been born, I want to see their form has Color.

Q After the shooting there what did Mr. Matheny do?

A He went funning around the garden fence and said, "I will kill you get."

- Where did you and your sister and father go?
- A We went home.
- a 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 Maith Matheny?
 - A No. sir, she wann't on the outside of the house.
 - Q If she had been on the front porch could you have seen her?
 - A Yos, sir, certainly.
 - 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 futher went towards the road.

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CROSS EXAMINATION BY MR. STRICKLER.

- X You may 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.
 - A He had a curry-comb in his hand?
 - A You, sir, and an old rag.
 - I He did not throw that ourry-comb at your sieter?
 - A He wont 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 pareighborhood there?
- A It was down alose to the garden fence, not next to it but it was alose to the garden fence that he was reaching for it.
 - I How his was that rocky
 - 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; paps and Bessie seen it.
 - I 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 aloser than either of the others to hid?
 - A No. mir; I was at the atable.

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. and ere I were the stable.

I 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, mir.

- I 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 sistor Bessie went through behind you?
 - A Yes, sir.

MR. OTT: The bars are not exactly of the stable.

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.

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X When you started to take off these pieces where was Mr. Matheny?

A That is when he was going to hit Mrs Hisey with a curry-comb.

- I Mrs. Hisey was between the stable and the road?
- A No: someting like this more. (indicating)
- I You were here (indicating)?
- A Yes, sir.
- I 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.
- I Your father was there close?
- A Tos. sir, he was there close.
- X Matheny's house was down this way, someplace?
- A Yes, sir.
- Z Where was he, in here? (Indicating.)
- A I can not tell you; he was dancing 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 grab for the rock, and father said he should not hit one of us girls with a rock.
- X He did not may be was going to hit them with a rock, did he?
 - A I don't know what he said.

- A bear you wanted to toke out these places where were
- A Size teril ern tid of guing new of man of raily A . dime-grave
 - I How. Himsy was between the stable and the ready
 - (Not somewhat liles this more, (indicating)
 - I los were Nere (tollonting);
 - AND VIEW IN
 - A And whose was pour father as that they
- A should strong to antiquitat) . wheat of process to
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 - . How the less is a good place from the shorts.
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 - vers , say A
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- a I was not tall you; he was denoted mound there everywhere.
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 - the sair, I did not our the court,
 - There speed a name and all approved Supplied with one told. I

 - A death and may he was going to hit than with a rook,
 - . I feel't know what the maid.

- X Hd 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 at at home.
 - X Did he swear my there that day?
 - A I think he did.
 - I What were some of the things he said?
- A He said. "God-dam" for one thing. I don't know what all he said. He spit them out as fast as he could.
 - I He did not throw the curry-comb?
 - A He stuck at her with 11.
 - 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.
- I You did not see any rock and did not see snything in his hand but the curry-somb and he did not throw that at anybedy?
 - A He struck at her.
 - X what did he may when you were getting the horse out?
 - A "There is your horse".
 - I He said. "There is your horse"?
 - A Yes, sir; he did not say, "get it out".
 - I He said that before the gun went off or afterwards?
 - A No; I don'tthink he said that before the gun went off.
 - I 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.
 - I You were at your horse; where was your father when he

- Tille

- Test him would were seven for him M. H.
- A I don't bear what you wall it. It seconded like sweeting

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- A Do you know what surething thy
- a I have big on a to a name of the I never hears and and I do
 - I Did to swant our there that A
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- A Me and a word there are the feet of the art of the art of the art of the could.
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 - I He well, There is your herse't
 - "Int. Bir; be did not may, "get it out".
 - I He said that butter the gun cars offerenday.
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 - Toldara and to two twods should and d'ament I
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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).
 - A About how far from the stable was the apple tree?
 - A Not any further than from here to the corner over there.
- I 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.
 - I 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 worke but he has to work.
- I He had no trouble to keep Mr. Matheny from hitting you girls without using firenrms?
 - A He threatened once before to shoot me and my boother.

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 wm 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 meen to say that Mr. Matheny had any gun there that day?

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- A I don't remember whether he did or not.
- I He didn't say snything about shooting snybody?
- 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 um talking about the day you went for the horse; he did not threaten to shoot you that day?
 - A No.
 - I 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.
 - I He did not throw anything that day, did he?
- A No, he would have thrown the rock if he could have gotten it.
- I 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.

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X Are you pretty good at drawing?

A No. sir.

I 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; south 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.

I and you went right on in there; where is the gurden 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 atable 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 gettingout the horse?

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A NO. BLT.

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A Ton, mig.

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A I don't know whether it is a stable or not. It was where he had the horse penned in.

I 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 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 welked 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 Ro, he struck at Mrs. Hisey.
- X And he said several times, "get out and stop trespassing," is that right?
 - A He said "quit trespassing." .

