

# The Plattsmouth Journal.

SEMI-WEEKLY EDITION—EIGHT PAGES

VOLUME XXVIII

PLATTSMOUTH, NEBRASKA, THURSDAY, JUNE 10, 1909

NO. 228

## JURY FINDS JOHN CLARENCE GUILTY

### Fixes Crime as Murder in Second Degree—Last Testimony

Dr. J. S. Livingston called. Dr. Livingston testified to having examined defendant's head and finding it more or less bruised as from a blow. An attempt to show at what distance such a blow could be inflicted was ruled out.

Peter Clarence called. Witness testified to the size and dimensions of John Clarence's team his testimony showing the team to have been about 5 feet 4 inches in height.

Dean Austin called. Lived at Union. The reputation of Mr. Thacker was not quarrelsome. No testimony as to his temper was admitted.

Sam Smith called. Liveryman and Draying in Plattsmouth. Had measured John Clarence team. One mare 5 feet 3 1-2 inches and 5 feet 4 inches. The other horse was 5 feet 3 1-4 inches and 5 feet, 3 1-2 inches in height.

Nelson Jones, drayman. Saw Clarence on Jan. 15th in Tom Troop's cigar store. He came up street on a horse. Went into Troop's store. He was inquiring for police. Defendant inquired for Mr. Cory. Defendant unbuckled a belt with gun and holster in it. What he said was ruled out. Defendant said "Mr. Cory, take these and lock me up, I shot John Thacker."

E. M. Smith called. Lived near Union. Farmer and stockman, 56 years of age. Knew both Thacker and Clarence. Had broken wild horses and bronchos over 9 years. The practice in the west was to carry a revolver when breaking horses to protect himself from horses which got the best of him. Knew Thacker's reputation. It was quarrelsome. He had lived next to him 9 years.

Mr. Gering cross-examined. Reputation comes of a line of honor or dishonor. Reputation is what a man does. Character means a man's respectability and integrity, character and reputation the same witness had been arrested.

By Mr. Clark. He had heard people talk of Mr. Thacker's disposition to quarrel. He took that into consideration when he spoke of Mr. Thacker's reputation. He had never heard other persons discussing the reputation of Mr. Thacker. Frank Schlagel and witness and Lennie Crawford discussed it.

By Mr. Gering. He had heard of quarrel with Frank Schlagel. Had talked with Crawford about June, 1907. Thacker had told him of Crawford pulling a gun on him. Crawford said they had had trouble in the woods and his buggy had been broke by Thacker's fault. Had visited Mr. Thacker. Don't know Thacker was ever arrested. The Houston quarrels happened when Houston was about 21 years old. Had talked to Houston lately on account of this case.

By Mr. Clark. Thacker had told him in presence of Lee Thacker and Ed. Houston. "I went in there calculating to whip Lennie Crawford. He might fight and the boy had a six-shooter, but he could eat the bullets." Thacker did not claim Lennie Crawford had shot at him.

John Klaurens, sr., called. Father of defendant. He has been a cripple a long time. About 20 years ago he got a touch of it. Had used a cane about 6 or 7 years. Caused from being thrown from a pet mule. Could not remember his age. Had seen him break lots of horses. He kept his gun strapped on.

Cross-examined by Mr. Gering. Witness never carried a gun. Riding witness, mare one day it slipped and fell nearly catching him. He then stated he would kill the mare if it caught him. He allowed him to ride horses whenever he wanted to. The horse had thrown him a million times, always hurting his knee. Dr. Gilmore had treated him. Had heard of trouble with Bob Kendall. He did not wear a cane then. Could not remember whether he commenced to use a cane before or after the trouble with Kendall.

Walter Thacker called. Resided in Liberty precinct, aged 28 years. Knew defendant. Met him on January 13, 1909, at Ed. Midkiff's in road. Witness in a buggy. Defendant got in buggy and lead the team behind. Witness asked him to sign a paper for a road through John P. Thacker's land. Defendant said he would sign the paper if John got paid for his land. Witness told Clarence how John felt toward defendant. He told defendant to stay away from John Thacker as John was laying for him. This was in August. He was told this by John P. Thacker and he told Clarence on January 15, 1909. Knew Thacker's reputation to be that of a quarrelsome man. Thacker was quick tempered. Brother of John P. Thacker. Witness' father died Oct. 21, 1908.

