

**Jury Finds John Clarence Cuiity**

(Continued from page 1.)

the engine when the first was thrown. Later he was in the wagon and Earl went out. Witness was within a foot and a half of the scoop hole and close to the east side. The Albin's were calling one another fools and Earl was daring Carter to get out of the wagon. The latter took off his coat. Thacker then came around the horses and told Carter Albin to get out of the wagon and further the witness could not remember. He could not remember what Clarence said. He was watering his mules. Thacker then picked up a stick and started toward Clarence who was 3 or 4 feet from the tank. Thacker then commenced beating Clarence over the head with the board and Clarence fought back with the cane. Witness then went out of the crib and ran around the head of the horses, and saw the men grapple. Witness demonstrated before the jury, how they were clinched. Mr. Clark laid particular emphasis on the position of Thacker's thigh. Clarence then reached to his left side and drew his gun, discharged it. The men moved along and fell in the draw to the southwest. Witness saw Clarence pull the gun and shoot. When they fell Thacker was on Clarence, side and shoulder, his head on Clarence's shoulder. Clarence held his cane over his shoulder with both hands. When witness started for the scene of the trouble, witness heard Clarence scream, he thought twice, when he was hit with the board. Saw the cane lying southwest after Clarence got up. When the last shot was fired Clarence's right side was on the ground and Thacker was on Clarence's left side. Lee Thacker came up and stood on Clarence's arm and tried to get the gun away. Clarence refused to give up the gun saying "You fellows would stand around and let him kill me." He offered to let Crawford have the gun but Lee objected, and then he offered to give witness the gun but he refused it. Thacker was then helped up and Clarence got up and went after his pony. He wished Lee Thacker good luck and said he was going to Platts-mouth to give himself up. No shots were fired until after the blows were struck.

Cross-examined by Mr. Gering: Witness was watching the Albins and did not think of trouble with Thacker and Albin. Earl Albin asked witness to throw corn at Carter. The first corn was thrown at Carter when he was on the engine. Could not tell how far Carter was from Earl when the corn was thrown. Could not remember about corn hitting Carter. Did not remember who first used the expression "fool" between the two Albins. Earl shook his left hand at Carter. Did not know whether Earl was right handed or not. Earl's right hand was in his pocket. Could not remember what was done next. Witness was looking through the 15th crack. Face quite close part of the time. Could not tell whether the camera was placed in the exact spot he had occupied when gazing through the crack. Could not say whether studdings were the same distance apart. Witness said he couldn't look south if his head was against the studding. Could not swear whether he could see a point three feet east and six feet south of the horses heads. Witness looking through the crack could not see Clarence's hand on his cane and did not so testify at Union. He could not see defendant's revolver around his waist. Witness indicated on State's Exhibit No. 2, where the men fell. Did not see Thacker pick up the stick nor Clarence move toward Thacker. First saw Thacker between the horses and the crib. At that time no one had said anything except the Albins. Witness stated he did not have his eye at the crack when the trouble started. Thacker struck Clarence with the board and this board was handed over to Mr. Ramsey. Shown piece of board, he identified it as the board which he had given Mr. Ramsey and claimed it was the board Thacker had used. Witness admitted this. Clarence had hold of the smaller end of the cane when he raised it to strike Thacker. Did not see the cane before. Witness recounted his actions during the melee. Witness demonstrated how the men were clinched, using Mr. Ramsey as a model of Clarence and he representing the late Mr. Thacker. A demonstration by the use of the revolver that the shot which penetrated the leg could not have been fired by defendant while in the position witness occupied was made before jury. A demonstration was also made showing the position of the two men as they lay on the ground with Thacker's hand grasping Clarence's right hand which held the gun. The third shot which penetrated the breast was fired as the men fell to the ground. The stick given Mr. Ramsey was found at the scene of the struggle. An old board was also found within 3 or 4 feet of the place. Witness did not appreciate

gravity of Thacker's wounds. The shot which penetrated the breast was fired as the men had almost hit the ground. Witness thought the gun some six or eight inches from the breast but not one foot. Witness could see all the shots. Two shots were fired very close together and the third shot when the men were almost in the act of falling.

By Mr. Clark on re-direct: Witness did not pretend to give Mr. Thacker's position on Mr. Clarence's body. Witness stood on the corn in the crib. Distance to the ground was 6 to 9 inches.