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- A But you did not wait but went right on and got the horse out?
- A Yes, sir, that is what I went there for and that is what Igot.
 - X Then you saw him reach down for a rook?
- A I saw thim 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.
 - I You did not have to go in the stable ?
 - A No. pir. 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 Me and the horse was jurst 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

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- I 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
 - Z He had alfendy told you to get the horse out?
 - A He said that as the horse was coming out of the stable.
- A He did not some and try to keep you from getting the horse out of the stable?
 - A Re was fighting papa and Bessie.
 - I He did not use the curry-comb to strike Bessie?
 - A You, sir.
 - I He did not strike her then?
 - A Mo. sir. because he could not get to her.
 - X You say you did not see that rocky
 - A No. sir; I didn't see the rock but seen him stoop over.
 - I Did the horse have any halter on him?
 - 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 thereafter; you came to the bars?
 - A I don't think over a very few minutes or over a minute.
 - I You heard the gun crack, aidn't you?
 - A You, 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 presched down there.

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- X You were not afraid of Matheny?
- A I sm not a bit of Joe Matheny.
- X You went in therefirst?
- A Yes, sir, I did. I would rather he would kill me ; then 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.
- I 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:

Х.

- 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 meen 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. Hisey was behind you?

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Yes, sir,

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No. I was in frant-

- 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?

WITNES: Yes, sir, that is the only way

- I 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 acor wasn't hung that day.
- I There was a door on that stable. I mean, is that the entrance in where you went in to get the horse?
 - A I dian'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.

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X Although Matheny had told you not to trespose 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 timeyou were trying to get in there toget your horse?

A I can not tell you enything 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.

I Don't you recognize that crib there as being the corn-

A That looks like the shanty down there.

X You mean his humble home? That is his house mear 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.

I Don't you recognize that there as the stable and don't you recall that there is a house near the stable?

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X Isen'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 the 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 sny, "take the horse out??

A He told us to get the borse 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

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THE COURT: I seried you shather he was not executing down them he was short.

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he was shot he said "get your horse".

THE COURT: He came up then after he was shot and said "Get your horse"?

WITHERS: He came around and maid "get your horse".

- I dan you tell where he wen when your father shot him?
- A I can not tell you snything about that picture.
- M. by not Y.
- A Thire that to the witness and they will tell you they don't know enything about that picture.
- I Why can not you take that slature in your hand and explain to the jury just where your father atood and where Mr. Matheny soo stood?
 - A It is not a true picture.
 - X Point out whorein it is not a true picture?
 - A It does not look right to so.
 - X You are familiar with the Mathemy place?
 - A You, sir, I want there weekly.
 - X You have known it all of your life?
- A Yes, mir, I have went there all of my life to see Mrs. Matheny; not for his make though.
 - I Where this difficulty occurred was near the stable, was it not?
- A Thut don't look like the stable to me. If that is Jos Mathemy's stable right there is whore it happened.
- I You mean to tell the jury that right here, a short distance from the stuble foor, it happened?
- A Wo, sir, I cannot well 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

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- X Is not the tree back this way in the orchard?
- A No mir, it is like I explained it to you on the plat.
 Did you ever see Joe Matheny's place?
- I 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 meen he was such a dangerous man?
 - X Yes, sir.

The state of the s

- X Miss Van Pelt you know as well as I do that Joe Matheny never hurt any ody in his life, don't you?
- A I don't know whether he ever hart any person or not but he rained 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.
- I Tell the jury how many people you ever heard of Joe Matheny hitting with rocks or anything of the sor t in your community.

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and he was altern to the rough or anything of the cor t in your

A I can tell how many he threatemed to hit if he had not been prevented.

X How many people did you ever bane of him bitting or whipping?

A STATE OF THE PARTY OF THE PAR

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 pape.

X Which true, the one book in the orenerd or the one near the stable?

A The one near the stable, which true is not on that picture.

X Did he make any attempt to hit Mrs. Misoy?

A He struck at her with the curry-cond.

X Was that while you were getting in the stable?

A No, sir, it was when we first went up there.

I how far was he from Mrs. Hizey when he struck at her with the curry-comb, indicate in distance across the room.

A About half way across hers. (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?

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A He mover smald hit maybedy, he was too high a marget. If your too his seemed in your

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- 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 Tes, 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 atcoped down to get the rock.
 - I Do you mean here near the gardon fance?
 - 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.
- I 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.
 - I You were at the stable?
 - A Yes, sir, at the acor 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 flitty feet away, is it not?
 - A I won't say.
 - X You would not say it was not fifty feet sway, would you?
 - A Mo, 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.

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 - A Teny stay
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 - Townshood move it from the form I
 - A I don't know how for it week
 - The barden funds where you from him when he stooped? If he ray
 - A I was four beinging the here out.
 - Toll walls out the utable? I
 - A Ton, wir, or the Acer purt senting ont.
 - I then I who were to the grant to and the standard and I
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 - A L BOR'S May.
 - The world not not the west that for the day, much like and I
 - about you for hims I on h
 - I Do you need to tail the jury that Joe Matheny, etcaling to at the part a rook to het goe with there at his window.
 - Title alle

- I And that was when your father shot him?
- A. When he called us whorse and bitches and stooped down for the rock father shot him.
- X Wen he calling you whores and bitches and stooping for a rock at the same time?
 - A Ton, sir, at the same time.
- I When he was stooping to got a rook he was hollaring and abusing you at the name time?
 - A Yes, sirk he was doing that all at the same time.
 - I Where was your father?
 - A Ho 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 bulled down the draw bars and deme up in the Matheny orchard?
 - A I threw down one of theme and papa the other.
- I 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 New, where was that particular tree that your father was standing by in that orghard when he shot Mr. Matheny who was standing near his garden fence?

