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## MORE EVIDENCE IN THE MURDER CASE

### Cannot Complete Examinations This Week--Court Adjourns Over to Next Monday.

#### Thursday Morning.

A five minutes recess was had to enable the jurors and counsel to enjoy a breathing spell. In addition to the defendant's aged father, his uncle, Peter Clarence, occupied a seat with him this morning. After the recess Mr. Thacker resumed his testimony. The sheller was stopped because the cob carrier chain broke. Witness testified he was setting down at the end of the sheller when the Albins were quarrelling. Carter had taken off his coats. They were cussing and Earl was calling Carter names and daring him to hit him. His measurements of the horses and wagon correspond to Carter Albin's. Saw his father first right back of the team coming from the east. He turned west toward the horses. Heard his father say to Carter "Get out of the wagon and slap him." Clarence was at the water tank. Father was going away from Clarence. Clarence told his father then "Keep your nose out of that or I'll shoot you out of you." Father shot back and witness saw Clarence pull a gun. Father picked up a stick about 1 1/2 x 1 inch in width and thickness and 2 feet in length. Witness showed a stick and testified it was not the stick but near the size. Witness testified Clarence shot his father as he reached down and picked up the stick. Witness saw defendant point the gun at his father and saw the smoke of the gun. The distance was from 10 to 12 feet. Father was not close enough to strike Clarence at the time. Father was about 5 feet 10 inches in height and weighed about 220 pounds. The second shot happened about 15 or 20 seconds later after Thacker had hit Clarence over the head once with the board and had taken the cane away from him. They whirled about when the third shot was fired. Clarence had the cane in the left hand and the revolver in the right. The men grappled and fell to the ground. Witness was about 30 feet away. Did not see Clark or Crawford at the time. Just before they were in the crib. Men in crib could not have seen Thacker stoop to pick up the stick. The men fell to the ground in the manner indicated yesterday by Carter Albin and Mr. Ramsey. Witness corroborated Carter Albin's testimony as to what occurred as the men lay on the ground. He stepped on Clarence's wrist. His father told him to take the gun. Clarence asked Clark to take it and he wouldn't, then Crawford said he would take it. Witness then identified the clothes Mr. Thacker wore on the day of the occurrence. He took charge of the clothes and delivered them to County Attorney Ramsey. They were now in the same shape as then. The affair happened in a half minute. Afterwards they got a carriage from Mr. Darrough and took Mr. Thacker home. While Mr. Thacker was still on the ground, he said he was afraid to get up for fear he would die. He told witness and Carter Albin to be careful with him. Clark and Crawford went off to the house but Crawford came back. Clarence said nothing after the first shot and did not scream after he was hit by the board. Witness illustrated his father's position to the jury when the first shot was fired. He did not see Carter or Earl Albin until after the first shot. He did not see Earl until after the shooting was over. Witness illustrated the positions of the men in the grapple. He drove his father home about a mile and a half. His father said he wouldn't live until he got home to see the little girl. He was placed by bed and remained in the same bed until he died on January 21, 1909. Witness knew Geo. Saxon, Matthew McQuinn and County Attorney Ramsey who were at his father's house on January 16. Clarence, Crawford, Clark and Earl Albin went to the barn after the shooting. Jim Stevens was present but he did not know where he was

now. He knew Sam Redman and Mrs. Jas. Darrough and described the Darrough premises. Redman was not there at any time. Witness coroner's inquest and had read his testimony. Darrough had a telephone. This witness was examined by Mr. Gering. Mr. Clark cross-examined: Witness the Darrough premises. Redman was, he had been there before the shooting. Witness was confronted by the testimony he gave at the coroner's inquest in which the threat Clarence made his father was quoted in different language, the profanity being left out. Other portions of the witness' testimony were read to him which showed a variation in language used then. One of the serious variations amounting to a direct contradiction was in regard to slapping Clarence; at the coroner's jury he testified he did not hear such a statement. The witness' testimony in the two hearings had several material variations as to where he saw Clarence draw the gun from. Witness testified Clarence was holding the mules with one hand on his hip. The mules were loose before the shooting; whether Clarence had released them or they had broken away he couldn't say. The board with which deceased hit Clarence broke when he was hit and Clarence threw up his cane which Thacker took away and hit him twice. At the second shot he dropped the cane and they grappled. Witness knew of no trouble between his father and Clarence. They had exchanged work and the like