By Mr. Gering: Questioned witness as to his testimony before the coroner's jury at the inquest at Union. This showed a variance between witness' testimony then and his testimony now.

Mr. Clark examined: Witness had seen Clarence breaking horses at his home. He buckled on a revolver and holster while the boys harnessed the horse.

By Mr. Gering: Witness was in wagon with Clarence. Witness held the double rope and the western horse while Clarence drove. Witness and Crawford had read over their testimony on Tuesday and Friday in Mr. Clark's office.

By Mr. Clark: Witness had heard other people say his testimony was different at this trial than at the inquest.

Clark made another excellent witness for the defense and materially strengthened their case. His answers were uniformly clear and given without apparent study or any equivocation. On the whole, the main strength of the defense seems to be in the testimony of Redmon, Crawford and Clark.

A short recess was taken at 3:30 to enable attorneys, the jury and the court to get a spell of rest.

Len Crawford called by Mr. Gering for further cross-examination. Knew Floyd Saxon. Talked with him in April, he thought. "I didn't see anything of it. Johnny butted in where he had no business and got himself in trouble." Witness denied saying this to Saxon.

John Clarence took the stand. Age 29 years. Lived at Union. Single man. Lived here in Platts-mouth, at Union lived with his father. Lived on Jan. 15th near Union on his own place. Had lived in neighborhood and known John Thacker all his life. Homes 1-2 mile apart. Relations had been pleasant. Used a cane 7 or 8 years. Witness shown defendant's exhibit No. 14, a photograph of himself taken two weeks ago or so. Also exhibit No. 16, also of himself. One standing and the other sitting with legs bare. Photographs were shown to the jury who scrutinized them closely. Had a cane with him on Jan. 15, 1909, producing it. Length about 3 feet and one inch in diameter at the end and one and one-quarter inches at the largest place, a hickory cane. Cannot walk without a cane and has scarcely any use for the left leg using a brace attached to heel of shoe and strengthening ankle. The brace had strap iron over the thigh and also one running half way up the leg. Went to Darrough's farm in the forenoon of the 15th. Knew Walter Thacker and saw him about 9 a. m. that day. With Ed, Midkiff he was going to borrow a wagon to haul corn with. Thacker told him that John had asked him to get witness over to his place to beat him. Witness did not believe John Thacker intended to do so. First saw John Thacker when he came back from watering his horses. Next saw Thacker at Darrough's. Witness at the water tank, Thacker hollered and attracted his attention. Witness standing at tank, witness had gotten a load before this which he had pulled from the east side of crib. Had two mares and two mules to it. Did not notice anything going on at the crib. Did not notice what the hollow was. Looked around and saw Thacker. He was 6 or 8 feet from witness north, and walking west. Nothing passed between them. Thacker went to the west side of the wagon and hollered to Carter Albin to get out and slap Earl. Witness told him to come back and keep his mouth out of it, it was none of his fuss. Thacker picked up a board a little southeast of the team and came toward witness. Witness had stepped a little north when Thacker first hollered but no more. Thacker struck the first blow when within reach. Witness had on a sheep's skin lined second coat and also a gun (examined gun and identified it.) Put gun on that morning. Witness was here shown defendant's exhibit 13 which he identified as the one he wore on Jan. 15 when Mr. Thacker was striking him. Cap was delivered to Sheriff Quinton and had not been in witness possession since. Couldn't say how many times Thacker struck him. Witness exhibited to jury how he raised his cane, the team he was holding setting away. Witness struck Thacker on the arm. Could not say what Thacker did with the cane. Witness then reached for his gun. Thacker was behind and at one side of witness with his arms around him somehow.