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- A It is not on there.
- I How far was it is from the stable them?
- A Not so far. I could not tell you exactly.
- A Could you measure it with your eye by any distance scress this room?
- & No sir, I don't herdly remember. I know it wasn't so far.
 - X Were you looking at him when he shot him or not?
 - A Mo. sir, I wasn't looking at him.
- I 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.
 - I You turned around after you heard the report of the gun?
- A Yes, sir, just a little before it want 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 heppened.
- X I am sure you said you didn't know when it happened. You turked around just after it happened, lab's get at it.
 - A I told you be weastooping for a roak.
 - I 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.

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- 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 got 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.
- I 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.
- I Now, I believe you said you were the only one permitted to go on the place; that Mathemy had notified each of the other members of your family not to some on the place?
 - A You, sir.
- X Mrs. Hissy and your father knew they must not traspass on the Hathany place?
 - A They had to get their horse.
 - X He had forbidden them coming on the place?
 - A Yes, sir, years before.
- I There was some feeling by you and your father against Mr. Matheny because the did not allow Miss Mith Matheny to associate with you?

A Great lands! My parents would be nighty glad if she never entered the gate. How come she did not want to associate with me, when she would run down to tell me when her dedy 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 gum.

JUNOR: Your father had the gun?

WITHESS: Yes, sir.

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A Andre: That the gree there, is its with Note: Year with the the gree; with most Year halles but the gree? with most Year, wir. THE JUROR: Your father kept the apple tree, or whatever tree it was, between your neighbor and himself?

WITNES: Yes, sir.

If you said that when your father started to take that gun with him, and the magnaine with it, you said to him "Don't take that gun"?

A Yes, sir, I did; Hemm said, "Lot him take it, he has to take something to protect binnelf."

I You were afraid for your fother to take that gun, knowing his temperment?

- A I know he would not take smything off of Joe Matheny.
- I You know that?
- A Yes, sir; he always had run ever 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 arids.

MRS. BESSIE HIMET, sworm, testified:

- Q You are Mrs. Hissy?
- 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 Hizey.
- Q Were you at your gothet father's home the day that this

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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 Yos, sir.
 - Q Who had been with you?
- A I had been to the Spring Creek church and had my kinn with me.
 - Q You atopped there with you father, at his home?
 - A I come there with my unele and sunt.
 - Q With your uncle and aunt?
 - A Yes, sir, in a cor.
- Q After you got there when did you loarn that the herse was minsing?
 - A As soon as we ate our dismor-
 - Q As soon as you got through dimmer?
 - A Yes, eir.
 - Q dow did you happen to find that out?
- A The children went to hant 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 Whon did you learn where the horse was?
 - A It was in the evening, I don't just know what time it was.
 - @ About what time?

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- A About six o'clock, I think.
- Q Them, when you learned where the horse was, what did you and your mister and father do?
 - A We went up there.
 - Where sid you go to when you went up there?
 - A Wo went up the road and went into his stable.
 - d 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 foor currying his horse.
 - Q Use 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 In 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 may very often and I don't know.
- Q When you got down to the draw-bars at Mathony's stable, who was the first one that entered the Matheny premises?
 - A Florie.
 - Q Who next?
 - A Myself.
 - Q Who next?
 - A Papa.

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A Phorie.

Q Who brought the herse out of the stable?

A She did.

Q Was that before or after Mr. Mathemy 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 a your own way what Mr. Matheny 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-dawn whores.

Q Hr. Mathany did?

A Yas, Bir.

Q Then what?

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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 got the horse after so long a time.
- Q Then what? What did he do if enything to you?
- A When Mr. Mathany met us he attempted to strike me with a curry-comb and pape warded that blow off and them is when he commenced telling pape what he ran.
- Q Then he commenced felling your pape 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 bhot him?
- A Why, he was telling paps 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 bakk at papa.

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- Q What did your papa say?
- A Nothing but to get the horse out.
- Q What did your paps 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.

ě,

- Q Wes he within strinking distance of Florie if he had gotten that rock?
 - A You, 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 aid your father attempt to bother him any more?
 - A No. sir.
 - Q Did you girls bother him anyway?
 - A No. sir; we got out of there.
 - Q You got out of ther and went on home?
 - A You, sir.
- Q Were you at the house started to go out with the girls to get the horse?
 - A Yes, sir.

CROSS MEANINATION BY MR. STRICELER.

X Where was this rock; you saw the rock did you not?

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A Yes, mir.

- 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 thepicture.
- A It is right about here, (Indicating.) if I am not mistaken; I don't know; I could not tell you by that picture.
- I 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? And. 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 come around this way.
- X You don't go through your garden to get to your house. Mr. Matheny?

MR. MATHEMY: No. sir.