Cross-examined by Mr. Gering. His brother wanted witness to bring Clarence up to his place in August, 1907, so he could whip him. Witness might have heard of deceased and defendant being at Ed. Midkiff's. He might have told someone of John's threat. Messrs. Gering and Clark clashed over side remarks and a portion of them was incorporated in the record. Witness could not remember whether he had told any one else. Walter wanted the road opened for his benefit and John did not want it. This was the cause of his telling it. He was afraid his brother might pound defendant up. He had always known his brother to be quarrelsome. Did not know what reputation was. Mr. Clark had brought it in as though John was quarrelsome. Did not know what character was nor whether it was different from reputation. There were two living brothers, one in Iowa and one at Homer, Neb. Had talked to Mr. Clark in his office going on his request made in the court room. This was during the Ossenkop case. He thought it was after his brother had been shot. He had told Mr. Clark before his brother was killed that John was quarrelsome. John was not a fighter. He heard of the quarrel with Crawford. Mr. Clark asked him about the talk John had made to him about Clarence.

By Mr. Clark. The first talk concerning the private affairs of J. P. Thacker and the witness over the father's estate. His father was living with him when he died.

Earl Albin called. 19 years old. Lived near Union. Was at Darrough's farm on January 15, 1909. Cousin of Jno. P. Thacker. Witness was outside the crib when the trouble commenced, on the right hand side of the wagon between the crib and wagon. He was talking to Carter Albin. Carter said, "He was a d—big headed fool." Witness said he probably was and wanted Carter to get out the wagon but he would not. He took off his coat. John P. Thacker came up and said "Kill the S— of a B— he don't amount to anything." Thacker got up to about 20 feet of witness east and in front of the wagon. Did not hear anyone else say anything. Clarence said something but he did not hear what. Thacker picked up a board and went back to where Clarence was. Witness was 5 feet 11 inches high. Witness could see Johnny and Thacker. Thacker hit John with the board. Johnny hollered or screamed. Could not say what Clarence did with his cane. There was shooting as soon as Thacker grabbed Clarence. Witness went to the head of the horses as soon as the striking took place. He saw Thacker hit Clarence twice over the head with the board which then broke, then Thacker grabbed Clarence. Two shots were fired in quick succession and the third followed later. The men fell to the ground. Thacker on top. Thacker was back of Johnny when the second shot was fired. They were gapped. Clark and Crawford were in the crib when the trouble started. Did not notice them until when Thacker got Clarence down. Did not know whether

John had his cane when Thacker grabbed him or not. Carter was in the wagon when witness started around the head of the wagon. Lee Thacker came down and stepped on Johnny's hand. John Thacker had a hold on Clarence's right hand when they fell. After the trouble John Clarence got up and got his pony. Witness went to barn with defendant who told him he was coming to town to give himself up.

Mr. Gering cross-examined. Did not know how many times Thacker struck Clarence over the head. Relations between John P. Thacker and witness were strained and he did not have a friendly feeling for him. He had dared Carter Albin to get out of the wagon. He was intending to lick him but his uncle was too big a coward. Witness was very defiant in his manner. He testified that he had started trouble with his uncle by throwing corn at him out of the crib with the intention of starting a fight with him. Witness had shaken his fist at his uncle after the uncle had shaken his fist at him. Witness pointed out on photograph where he and his uncle were standing. Witness did not know where Clark or Crawford were when the fight started. Witness looked over the horses backs. He saw Thacker stoop down and pick up a stick. Mr. Gering's cross-examination was a ken and helped to badly tangle the witness up on facts of the trouble. The witness constantly said, "I don't know" in answer to Mr. Gering's questions and seemed to be badly at sea over the situation of the parties. Witness lives now at Wausa, Neb. The witness positively denied several of the answers read him as having been asked him at the coroner's inquest.

By Mr. Clark. Witness had made no measurements on the ground and had not been back here.

Witness demonstrated before the jury how the men stood when grappled.

Court adjourned at 5:45 p. m. until Monday.