Thacker was behind and to the left side of him. When he lost the cane, he made up his mind to shoot and save his life. Witness did not believe Walt Thacker's statement until John commenced beating him. He fired no shots until John commenced to beat him nor did he shoot him as he stooped to pick up the stick. He did not tell him to come back or he'd shoot him. The men clinched and fell very quickly. He pulled the gun with his right hand and fired as quick as he could. He took no aim (witness demonstrated the position of the gun in his belt and how he handled it.) He was shooting as they fell. When they struck the ground Thacker was laying on witness' side and breast. On the left side. Witness left arm was over his breast with Thacker's neck over his elbow and his head below witness' chin. After they got up witness was handed his cane and went to the barn and saddled his pony, starting to town. Spoke to Lee Thacker, wished him good luck. Then came to town and gave himself up to Policeman Cory. Witness did not know when he left Darrough's. He came in over the telegraph road. Witness had on no overcoat. Shown a coat marked exhibit No. 17, identified as the coat he had on that day. Wool on coat had black on it after he shot Mr. Thacker, which was powder burns. Coat offered in evidence and exhibited to the jury. When they clinched he came from the north and witness turned as he struck at him. They fell to the southwest. His coat was down over the gun when they clinched. Witness had no other intention than to protect his life and body when they fell. Witness' height 5 feet 6 inches, weight 160 pounds. Had had no business or other relations with J. C. Petersen prior to Jan. 15.

Mr. Gering cross-examined: Witness required to put on his coat just as he wore it that day and also the revolver and belt. Witness demonstrated how he handled the gun. At the first shot Clarence's hand was below the navel. Powder mark could have been made on coat when the cartridge exploded but no bullet hole made. Witness demonstrated where he would have to hold the revolver to shoot Thacker in the thigh. Revolver was a little higher when the second shot was fired. Third shot fired as they struck the ground. Thacker's head was some lower than before. Witness pointed out the powder marks. Witness purpose in shooting was to make Thacker stop beating him. He was not beating or injuring him when he fired the first shot. He had hurt his knee when the second shot was fired. The third shot was fired when they struck the ground and Thacker had made no attempt to strike witness between the first and last shots. All he tried to do was to get witness down. It looked to him like his life was in danger when Thacker had him by the wrist and was asking the boys to take the gun away from him. Lee Thacker never offered to strike him with the monkey wrench nor had he stepped on his head with undue force or violence. Witness had heard Crawford had pulled a gun out on Thacker. The witness exhibited to the jury the spots on his head where Thacker had bruised him. Walt Thacker wanted him to sign a petition for a road through John Thacker's land. At that time he had been made acquainted with John's threats. He did not believe Walt Thacker, notwithstanding these threats made in August, 1907, their relation had been friendly and Thacker had never offered him violence or anything of that kind. Walt had feeling against John. The teams hauling the corn were gentle. Witness demonstrated how he was holding the lines and the rope of the team which he was holding at the time of the trouble. Mr. Gering closely questioned the witness concerning his movements about the Darrough premises on the day of the trouble, and his actions with the team etc.

Mr. Clark on re-direct: Thacker tried to bite witness as they lay on the ground, biting at his chin.

Mr. Gering: Witness had already fired the third shot when the attempt at biting took place. Heard Mr. Thacker order the doctor.

Mr. Gering wanted to examine several witnesses to relieve them from having to stay. Judge ruled that if the witnesses could be furnished within an hour they might proceed. It was decided that the state would call their witnesses out of their turn.

The state called D. W. Foster. Age 75 years. Lived in Liberty precinct 35 years. Knew Mr. Thacker's reputation to be a peaceable man.

By Mr. Clark: Lived 5 miles from Mr. Thacker. Traded at Union. W. D. Wheeler called: Age 54 years. Lived 6 miles south of Platts-mouth. Had lived there about one year. Sheriff and county treasurer. Had known John P. Thacker for 15 years. Witness not well acquainted with his reputation.

Geo. LaRue called: 66 years of age. Lived at Union 40 years. In Cass county 41 years. Had known John Thacker 35 years. Mr. Thacker's reputation peaceable.

By Mr. Clark: Had never seen Mr. Thacker having quarrels with a Mrs. Quall Johnson. Had heard of some little quarrels in which Mr. Thacker was the aggressor.

Wm. Chalfant called: 43 years old. Lived in Liberty precinct 11 years. Knew Mr. Thacker 11 years. He was a peaceable man.

Mr. Clark cross-examined: Until this trouble he had not heard Mr. Thacker's reputation as to being peaceable questioned. Had not heard of quarrels with his neighbors. Had never heard of Frank Albin moving away on account of trouble with Mr. Thacker.

Crede Harris called: 43 years old. Lived in Liberty precinct 30 years. Lived within 2 miles of John P. Thacker. His reputation was peaceable.

Byron Clark cross-examined: His knowledge was from his personal relations.