I There is no garden between your house and the orchard?

MR. MATHEMY: No. sir.

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- There is a garden between the house and stable?
- A Yos, sir.
- y 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 come 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.
- I Give us an idea of where Mr. Mathemy was reaching for this rock; where was he when he was reshing for the rock, near this building?
 - A I don't know anything about this building.
- Y Well, out 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 rook was near the tree?
 - A It was near a troe.
 - 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 W A whole lot nearer
 - X Did the the limbs of the tree nearly touch the stable?

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- A I don't know about that.
- X It is not far from the stable?
- A Not far.
- I 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).
- I 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.
 - I Did you see him have anything else in his hand?
 - A He had a curry-comb.
 - I Which hand did he have it in?
- A He had the curry-comb in his left hand and the rag in his right hand.
 - I 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.
 - I Is he left handed?
 - A I don't know.
 - X And he had the curry-comb in his left hand?
 - A Yes, sir.

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X When he reached for the rock did he still have the curry-

- 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.
 - I 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.
- I Did you hear Mr. Mathemy 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.
- I You believe she had the horse out when he said to get the horse?
 - A You, 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

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Mathemy?

- 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 You. mir.
- I 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.
- I 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.
 - I 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).
 - I You know where the garden fence was, don't you?
 - A You, sir.
- I 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.
- I How far is that garden fence, do you suppose, from the stable?

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- A I don't know.
- I 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.
- I 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 3h inches) I judge.
- I As large as a coccamut; you know the size of a cocca-mut?
- A Certainly I do. There are different sizes.
- X How much does a cocoa-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.

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A Stanfordston.

- X Smooth?
- A Bot vory.
- 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.
- I Can you tell us anything by an examination of this picture?
 - A No. wir, 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 got as far as my home very often and I don't just remember.
 - MR. HAMMER: Don't you think that pecture 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.
 - I That is the stable. You recognize the stable?
 - A Yes, sir.
 - X That is the corn-orib 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.

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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.
- I 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.
 - M 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.
 - I Now, where was your father, Mr. VanPelt?
 - A He came around another apple tree behind Mr. Matheny.
 - I The orchard is this way from the stable, towards the road?
 - A Yes, sir.

A him Plorie was at his while door and he harden out of the print of a beauty beauty of the state of a beauty of a beauty.

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- Nos, etc.

- X Your father, as Mr. Matheny was going towards Florie, was back of an apple tree?
 - A Coming around an apple troe.
- 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.
 - I 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.
- I 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.
- I 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.
- I Can you give some estimate, or do you know? If you don't know may you don't know.
 - A I don't know.

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 - A South second to apple trees.
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 - A No you moon Mr. Burney!
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- 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 fifteen about feet 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.
 - 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 snything to him, except asked him to get

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I that his your father may to him!

A No did not may smything to him, except asked him to get

the horse out.

X He did not say enything to him at that time when he was about to shoot him?

A All father said there was that he should got 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.

I 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:

I 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 them, 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 gotting 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.

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X That was when you came through the orchard from the drawbars going to the stable and he came up between two rows of trees like?

- A Yes, sir.
- X Was it about helf-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 helf-way.
- I Mr. Mathemy some up and met you about half-way between the read and the stable, or the draw-bars and the stable; who was with you when he met you?
 - A Floris was on shead of me and Papa was back of me.
- I Florie was ahead of you, going towards the stable, and how far behind you was your Papa?
 - A Not yory far.
 - I How far in front of you was Florie?
 - A I don't know -- four or five or six steps.
 - X And your father alike member of steps behind you, was he?
 - A Yes, air, 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 reg he had in his hand?
 - A Yes, sir.
 - N He did not strike you?
 - A No, mir, he did not.
 - X What provented him?
- A Just then Papa kind of same around this way and I got father away, and then he made for Floric.

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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.

I Stops 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. Mathemy 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 stopped 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 curry-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."

I After that you did not say a word, and he deliberately turned around and went towards Florie at that time?

A Yes, sir.

- A Thun he made for Florie Plants held't gotten up to
 - A She was your about there.
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If Then when sid he tell Floric and the rest of you -- when did Mr. Matheny tell you to take the horse?

A I den't just know when he told us that, but I remember he told us that.

X You den't Just remember when he told you to get the horse?

A Ho.

Mathemy and was in the stable and you would like to get it and take it home?

A Me the not give on may change.

I why didn't you say "Mr. Mathery, we would like to get out horse"?

A It was hard to ask him anything like that when he was running his tengue like that, all that stuff he was caying.

X He was doing all the talking and you ward 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.

Mil. HARMER: Your father asked. "Let's get the

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.

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. I have morn been prohibited by him from going themes.

- X You were not told by him not to trespens on him?
- A Ho, sir.
- X Your father took that gun, loaded it up and took it with him to shoet Jos Wetheny?
 - A He took the gun for self-protection.
- I And that self-protection was to shoot Joe Matheny, wasn't it? You know your father had been very bitter towards Joe Matheny for some years, didn't you!
 - A Mo, sir, I did not.
- I You know further that Joe Mathony was as inoffensive as any man in that country? You were raised up there before your marriage and live there now, den't you?
 - A No. cir.
- I I suppose you married when you were about 18, 19 or 20 years old?
 - A Whom I was twenty-one.
- A Up until you were il 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 Mathemy lived?
- A Not all of my life. I think I was nine years old when we moved there.
- I Up until 21 you lived in the community if not in your father's home?