and the most friendly relations existed. Clarence said he'd behave if they would let him up. He still had his gun and witness did not know what became of it. Witness was some excited. Re-direct by Mr. Gering: No one attempted to strike Clarence while he was on the ground although witness had a wrench in his hand. The inquest was held in the night of Jan. 21 at his father's house. The body was at home. Witness was setting up nearly all night the night before and that night. The witness at the inquest was excited and sick. The object of this line of questioning was to indicate the conditions under which the witness testified at the coroner's inquest. Mr. Thacker made an excellent impression as a witness. He was clear and candid and his manifest determination to tell the truth and to present the facts to the jury as they occurred was very evident. At 11:50 the noon recess was taken, the jury being cautioned against discussing the case by Judge Travis as usual. Thursday Afternoon. Court reconvened at 1:30 p. m. Many ladies were present as well as many men. Lee Thacker recalled: Ed. Mielow was at the sheller that day. Mr. Thacker had weighed 240 pounds at times, about an inch or so taller than witness. Did not see Clarence leave. Saw him at barn when Clarence wished him good luck or something to that effect. This was brought out by Mr. Clark. Sheriff Quinton called: Had received a subpoena to be served on James Stevens and had telephoned the place where he understood Stevens was and he was informed Stevens was gone to Osceola, Ia. He made his return "not found in Cass County." John Cory called: Constable lived at Perkins Hotel in Cass County. Knew Jim Clarence. Saw him in the corner room of the Perkins Hotel in the clear store on January 14th. The revolver and holster and belt were produced and defendant admitted them to be his property. The revolver had one loaded shell, three empty shells and one black chamber. This revolver, belt and holster were offered in evidence. Witness testified that belt and holster showed constant usage. Cross-examined by Mr. Clark: He spoke to another person before he spoke to witness. He did not notice who it was. Miss Lulu Ames called: Lived in

Plattsmouth. In January, 1909, was employed at the home of John P. Thacker. She had never heard Mr. Thacker complain. She was at the funeral of Mrs. Grimes with Mr. Thacker and they returned home about 1:30 p. m. He left for Darrough's on horseback about 2 o'clock. They brought him back about 3 o'clock in a carriage. She assisted in undressing him. He made statements as to his physical condition. He said he was awful sick, felt kind of paralyzed and was afraid he couldn't live. She was present at the operation and heard him make a statement to the doctors. He wanted them to save him if they could. He was very quiet. He remarked he never struck Clarence and was shot once. This was on the afternoon of January 16. What he had told her was before Messrs. Ramsey, Saxon and McQuinn were there. He died January 21, 1909, at his home in Cass County, Nebraska. Witness described clothes deceased wore. Witness saw the clothes yesterday for the first time since deceased died. Witness was shown clothes of deceased and identified same. Mr. Clark cross-examined: She heard Thacker talk to the surgeons once before the operation. This she did not know whether he asked the surgeons to operate on him or not. He was talking to doctors Brendel and Livingston. This witness was a star for the prosecution and made an excellent impression. Lee Thacker here stated his father never carried a revolver. John P. Sattler, in furniture and undertaking business, mayor of Plattsmouth. He did not know Clarence. Witness was attending funeral of Mrs. Grimes. He left there in the morning. Defendant met witness near home of Will Adams. Defendant overtook witness. Both stopped. Clarence said in effect he had shot Mr. John P. Thacker. Witness asked if he killed him. Defendant answered he didn't know but thought he'd die. Witness said that was bad business and defendant answered it was and he was going to give himself up. He claimed the two had had a quarrel. Clarence rode off on a trot whistling. Cross-examined: Clarence might have been excited. Witness did not notice the condition of defendant's horse. Matthew McQuinn had lived in Cass County since 1886. Farmer. Knew John P. Thacker who lived 4 1/2 miles away. Remembered shooting and went to his home about 6 o'clock that day. Knew Thacker's physical makeup. Deceased was about 5 feet 10 inches high, weighed around 220 pounds. Thacker was in southeast room of house, seemed to be suffering. Witness stayed all night. He was present on January 16. Near 3 o'clock Thacker made a statement. There were present Geo. Saxon, Mr. Ramsey and Herbert Thacker. Deceased stated he felt bad and thought he was going to die. This was before his dying declaration. Deceased made a statement of the trouble in the afternoon after the conversation of the morning with witness. Considerable argument arose here over the character of testimony necessary to prove a dying declaration and some time was consumed in debating the question. The court held whatever Mr. Thacker said was competent as showing what he thought of his condition. Witness