Winfield Swan called: Name T. W. Swan, aged 46. Lived in Liberty precinct all his life. Had known Mr. Thacker since boyhood. Knew his reputation as peaceable.

By Mr. Clark: Lived 3 1/2 miles from Mr. Thacker. Had borrowed and loaned things. Thacker passed his place on his way to town. Had never heard his reputation discussed until this trouble came up.

Jesse Pell called: Jesse L. Pell, 37 years old, Brother Mrs. Ed. Midkiff. Lived in Liberty precinct all his life and was a boy with Mr. Thacker. Lived within 2 miles of him. His reputation was peaceable.

Mr. Clark cross-examined: Had not heard of him ever having much trouble. He did not remember of much trouble. A few rows. Witness lived west and south of Mr. Thacker.

Dan Cox called: Mr. Ramsey examined: Lived at Nebraska City. Knew Len Crawford. Was in Nebraska City about February 16. Remembered a conversation with Crawford on that date. John McCarrel present. Crawford said: "I didn't see any of the shooting. I was in the crib and D— glad of it."

John McCarrel called: Corroborated the witness Dan Cox. Lived in Liberty precinct 22 years. He said "I didn't see a D— thing of it. I was in the crib and D— glad of it."

Mr. Clark cross-examined: Was not certain whether Crawford said he didn't see it or the shooting.

Floyd Saxon called. Examined by Mr. Ramsey: Lived at Union all his life. Knew Sam Crawford. Had a conversation with him in which he said "I didn't see anything of it." Thought referred to the affair. Crawford said he was in the crib and didn't see anything of it.

E. E. Smith called: Mr. Ramsey examined. Lived in Liberty precinct all his life. Knew Orin Ervin and Crawford. Remembered a conversation with Crawford on January 15—Crawford said "I don't know anything about it, I knew what he was and I got down out of sight."

Orrin Erwin called. Mr. Ramsey examined: Lived near Union in Liberty precinct. Corroborated E. E. Smith on conversation testified to above.

Geo Saxon called. Mr. Ramsey examined: Knew Sam Redmon. Was with County Attorney Ramsey at the Darrough farm at his request. Recalled conversation with Redmon at that time and place when he said he was at the telephone in the house at the time and did not know anything about it.

Mr. Clark cross-examined: Conversation held just south of the house. Did not see Mr. Redmon point out where he stood at the time. Had conversation in the house and at the barn but could not recall them. Redmon had pointed out where the men fell.

George Hill called. Mr. Ramsey examined: Recalled a conversation with Sam Redmon a short time after the shooting. Redmon said he didn't know anything about it, he was in the house getting a team.

By Mr. Clark: Witness had asked Redmon about the shooting and he said he didn't know anything about it.

Mr. Gerrans called. Examined by Mr. Clark: Lived at Union. Had seen defendant getting ready to break and breaking horses about one year ago. He had a revolver on him.

Court adjourned until 9 a. m. Tuesday.

Tuesday Morning. At nine o'clock this morning when court was to reconvene for what promised to be the final stretch of the noted Clarence case, there was scarcely a corporal's guard of visitors and spectators in the room. As the session wore on the numbers increased until a fairly good sized crowd was in the room. The defendant buoyed up by the favorable day of yesterday, seemed quite cheerful. Alongside him and back

of his counsel his aged father and mother as well as his brother held seats, just as they had done throughout the trial. Several ladies were also seated beside the aged Mrs. Clarence.

The widow of the late Mr. Thacker with her stalwart son Lee, and her two charming little daughters, occupied seats inside the bar just back of County Attorney Ramsey



John P. Thacker, the Murdered Man

and Mr. Gering, the special counsel. The day was dark and disagreeable and the gas lights over the clerk's and reporter's desks were early lighted to dispell the gloom and darkness.

Court was late in assembling, Judge Travis and counsel being engaged in preparing their instructions for the jury and it was 9:20 before court opened.

Jas. Robertson called by the defense: Mr. Clark examined. Clerk of the court. Had measured defendant, height 5 feet, 10 1/4 inches. Knew John P. Thacker. Witness a member of the county insane commission. An attempt by Mr. Clark to show that witness had observed Mr. Thacker exhibit a hasty and high temper while witness was sitting as a member of the commission, was ruled out.