#### Monday Morning.

The attendance in district court this morning when court reconvened for the continuance of the trial of John Clarence for the murder of John P. Thacker, was lighter than at any time during the case. This was doubtless owing to the bad weather and the early hour, at which the trial was resumed. Court was prompt in convening and business was taken up at once. The defendant, his mother and brother occupied seats behind the counsel, Byron Clark. Mrs. Thacker, her little girls and son Lee, were also in court and occupied seat behind County Attorney Ramsey and Matthew Gering, counsel for the prosecution.

Mrs. Maggie True called. Resided at Union; subpoenaed by state first. Had seen Clarence preparing to break and breaking horses. Saw Clarence take revolver and belt and strap it around his waist.

Cross-examined by Mr. Gering: Had only seen Clarence with revolver that one time. Had seen him with the revolver when breaking western horses. Did not notice any brand. Saw him hitch up horse to wagon and get in wagon. Defendant drove away; the horse was rearing and kicking. He drove with the lines and a W, which gave the driver absolute control of the horse.

Sheriff Quilton called; Sheriff of Cass County; also jailor. Had the cap which the defendant wore when committed to jail. Cap identified. Had examined the head of defendant on January 16—found several small lumps on head. This was not at the time Dr. Livingston examined the defendant. One was about the center of the head and one was at the left side.

Cross-examined by Mr. Gering: No blood on head. One bump just ordinary bump, the other red. Cap taken possession of at request of County Attorney Ramsey who had never seen it.

By Mr. Clark: County attorney had never asked for it.

Nelson Jones recalled by defendant: Was present when defendant took off his belt and revolver. Observed his horse at the time. It looked as if he rode hard and sweaty. Did not know at the time what was done with the horse. An hour later he saw the horse in the barn blanketed with two blankets.

Sam Redmon called: Lived in Plattsmouth. Lived at James Darrough's on January 15—was shelling corn there. Arranged for help for job. Was there when defendant shot Thacker. Was at the sheller before the shooting, but was away at the time being at the house, calling more teams. The

sheller was running. He then started back to the sheller and when about half way he noticed the sheller was stopped and he stopped. No quarreling when he left the sheller. Earl Albin had been throwing corn into Carter's wagon. When witness stopped he was about 60 steps north and east of the sheller and wagon. He stepped the distance a day or so later. Witness saw Albin pull off his coat. Could not hear words spoken. Then saw Thacker about 6 feet east of the horses' heads, going west. He passed the horses' heads a couple of feet. Remained a very short time. Then saw him going east. Could not say how far he went. No one before him nor in that direction. The tank was south and west. Clarence was there. Thacker did not go quite as far east as defendant, but turned south toward him. Heard no words; saw Thacker hit defendant a couple of times with a board and defendant striking back with his cane. They clinched and one shot was fired then two more as they fell. Witness did not hear shooting until after the blows were struck. Clarence did not move toward Thacker. Could not tell whether Clarence hit Thacker with the cane or not. Witness then returned to the house. Witness saw defendant before at the house, then he started back. Witness did not hear defendant make and statement to him. Clarence ate dinner at Darrough's. Clarence did not have on the overcoat; saw Clarence have revolver on his left side that day.