finally stated Thacker said he had to die. Mr. Clark developed that a written statement was made by Mr. Thacker of the trouble. County Attorney Ramsey asking the cause and making a memorandum of what was said. Attorney Clark then objected to witness testifying and it developed that the written statement was not signed by Thacker but was signed by the witnesses as notes of what was said by Thacker. The objection of Mr. Clark was overruled. Mr. McQuinn then testified that Mr. Thacker went to the sheller and found the two Albins quarrelling. He told Carter to get out of the wagon and slap Earl's face and learn him some sense. John Thacker then told him to "keep his nose out of it or he'd shoot him out of him." He started for Clarence and the latter shot him in the leg. He thought it was a small gun which Crawford had shot at him with one before and he intended to make him out. As he stooped over to pick up a stick Clarence shot him again. He hit Clarence over the head. Clarence hit him with a cane and he took it away from him and hit him over the head twice hard enough to fall on or hit finally had to knock him

down with his fist. The cross-examination was unimportant. Mr. Clark sought to strike out this evidence but his motion was overruled. Geo. Saxon called: His testimony was practically a verbatim statement of Mr. McQuinn's testimony except that it was more complete in some of the minor details, and was replete with reasons advanced by Mr. Thacker for grappling with Clarence. He thought the gun small one but when shot he discovered it was another gun and he knew he couldn't run as he would be shot anyway so he tried to get it away from him. Aside from this his testimony did not vary materially from Mr. McQuinn's. On cross-examination by Mr. Clark witness could not recall whether deceased had said anything about Clarence striking at him with a cane. Mr. Clark developed the witness had offered to sell his testimony to Mr. Clark for \$300. This Saxon admitted. Mr. Gering developed that he had signed the paper on January 16 before this offer to sell the testimony. He declared Mr. Clark had offered him a price and he asked what he thought he ought to have. This created a great sensation in the court. Mr. Clark then made the witness produce a letter from Mr. Clark which Mr. Clark claimed had been written to Saxon in reply to a letter of his offering to sell his testimony. The letter was identified. Mr. Clark then got into the record admissions from Saxon that he had written him refusing the \$300 proposition and denouncing the offer as a proposal for perjury. A sensational wrangle ensued over these admissions and after they were admitted, Mr. Gering secured from the witness a statement that Mr. Clark had verbally offered to pay witness his expenses and good pay to secure his attendance at Mr. Clark's office in Plattsmouth and his letter was written in reply to this offer. Herbert Thacker, son of deceased, aged 14, and a very bright boy, was on the stand, and he made an excellent witness considering his years. The little fellow's testimony was almost identical with that of both McQuinn and Saxon except in certain particulars where his memory was faulty. His cross-examination developed the boy could not remember who called on his father. This was considered important as the boy remembered the story of the statement so well. A brief recess was had at 3:30 p. m. to give the jury a chance to rest. Dr. Davis of Omaha was called. Physician and surgeon for 25 years. Graduate Minnesota Hospital, now University of Minnesota. Was at Mr. Thacker's on January 16. Called by Dr. Brendel. Examination disclosed three bullet wounds in left side—one shot in abdomen, one in side between ribs and one in thigh. Witness briefly recited conversation with deceased. Witness stated he told Thacker the wound in the abdomen would likely prove fatal unless an operation was performed and Thacker told him to go ahead and save him if possible. The operation was performed by witness assisted by Dr. Livingston and Brendel. The bullet which entered the breast ranged downward through the stomach and lodged in the abdominal cavity. Bullet entered and identified by Dr. Davis. No other bullets found. One bullet had passed through the right leg. Both entrance and exit punctures were nearly on the same level. Nothing was found regarding the wound in the abdomen, entered near the navel but was not found. The bullet in the breast was downward and very slightly backward. Didn't think the course that bullet was deflected. There was a hole in fatty layer in front of the stomach. Thacker to have received the wound either from a revolver shot from above or while he was stooping over (witness illustrating). His judgment was the bullet would probably cause death. Mr. Ramsey examined this witness. Cross-examined by Mr. Clark. Witness did not trace course of bullet in abdomen nor measure the difference in height between where the bullet in the thigh entered and left. Mr. Ramsey: It witness' opinion death would have been the result of the wound in the breast. Argument ensued between counsel over the question of admitting expert testimony to show Mr. Thacker's ability to walk 10 or 20 or 30 feet after receiving the wound in the breast.