Peter Clarence called: Mr. Clark examined: shown photographs marked defendant exhibits Nos. 5, 6, 7, 9, 10, 11 and 12 showing a wagon owned by defendant. Witness with Sam Smith had measured this wagon. It was 5 feet 2 1/2 inches in height.

Sam Smith recalled: He corroborated the measurements of Mr. Clarence. Witness had taken charge of defendant's horse which looked as if it had been rode very hard, as it was warm and sweaty.

Jos. Darrough called: Examined by Mr. Clark. Owned farm where trouble took place since 1893. Lived within a mile and a half of Mr. Thacker. Knew reputation of John P. Thacker and hardly knew what to say as to his being peaceable or quarrelsome. Couldn't say what it was.

Sheriff Quinton called, examined by Mr. Clark: Sheriff of Cass county. At the inquest on death of John P. Thacker; heard witnesses, Ira Clark, Len Crawford and Earl Albin called and sworn at request of county attorney.

By Mr. Gering: Witness summoned the coroner's jury at coroner's request.

Defense rested at 9:40 a. m.

The state offered the transcript of the testimony of Ira Clark before the coroner's jury to show a variance in his testimony then, and what it was at this trial in which he had changed his evidence as to how the shots were fired and as to what he saw Clarence. This was for impeachment purposes.

A similar offer was made in regard to the testimony of Len Crawford. This, also was for impeachment purposes. Mr. Clark offered several questions and answers of this

witness to explain some of the discrepancies in his testimony.

Lee Thacker called: Examined by Mr. Gering. Knew Len Crawford. Mr. Gering sought to show by this witness that his father never used vile language and epithets but the court ruled this out.

W. C. Ramsey called: Is county attorney and as such had looked up the evidence in this case. Was with George Saxon at the Darrough farm. At that time Sam Redmon said he did not know anything about it that he was in the house telephoning. The witness also met Redmon in front of Donat's saloon in Platts-mouth and after shaking hands with him, asked what Redmon was doing back here and he said he was to testify for Clarence. Witness said "I thought you knew nothing about it, and Redmon answered "That time I was not under oath."

John Vanhorn called. Examined by Mr. Gering: Lived near Union for 26 years. Knew Sam Redmon about three months. Redmon talked to witness about six hours after the trouble. Redmon said he was in the house and didn't see it.

By Mr. Clark: He didn't say he didn't see the shooting.

Fred H. Black called. Examined by Mr. Gering: Lived in Platts-mouth 40 years. Had been sent by Messrs. Ramsey and Gering to the Darrough farm on Saturday afternoon with Messrs. Ramsey, Gering and McCullough. Saw the crib in question. Looked through 13th and 14th cracks. Studding about a foot and a half or two foot apart. Size 2x4 inches. The closer one got to the studding the more the view would be obstructed. Looked through cracks on both sides of the opening about 4 or five feet each side. Mr. Ramsey near the water tank also Asa McCullough. Through the crack he could see Mr. Ramsey north of the tank, but only about to his elbow when he was west of the tank. Could not see the belt. Witness also testified as to other experiments with bodies on the ground in the position Clarence and Thacker occupied. Other experiments were also made to show that witnesses for the defense could not have seen the things they claimed to have seen through the cracks in the corn crib.

Mr. Clark cross-examined: 15th crack not measured. The 14th and 15th boards were off but were put on while there. There was no corn in the crib. Witness did not experiment away and back from the crack.

Mr. Clark moved to strike out all dittons were not the same as at the testimony of the witness as conditions were not the same as at the time of the affray and not contradictory to any witness. Overruled.

Asa McCullough sworn. Mr. Gering examined: This witness was 6 foot 1 inch high. He testified to various experiments made at the Darrough farm on Sunday, June 6. The object being to show witnesses for defendant could not have seen what they claimed at the time of the trouble. His testimony was to rebut that of Sam Redmon particularly.

Mr. Clark made no cross-examination of this witness

Lee Thacker called: Mr. Gering examined. He sought to show the height of the corn sheller. A fight on this was made by Mr. Clark and a warm argument followed. The state sought to discredit and rebut Redmon's testimony by this testimony. Judge Travis ruled out any testimony regarding the height of the sheller.

The case closed at 10:45 a. m.

County Attorney Ramsey opened the arguments at the close of the taking of testimony and after a short recess. He spoke during the remainder of the morning session, taking one hour and a quarter for

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