Cross-examined by Mr. Gering: Could not say what came defendant had. Supposed the one he now had was the one. Cane about 3 feet long. Thought cane would come up to defendant's belt. Ordinary friend of John's. No trouble when he started for the house. John was pulling out his wagon with a team of horses—gentle, he believed. He was in charge of the place as Darrough was gone. He thought Earl Albin was throwing the corn in the wagon to start a fuss. Heard Albin's testimony but could not remember his stating that he threw the corn to start a row. He, Crawford, Clark and Earl Albin were all in the crib shoveling corn. They threw it to the sheller which stood east and west. Sheller about 8 or 10 feet long. Sheller north of Carter Albin's wagon. Witness testified to various heights and measures of different objects. There was a tree northeast and a pile of wood; also a pump was north of that and the Darrough house was north of that. Could not say whether the tank could be seen from the west side of the porch or not. Had lived with Darrough since October. Saw Midkiff and Mrs. Darrough at the house. Telephone on the south side of the room. Called up Mr. Chalfant and Mr. Petersen. Witness supposed it to be about 300 feet from the house to the crib. Attorney Gering wanted to test by the watch the time he would take to walk from the house to the crib. Mr. Gering holding the watch. The test resulted in witness fixing the time at about 45 seconds. Witness had talked to Mrs. Midkiff and Mrs. Darrough about one minute. Witness stopped at about 180 feet from the sheller when he first saw Thacker. It was nearly five minutes from the time he left the crib until he got back to where he stopped. Thacker came from the east immediately after Carter Albin took off his coat. Witness had made measurements of various distances on the premises by himself, one end of the tape being held by a rock. Witness had posed for photographs for Mr. Clark. Mr. Gering showed witness defendant's exhibit 6, a photograph, for the purpose of showing witness could not see the wagon over the sheller. Thacker was out of his view part of the time. He could see him east of the team at a distance of 180 feet. Saw Thacker strike Clarence at a distance of 6 or 8 feet from the tank. Witness could not say whether defendant used one or two hands in wielding the cane. The reins of the team were dropped. The floor of the crib was bare—some six feet at the door. Mr. Gering showed witness state's exhibit 4, and questioned him on the 2x4 studding in the crib. Witness demonstrated with Mr. Gering his idea as to how far the men were apart. He thought six or eight inches. Did not hear a shot until the men had gotten together, the shots all followed one another in regular succession. Thacker did not hit Clarence after they clinched. No shots were fired until after they clinched when Thacker was not striking Clarence.

He did not see the board break. Witness shown defendant's exhibit and questioned as to the distance of the team from the crib and also demonstrated how far from the tank the men fell, fixing the distance at about 8 feet. Knew Geo. Hill and Geo. Saxon; saw the latter with County Attorney Ramsey and had a conversation with the latter. Did not remember telling him that he was telephoning at the time and did not see it. Witness had not talked to Attorney Clark about the matter at the time he talked to Mr. Ramsey. He had later, talked to him about a month later. At the start of the trouble he didn't want to get into the trouble but lately he had been taking quite an active interest in it, taking measurements and posing for photographs and returning from Missouri to testify.

Mr. Clark endeavored to get statements from the witness as to the conversation with County Attorney Ramsey but was ruled out by the court.

Mr. Gering examined. He went back to the house as soon as he saw the shooting. He talked to Mrs. Midkiff and Mrs. Darrough. The latter had written him several letters after he went to Missouri but they did not relate to this trial, but to personal matters.

This witness made perhaps the best defense has put on yet, as his answers were clear and lucid.

A recess of about ten minutes was taken at 10:30 to give the jurors a breathing spell.

Sam Redmon recalled by Mr. Gering, testified he did not know which man had the gun. He saw Clarence shoot Thacker. Mr. Clark also had witness identify the wagon on the photographs as James Darrough's.

Len Crawford called. Lived at Union, aged 26. Knew Thacker and Clarence. At the Darrough farm on January 15 when the shooting occurred. He scooped corn. Clark, Albin, Redmon and himself doing this. After Redmon left, Albin went out to quarrel with his uncle in the wagon. Earl was between the crib and the wagon. Witness was sitting down when Thacker came. He heard him tell Carter to get out of the wagon. Clarence then said "Keep your mouth shut, or 'shut your mouth.'" Witness then standing up. Had shown witness Larson where he stood. His feet was resting on some corn. Had his eye against the crack. Could see Johnny and Thacker on the other side of the wagon. Saw Thacker come around the horses' heads then on the east side of the wagon. Witness shown defendant's exhibit No. 10. Was not present when pictures were taken, but had pointed out where he stood to Mr. Larson. Shown exhibit No. 11 and identified the view as that he had seen Thacker was going north and east, Clarence facing north. Thacker went to where Clarence was. Could not say whether Clarence was advancing toward Thacker. Witness saw Thacker strike Clarence twice with the board and Clarence struck him with his cane. They grappled and he did not see shooting, shooting was after Thacker had hit Clarence. Could not locate Clark. Witness 5 feet 8 inches high. Witness explained how he identified the crack in the crib for Mr. Larson. Did not know how much corn had been taken out.