The court ruled to ask the question in another form. Witness could not say positive what position the men were in when the bullet wound in the thigh was received. Cross-examined. Witness testified a bullet was erratic in its flight only when it met with resistance. They followed the course of least resistance. He had not examined the ribs definitely enough to say absolutely certain whether the ribs had been struck by a bullet or not. Dr. T. P. Livingston lived in Plattsmouth 44 years. Physician and surgeon 24 years. Saw Mr. Thacker on January 15, 1909, for first time. Found him at home in a condition of shock and suffering from three bullet wound on left side as described by Dr. Davis. J. F. Brendel had already administered relief remedies. He found Thacker suffering so severely that he advised an expert surgeon and they called in Dr. Davis. Witness saw Mr. Thacker on January 21, in the evening when he performed a post mortem on him. He was assisted by Dr. J. F. Brendel. The post mortem developed wounds as heretofore described. They opened the abdominal cavity and the breast up to where the breast wound occurred. The stomach was removed and a bullet hole was found at the back of it. A furlow of whitish fluid was found back of the stomach extending to the transverse colon. Could not find the bullet which entered the abdomen. The fatal wound was that the chest of Mr. Thacker was in a transverse position to the line of fire. Witness illustrated by bending County Attorney Ramsey's chest forward to where it would be in the line of fire. Mr. Clark cross-examined. Dr. Livingston's testimony was not shaken as to the position the body was in when the fatal bullet was fired. The anesthetic used was ether and some little trouble was occasioned in getting him from under the influence. The operation was surgically a success. Thacker did well for several days after the operation. The condition was hopeful. Re-direct by Mr. Ramsey. The bullet had struck no bones but had gone straight through. The tissues afforded very little resistance. The bullet found in the cavity entered the breast. Dr. W. R. Lavender, Omaha, Neb. A specialist in post mortems. Practicing physician since 1882. Held official positions in Douglass county. Had had over one hundred and twenty official cases of criminal cases in Douglass county besides his private practice. An expert on powder burns. Had experiment with guns for powder burns on clothing. Had used a 32-caliber Smith & Wesson. Shown overalls and testified no powder burns there. Shown vest and testified there were no powder burns. Shown coat and there were powder burns. Shown 32-caliber Smith & Wesson revolver and said muzzle of revolver must have been 15 inches from vest to produce powder grains. On the overalls 15 inches also. Bodies of the two men must have been 32 to 36 inches apart to have permitted powder grains from the revolver. Mr. Clark cross-examined. Powder burns are different on different textures and also differed on kind of powder used. The examination was with the naked eye. Handling cloth would have effect on the powder grains found. Examined clothes about a week ago. Mr. Ramsey showed witness shirt of deceased but no powder grains were identified. The stains were blood. The undershirt was produced and one hole in it showed powder burns, while another did not. Mr. Ramsey sworn. Testified he had had possession of Mr. Thacker's clothing which had been placed in evidence since a few days after the shooting until April 12, when he delivered them to Prof. Barber at Lincoln who kept them until May 15 and then they were returned to him and had been in his possession since. Even when Dr. Lavender was examining them. Cross-examined he stated he had spread out clothes and examined them as did several others. Mrs. John P. Thacker called. Wife of deceased. Married in 1881, Jan. 3. Husband 48 when he died. He left home for the Darrough farm sometime in the afternoon. Witness identified a variance between Albin's testimony at the inquest and his testimony now. The same course was adopted in regard to the testimony of Lee Thacker, which showed the variances being different now to what it was at the inquest. The