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A We took the ren for cell-protection.

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Table of the parties of the community of Title of A

- A Not in that community. I live in Spring Creek.
- X Spring Greek is how for from your father's home?
- A Two and a holf miles.
- X You want back frequently to see your father and mother?
- A Certainly.
- X You wave acquainted with the people there and with Mr. . Matheny?
 - A Yes, siz.
- I Non knew, 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?
- I meen that Joe Mathany was never known to have had a Sight with anybody and that he was known to be a coward up there; that is what I mean?
 - A I think I have beard of his having fights.
 - X With whom?
 - A If I am not mistaken, with Ran Croner.
- X Did Cromer fight him or ald be fight Cremer?
 - 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 Mathemy won't light? You know that, don't you?
 - A No. sir.
- I 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 Net in that secondly. I live in Spring Sycale.
- remed at and other than your street making I
 - A Test of the state of the
- Trusteen And total total and one of the superior and from the X
 - A Suchstally.
- - ATAM . MIT A
- The late, as a south of the community, now, don't pour
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I What?

- A I would not trust him.
- X You still don't enswer my question. I am asking, not what you would do but what is known up there in that community?
 - A I expect he would.
- I You mush by that, that you do not know how the people regard him with regard to fighting?
 - A I think, as a general ren, they think he would fight.
- X You all have telked this care over down there at home have you not?
 - A Mo, sir, it has not been talked say more than can be helped.
- X You and your father and Miss Floris have gone over several times these occurrences, have you not?
 - A Mo, 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.
- Z You have been interviewed about it; your father has talked to you about it, has no 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.
- I And you came on the witness-stand today without your father's counsel having talked to you and asked you what you know 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.

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A Do you meet today?

I Tes, teday.

A Ma, alr, he did not.

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A Yes, size

MR. HAUMER: You testified at Dayton and your father's counsel had a transarist of what they all said out there?

WITERSS: You, sir.

Witness told to stand saids.

- D. H. VAR PRLT, in his own behalf, sworn, testified:
- Q Now old are you Mr. VenFelt?
- A Fifty-three.
- Q Are you e man of family?
- A Beven 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 heren't but one at home.
 - C. What is your physical condition, good or bed?
 - A My health is not good at all.
 - Q What is the matter?
- A I have a broken shoulder; a herse fell on me and broke my shoulder, and since them I have been knocked out.
- Wounded Mr. Joseph C. Matheny on the 19th 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 on the one hand and Mr. Matheny upon the other; go on with it in your own way.

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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 map on Sunday. I laid down and mover 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 swhile 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 rooks. 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 end we went on in, the girls, both, were kind of sheed 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 thiswas and bitches and God dammed 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.

- 2 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

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A He was note he was obserting does after the rear.

here . Compacture on white and in Short we took beninde and A took wasten for his I' . Too his here have been been booken I don't

myself; I cannot say that positively for I don't know.

- Q Then you came around was your good sye or your had eye next to him?
- at the time she says he struck at her with the curry-comb. She says that is what desged 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 her
- A He is expert on it. The sen 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 passeable, law-abiding mun or the contrary?
 - A The contrary.
 - Q You know 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 als you attempt to do anything further to him?
 - A No. Bir.
- Q After you shot him, then, where did you go and where did he go?
- & 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

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ne derest you what him, then, where did you go and where the

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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. Off: You said he "shot", do you mean he shot

WITHKES: He man.

- 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. Books were there then.
- Q Rad Mr. Mothery over 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 snything before this?
 - A No. sir.
- Q On this occasion, if he had not attempted to throw that rock to strike your asughter would you have shot?
 - A No. sir.
 - Q Why did you shoot?
 - A For the protection of my asughter.

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

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oase 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 fonce and I couldn't belp it.

I You made no effort to keep your stock up in yourown onelosure, 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 dow getting into their wheat?

A She only ceme twice. She told on the stend that she came there on her way to Spring Creek and told us to get the cow out, and we did it. The new went around in the woods and got in at another place, that we did not know about. There were only two times that the new ever got in their wheat.

I those are all that you know of; you don't know how many more times your now 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.

I You don't mean that you were at home all the time during the last ein 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 forencon but there in the afternoon.

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A L on many La the revenues has those in the officerent.

If Some years ago you met Mr. Matheny in the public road and you asked him shout some statement that he had made about your children and he told you that he had not eaid 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 Wes, sir, I would have gotten him if he hadn't gotten out of the way.

I 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.

I 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

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A He never whiteput supports, but if he could get a common 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 enybody, but he had tried to do it mighty often.
 - X You have known him for forty years?
 - A No. Bir.
 - 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.
- I 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.
- I 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.
- I 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.

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 X You knew he was crippled up in his right arm with the rheumatism?