Mr. Gering cross-examined: Examined the witness on his testimony before the coroner's jury as to corn taken from the crib. Earl Albin was a little back of the hub of the front wheel of the wagon. Earl Albin started the fuss by throwing corn at Carter Albin. Earl hadn't said anything about starting a fuss. Witness corroborated Carter Albin as to facts of the quarrel with Earl Albin. The watch test as applied to Redmon was repeated with this witness, he fixing the time which elapsed when he began scooping corn to the time he heard Thacker at three-fourths of a minute. Witness was then examined at some length on the location of the several witnesses of the affray, and also some measurements. Witness got up in the crib after the sheller stopped and took a position between two studding. Witness used state's exhibit 5 to show the jury where the 13th and 14th crack were between the boards of the crib. Witness could not see the ground on the east side of the horses. Saw Thacker when he was about two feet from Earl Albin. Looking through the cracks he was about some 12 or 14 feet from Thacker when he heard him tell Carter to get out of the wagon. Witness did not hear John Thacker say "Get out of the wagon

and kill the S— B—." He did not call his nephew such a name. He only heard Clarence say "Shut your mouth." Witness denied testifying that he saw Clarence have the mules' lines in his hands, at the coroner's inquest. The men were twenty-five feet apart when Clarence and Thacker were talking. Witness did not see Thacker pick up a stick. Witness described the character of the ground in the vicinity of the crib. Knew Clarence had a gun, had seen him with it on before but not on that day. The men went into the low place when they clinched and he lost sight of them. Did not think any shots had been fired after they went out of his sight. He was in the crib and two shots were fired in rapid succession and then the third one. The space occupied by the events was a space of about 26x36 feet. When the fight started he looked at Thacker and Clarence and did not pay any attention to the Albins. When he first saw Earl Albin afterwards, he was coming back with one of Clarence's mules. Could not locate Ira Clark. He was watching the others. The boards on the crib were about four inches wide. An objection by defense to this method of arriving at heights was sustained by the court. Ira Clark was taller than the witness who stood on corn in the crib and looked out of the crack. Could not say definitely but it was a short time from the time Clarence told Thacker to shut his mouth until the shots were fired. Perhaps it was a minute or maybe only half a minute. They had not clinched when they went out of his sight. He did see anything of the gun at that time. Could not say whether Clarence had been on his knees—could not see him. Knew John McCarroll and had talked with him at Nebraska City in Nichol's saloon. Dan Cox and a nigger present. McCarroll asked about the shooting and witness told him he did not see it. Could not remember telling McCarroll "don't know a D— thing about it. Was in the corn crib and I'm D— glad of it." Witness denied having said he didn't know anything about the affair. Knew Orrin Ervin, Ernest Smith, Verl Klanson. Talked with them. Boys I did not see the shooting. I knew what he was, and didn't want any bullets through my hide. I got out of sight." Witness denied making this statement to those men. Had no feeling regarding Thacker and had had trouble with him.

**Monday Afternoon.**

A recess was taken at noon until 1:30 p. m., when the trial was resumed. The attendance at the afternoon session was considerably greater than in the morning and as before, many ladies were in attendance. One feature was the appearance of a large number of small boys in the room.

Len Crawford again took the stand. Judge Travis ruled witness should answer the question as to whether he had a gun on him when he had the altercation with Mr. Thacker. Knew Charles Morton and had told him he did not know anything about the shooting. Denied telling him he "didn't know a d— thing about it." Questioned as to whether he had given testimony before the coroner's jury at variance with that now given, witness admitted this to be the case. This concluded Mr. Gering's cross-examination.

Mr. Clark on re-direct examination had the witness explain the variance in portions of his testimony. When Thacker struck Clarence the latter kind of screamed once.

By Mr. Gering: After the affair witness went to the house and later helped to put Mr. Thacker in the carriage.

Ira Clark called: Aged 18 years old; lived at Union. 5 feet 9 inches high. Was present when Olson and Larson took pictures at the Darrough farm and examined defendant's exhibits Nos. 9 and 12. He identified positions shown in the photographs and certain viewpoints within the crib. Witness was present on the day of the shooting and knew the location of various objects at that time. Exhibit 12 represented objects correctly. Defendant offered in evidence exhibits Nos. 9 and 12. No objection and same admitted. Had his head against the boards when looking through the crack on that day, looking south and east. Witness went into the crib with Crawford, Earl Albin and Redmon to scoop corn a little after twelve o'clock. Was there when Redmon left and the sheller stopped a few moments later. Saw Earl throw corn at Carter who was on

(Continued on 2.)