Court adjourned at 5:20 p. m. until 9 a. m. Friday Morning. Court opened yesterday morning with a large attendance, many ladies being present. Many were drawn to the Clarence trial by the sensational and interesting developments of yesterday afternoon, and were expecting other equally startling proceedings today. At the close of the case yesterday Judge Travis intimated no court would be held tomorrow (Saturday) and it is likely the case will run until next Tuesday. This morning the aged mother of the defendant occupied a seat behind her son as well as his father and brother Clarence seem more downcast and depressed than heretofore. At the morning session the occurrence of yesterday, when the witness, Saxon, seemed to have asked \$300 for his testimony, was taken up by the State and Saxon was permitted to show his motive in asking the money and how the entire matter came up. Geo. Saxon, recalled by Mr. Gering, testified that all Mr. Clark asked of him was a statement of what Mr. Thacker had said about the trouble and that Clark had offered him his expenses and good pay for it. He was reluctant to say anything about it, and after thinking it over he made his price so high Mr. Clark wouldn't pay it. The witness had signed the statement for the County Attorney before this. Mr. Gering stated the State conceded Mr. Clark meant no wrong. The letter of the witness to Mr. Clark and of Mr. Clark to Mr. Saxon were identified and offered in evidence by the state. Mr. Gering read a letter from Mr. Saxon stating that in view of the conversation Mr. Clark had had with him and that it would cost Clarence his farm to save his neck, he might as well have part of it as for the lawyers to get it all and wanting \$300 for his statement. Mr. Clark's letter replying denounced Mr. Saxon and stated neither Clarence nor his counsel needed such evidence and the price asked was the price of perjury. Saxon replied to this, stating all he wanted was an honest man's pay and he did not intend to commit perjury for anyone. The letters served to explain the entire occurrence of yesterday and to exonerate both Mr. Saxon and Mr. Clark. Mrs. John P. Thacker recalled. Cross-examined by Mr. Clark stated she and her son had employed Mr. Gering as counsel. State rested at 9:18 a. m. W. C. Ramsey called by defendant was at Darrough farm next day and passed Crawford and Clark on the road. They gave witness a stick or board which they claimed to have picked up. At the farm witness and George Saxon found another piece of board about six feet long, which was in his office now. Witness produced the stick which he had found, 2 1/2 or 3 feet from the southeast corner of the corn crib. The witness thought they were off the same piece. Called as witness for the state. Mr. Gering examined. Witness had learned where the men fell, which was about 19 feet from where the last stick was found. Earl Travis sworn. Court reporter for this district court. Was present at the coroner's inquest at Union on the death of John P. Thacker. Took the testimony at the inquest. Employed by both County Attorney Ramsey and Mr. Clark. Witness took Carter Albin's evidence and had stenographic notes which were correct and which were extended correctly in typewriting. The transcript which defendant had was correct. Mr. Gering examined. It sometimes occurred clerical errors in typing in taking and extending notes, sometimes names and the like were transposed. The state and the defendant admitted that the transcript was a correct transcript of the reporter's notes of the testimony at the inquest. Mr. Clark then read various questions and answers given the witness Carter Albin at the coroner's inquest which were the same as read to Albin on his cross-examination last Wednesday by Mr. Clark. These indicated a variance between Albin's testimony at the inquest and his testimony now. The same course was adopted in regard to the testimony of Lee Thacker, which showed the variances being different now to what it was at the inquest. The