A No. mir.

X Is not that a fact?

A No. sir. If you see him throw rooks 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.

I 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 rooks 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 throw 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.

I Did he throw at you or the cow?

A At me.

- House, and delivered fright and mit up to being been and and make a

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- 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.
- I 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 Yos, 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.

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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?
 - " 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-orib 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 You, sir.

I 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.

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- A le orner up there a little very and then there is a path of the thorner of the path of the former of the bank of the house of the former of the banks of the banks of the banks of the banks of the banks.
 - L Year, Mir.
 - If Firm you want in the Aron-bear south your two girles, you
 - A TE to right up there my tr you sell it me seemen.

- X Are not there trees in there and apples growing on them?
- A Few apples there.
- I They have apples there?
- A I think they have.
- 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.
 - I You mean at the corner of that corn-crib?
 - A At that tree back there, right there (indicating).
- I How far apart were you when you met him? You say you met him at the corner of the corn-orib?
 - A No. at the apple tree.
 - I Away back there (indicating)?
 - A Not way back there. Can't you see that apple tree?
 - I Which way from the house?
 - A That way (indicating) from the apple tree.
 - X You meen 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 whom you met him?
 - A Something like from here to the rail.
- I 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.
 - I Did he say anything to you?
 - A No, sir. The first thing he said was when he saw the

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 - A Diet mig bind blaze. Om't you now that they have
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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 from the picture. Something like back to where that man sits (indicating).
- I That is something like 18 or 20 feet; how far were you from Mrs. Hizey, your other daughter?
 - A She was standing close to me.
- I 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. Hizey?
 - 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.
 - I 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.

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- I 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 traspasson 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 Henging 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 cook it.
 - A You have to cock it.
 - X When did you cook 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.

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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 juryman 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.
- Z 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?

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- A Yes, sir.
- X Where was he going to get that rock from?
- A Off the ground there.
- I You said it was a rock half as big as that spittoon

there?

- A Yes, sir.
- X Bid you see the rock?
- A Yes, sir, I sew it. He had his fingers justabout on it,
 - X Did he say anything to you as he stooped down?
 - A No. sir: he made these threats before.
 - I He sid 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.
 - I Half-way between the garden fence and the stable?
 - A Yes, gir.
 - 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.
 - I Mre. Hisey wasn't starting to go in the stable, was nher
 - A No. mir.
 - I 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.
 - I what did he threaten to do with you?

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A Ho just said that to all of us. He said "All of you got out of here or I will hill the last one of you.

I 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 Es wanted to stop her from gotting the horse.
- I How old are you?
- A Firty-three.
- M You have lost one eye?
- A Yes, mir.
- 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 sould not have some snything with him. He is too stout for me. I soult not handle him.
 - N Even though you tell us he is a coward?
- A Yes, he is a countd, 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 Havan't cornored 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 bim?
 - A No. Bir.
- K 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 dian't hit him in the right place.
 - I Ton shot to strike in a vital place?
 - A No. sir; just to keep him from hitting my daughter.

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- I You did not shoot up in the mir?
- A No. sir.
- I 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 ours whether you killed him or not?
 - A It did not enter my mind to kill him.
- I Did you try, in the siming 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 protec-

WITHESS: Yes, sir, that is right.

THE COURT: Well, did you realize that you might kill him or do him serious injury with the gun?

WITHERS: 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 adifficulty in which you might have to shoot him?

WITNESS: Well, I don't reckon I did. I don't - know about that.

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THE COURT: You don't recken you did't No, you would not have a right to do that. That would be a big mistore for a man to think that.

- I You know that that was Mr. Matheny's place, Sidn't you?
- A Oh, yeb, sir.
- X You know you had no right on there?
- A You, sir.
- I You know that your going there, after beving been oriered to stay away, would provoke a difficulty?
 - A Too, pir.
- I 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 You, mir, he went down there by MR. STRICKLER:

- X Ho soid, "Get your horse, get your horse," and away he went?
 - A Yes, sir.
- I Where was this rock you spout of logated with reference to save 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.
 - I How furfrom the trunk of the tree?
 - A Not more than a couple of steps.
 - X A comple of steps from the trunk of the tree?
 - A You, mir.
 - X What kind or a rock was it?
 - A What we call a "branch rock, a kind of sandstone.
 - I Smooth?

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A Tolorable 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 shoul of you?
- A Mo, sir.
- a or all they just go shoad of you?
- A Top, pla-
- Q You were starding behind an apple treat
- 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 ourry-comb in the old man's hand?
- A Yos, 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 no nover attempted to hit you with the curry-comb?
 - A No. sir.

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W. W. MOMER, sworm, tustified:

Q Dr. Moonts, you are a practicing physician, I believe, and reside at Spring Grack?

A Yes, sir.

- a You prostine your profession there in the neighborhood where the Neighborhood where the Neithern lives?
 - A Yes, cir.
 - Q New long have you known Mr. VanPalt here?
 - A About thirteen years.
- o Do you know his anughter, Mrs. Hisey and his daughter, Miss Florier
 - A Yes, nir.
- Q I want you to tall the jury if you know the reputation which each of these parties beere, Hr. Vanielt, him Flore and Mrs. Hisey, for truth in the community in which they live?

MR. Off: You know what general reputation means. what the people generally say shout them.

- A It is good. Their reputation for truth is good.
- Q Do you know the general reputation of Mr. Joseph J. Matheny in that community as a law-abiding citizan?
- A Well, I know he has a good deal of trouble. He has some alterestions with his neighbors. I don't know as he ever got into many fights, but he is fussy.
- Re has the reputation of being a funcy and a contentious man?

MR. OTT: He did not may that.

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MR. BIRICKLER: 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 so I know it is good.

OROSS+REAMINATION BY MR. OTT:

I 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 droner family of which Mr. VanPolt married one, in which he did not went them to take certain part of his land for a road? Earl's that the trouble you are referring to when you may that he has the counterion of being in trouble with his neighbors?

- A That is not all the trouble.
- X It is one of the difficulties?
- A Yes, sir.
- I There are a great many of the troubles you are talkall stick together, and that is one of the troubles you are talking about, is it not?
 - A Yes, sir.
- I There was no attack made by Mr. Mathemy on any of them was there?
 - A Not as I know of.
- I Although you have been in the county for thirteen years you have never heard of Joe Matheny whipping enybody at all have you?
 - A Bo, 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

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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 Gromer.
- I 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.
- N 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.
 - I With Mr. Long?
- A No, sir, not that I know of. He generally kept at a good distance.

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 - Think Mr. Tongt
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- 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.
- I You had heard of Mr. VenPelt being very bitter towards Mr. Matheny had you not?
 - A I did not think he was bitter towards him.
- X I am not making 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, aid it?
 - A I don't know about that.
 - X You had heard that VanFelt had threatened to kill him?
 - A I novor heard that.
 - I You know that VanPelt did not like Joe Matheny?
 - A I know they had some difficulty.
- I You said, I believe, that his reputation for truth was good in that community?
 - A As far as I know, it is.
 - I If he would make a statement under oath in a case there

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 - I If he would make a statement under outs in a case blows

would be no reason why you would not believe him, would there?

A No. sir.

I 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 them she has conducted herself --

I I am not asking you along that line of inquiry, but I am asking as to her reputation for trath. Mr. Hammer 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. H. H. BUYDLER, gworm, testified:

Q Dr. Beydler, you are a practicing physician, residing at Bridgewater, I believe?

A You, sir.

Q You also practice in the community in which Mr. Matheny and Mr. VanPelt live?

A Yes, mir.

Q You know the people of that community well?

A You, sir.

Q How long have you known Mr. VenPelt?

MR. OTT: How far do you live from their community? WITHRES: About five miles, at this time.

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MR. OFF: Do you pruntion regularly out there in that vicinity?

with the section of propertically every week.

MR. OTT: I object to the introduction of this witness, because he lived too remove from that community.

THE COURT: Now far do you live from VenPelt, Doctor?

TITUES: Five miles.

THE COURT: You live in Bridgemater?

WITHENS: Yes, sir.

MR. STRICKLER: You did live in Spring Creek at one time!

WITHES: You, pir.

THE COURS: How for is that from VanPolt's community?

WITHER: That is about two miles, I supposs.

MR. OFF: That has been five years ugo.

THE COURT: I think the Doctor may answer.

- Q Do you know Mr. VanFelt here?
- A Yes, sir.
- Q Do you know his ameghters, Flore Van elt and Mrs. Hixoy?
- A You, sir.
- 2 Do you knes 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.
 - MR. Off: Do you know what he asked you, first?
 Do you know what their reputations are?

WITHESS: Their general regutation for bruth is

- Q Do you know Mr. Joe Matheny?
- A I do.

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- 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.
- 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 versoity questioned.

CROSS-REAGINATION BY MR. OTT:

- I Doctor, you say that you have heard that Mr. Matheny was a little irritable and contentions; you never heard of him getting into a fight in your life?
 - A I heard of him getting into controversies.
- E And those controversies were chiefly about that read up there that took part of his land, and that was with the Gromers of whom Mr. VanPelt married one?
- A I don't know, sir. I couldn't just tell you what they were.
 - I You don't remember what the controversias were?
 - A No. sir.
- I 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 thrests he never carried out?
 - A Not to my knowledge, no, sir.

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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.

I 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. Mathemy?

A No. sir. I did not until the last few weeks.

I You mean, since this trial?

A Yes, sir, since this.

**

I Speaking about the reputation for truth of Miss Florie, some question has been asked her by Mr. Heamer about some trouble she had of which you are no doubt acquainted; now, since that community?

A Those things can occur without injuring your truth or veracity.

I I am not asking you whether they can; I am saking you whether it did?

A Not to my knowledge, it did not.

I As a matter of fact, do you really know the reputation of these young girls for truth and verseity is one way or the other?

A I have not heard anything to the contrary.

X Mrs. Hisey got married here six years age, didn't she, and moved over to Spring Crock?

A You, sir.

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L. Tue, 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. Himey; 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.

I 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.

I 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 saids.

W. T. REXRODES, 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. VanPalt 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.

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I have known Mr. Vantaly, I readed, Stream would

- 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 eath, 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 Domyon happen to know what the feeling of Mr. VahPelt 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 meen with his neighbors?
 - A Yes, sir, some little difficulties.
 - X Hes 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.

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X These controversies that you mention with his neighbors were in the form of quarrals were they not?

A Yes, sir.

X As a matter of fact, he is regarded as being a coward, up, isere, 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.

WR. 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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- X Did you ever hear him swear an cath 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

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a new May Curry's 61st you came down there steering serious

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 sometime and when I went to get it off I tried to find an iron to set against it to use a coad 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.
- 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

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DIRECT HXAMINATION 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 mun, 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.

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A May siry 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.

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- Q It is sod there I believe, old orchard sod?
- A Yes, sir.

CROSS EXAMINATION BY MR. HAWMER.

- 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 guestioned; it was always good with me.

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- 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 fifty-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.
- A How about the reputation of his daughters, Mrs. Hizey, and Miss Florie Vampelt 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

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A It was along soons I led line I remainer being siles

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.

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- 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, mir, 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 emeur?
 - A Mo, sir.
 - q flow long have you known him?
 - A Ever since I can remember I guess.
 - CROSS WXANINATION BY MR. HAMPER.
 - X What kind of an exemination old you make there for rocks?
 - A I never made a particular examination.
- X You don't mean to tell the jurgy that there were no rocks there?
 - A There were none there where I went to look.
 - A 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.

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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?

WITHESS:

It tie the front part of a wagon made into a cart. It was an old wagen once and the front part was used for a cart.

GEORGE RITCHIE: aworn, 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

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A Year all the think way of through the year. I have

the ground there should the stable and corn orth and seen there are ground there are not?

A Re, mir, I have not noticed any rooks 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-
- 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 newer heard him swear. That day I heard voices there but I did not know what they said.

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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 Now 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 Dan 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. C. 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.
- & 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.

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 - A I been very little talk.
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 - A I never heard him awant 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?

WITHESS

It is good as far as I know.

MR. HAMMER: Also as to his being a law-

abiding withmen?

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, pir.
- 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.

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Witness to wind asing asing

D. N. VARPELT recalled, and testified on examination by the court as follows:

Mr. Vanpelt what kind of a gund 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 Windhester 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 snother 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 Shorte
 - & Rither one can be used in it?
 - A No, sir. It willnot shoot a long or a short.
 - & 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 rathing and shooting 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.

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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. Have to the jury the following instructions; on danying the instructions on the back on the harbeyter defence.

INSTRUCTION No.

A man can only resort to violent mas means of selfdefence 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 t 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 upon the stable door in order to remove the horse, them, 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 awailable to him to justify his action in shooting Matheny even thought 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.

The limit will be to the systems introduced in behalf of the course, the course of the

A cone of the property of the product of the production from death of the production from the latter, and he nements to his production from the bisself of the product of the state in the latter than the state that the product in design, unless be first shown to the situation where he falls the latter than the state the state the state of the latter than the state the state of the latter than the state of the latter than the state of the latter than the state of the state of the latter than the state of the latter than the state of the latter than the state of the latter of the latter

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INSTRUCTION No. 2

An assualt 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 mutal combat, it is an unlawful assault, otherwise a malicious assault. The difference between malicious assault with intent to main, 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 mutal combat or on a sufficient provocation.

INSTRUCTION No. _ _

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.

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Rollowing instructions: The following an The methodists asked on behalf of defendant of methods the Court befused.

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The Court instructs the jury that if they believe from the evidence that the accused at the time he shot Matheny, noted 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 appearently 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 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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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.



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 Mathemy 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 the wit 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 as 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-

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fend his daughter. Flora from serious bodily injury at the hands of Matheny, which was then iminent, then the accused was justified in shooting Matheny and is not guilty as charged in the indictment.

(30)

The Court instructs the jury that if they believe from the evidence that the prisoner, with his daughter, Mrs. Hissy 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 Mathony could not otherwise effect the removal of them from his lands, and, if the jury further believes from the evidence that the said Natheny 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 w 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 We 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 daid daughter extended to the killing of Matheny, if necessary to protect his daughter, and he is not guilty.

attorney for the Commonwealth objected, which objection the court meetained, and refused to give said instructions, or either of them; to which action of the court in sectaining said garden objection of the Commonwealth and inrefusing to give to the jury said instructions as tendered, the secured, by counsel, emerged.

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Thereupon, after argument being heard, the jury retired to consider of their verdict, and, shortly thereafter, returned into court and rendered the following verdict:

of unlawfully shooting Joseph C. Matheny in manner and form as charged in the indistrent and assertain his punishment at confinement in Jail for six months and a find of \$200.00. H. L. Burtner. Foreman."

to set aside the verdict and grant a new trial on the grounds that each 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 act on 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 said of Exception may be signed, scaled and enrolled and made a part of the record in this cause, which isnaccordingly done this Law day of September, 1919, and within 30 days from the date of the entry of said judgment.

Judgment.

Judge. Judge.

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