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State of Idaho

vs.

Steve Adams

1907

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1.

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF  
KOOTENAI.

STATE OF IDAHO,	)	
	)	
PLAINTIFF,	)	NO. _____
	)	
VS.	)	Before Hon. W. W. Woods, Judge, and
	)	a Jury.
STEVE ADAMS,	)	
	)	
DEFENDANT.	)	

BE IT REMEMBERED that the above entitled case came on to be heard in the above Court at Rathdrum, Idaho, on the 25th day of October, A. D., 1907. The Plaintiff appearing by its attorneys, Messrs. James H. Hawley, Walter H. Hanson, H. P. Knight, C. H. Potts, R. E. McFarland, James E. Gyde and A. A. Crane; the Defendant appearing in person and by his counsel, Messrs. Clarence S. Darrow, Charles L. Heitman, Edwin McBee, Fred Miller and John H. Wourms.

The counsel for the Plaintiff and Defendant announced they were ready for trial and thereupon the following proceedings were had.

The clerk, under the direction of the Court, proceeded to call names from the special venire of jurors ordered by the Court; said special venire having been exhausted, thereafter two further special venires were ordered by the Court; and in the examination of said veniremen adjournments were taken to November 5th, 1907, at two o'clock P. M.; at which latter time, twelve qualified jurors having been secured, the jury were sworn to well and truly try the case; and thereupon the following proceedings were had, to-wit:



2. Plaintiff's Opening.

The clerk of the Court, by direction of the Court, read the information in the case of the State of Idaho, Plaintiff vs. Steve Adams, Defendant.

Thereupon Mr. Walter H. Hanson made the opening statement on behalf of the Plaintiff as follows:

MR. HANSON: May it please the Court and Gentlemen of the Jury:

At this time it becomes the duty of the state to briefly outline to you the facts it expects to prove in this case, and upon which it expects your verdict.

You have learned from the statements of counsel made here during the examination of the jurors and the reading of the information, that the Defendant is charged with the murder of Fred Tyler, alleged in the information to have been committed on or about the 10th day of August, 1904.

The evidence which we will introduce in this case will show and conclusively prove, I believe, that the deceased in this case was killed between the 6th day of August and the 10th day of August, 1904; not exactly on the 10th day of August.

The evidence will show that Fred Tyler was a young man, about thirty-three or thirty-four years of age, who came to Idaho from the State of Michigan in the winter or spring of 1904 and settled first at Coeur d'Alene City, and later went to Santa, in this county, to live, with his mother and two sisters: That about the 31st of May or 1st day of June---wasnt it?

MR. KNIGHT: Yes sir.

MR. HANSON: (Continuing) he went into the Marble Creek country, in Shoshone County, for the purpose of locating a homestead. At the time Fred Tyler went into the Marble Creek country, there had been some trouble and ~~that~~ there then existed



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3.  
Plaintiff's opening.

some hard feelings between what was known as the older settlers and some of the new comers; Mr. Tyler being one of the newer settlers in that district: That at the time he went into the district, or shortly thereafter, some of the old settlers banded themselves together into a sort of a committee to look after what they considered their rights: that Fred Tyler located a homestead, built himself a cabin, and remained there for some time: That he was in almost constant communication with his mother at Santa; wrote her at every opportunity, until about the 15th of July, 1904, when he wrote her a letter, which was the last one she received, and the last she ever heard from him.

That on or about the same date, between the 6th and the 10th of August, 1904, Tyler went out on a little fishing expedition on one of the branches of Marble Creek---which is a tributary of the St. Joe River---and that he got quite a number of fish, was quite successful, and on his return to his homestead he stopped at the home of Mr. Phillips and took supper with

Mr. Phillips and his family; That about sun-down, I think the time was, about 7 o'clock in the evening, he started for his own cabin, after leaving part of his fish with Mr. and Mrs. Phillips, and took some little articles with him, which had been on the table that evening and were given him by Mrs. Phillips; That he had with him the fish he had caught, which were contained on a fish-basket, made of a part of a gunny-sack:

That after he disappeared from the Phillips home on that evening, he was never seen alive again by any one, except the Defendant, and those who were alleged to have been with him at the time he killed Mr. Tyler.

Mr. Tyler disappeared about that time, and his disappearance was commented on by the neighbors, who indulged in considerable speculation as to whether or not his discrimination?



4.  
Plaintiff's Opening.

speculation as to whether or not his disappearance was caused by a murder or otherwise; but suffice it to say he was never again seen alive by any one.

About a year later---I think it was a year later---in August or September, 1905, a surveying party, which was working in the neighborhood of Tyler's cabin, found the remains of a human being. At that time, of course, they were badly decomposed. They immediately notified the coronor of Shoshone County, and he came at once to the spot, and in company with a deputy, Mr. Williams, he went to the spot where the remains had been found, in company with Mr. Yeager, who is now the father-in-law of Fred Tyler--

MR. KNIGHT: No, brother-in-law.

MR. HANSON: (Continuing) yes, Mr. Yeager is his brother-in-law; and I believe Mr. Simpson, another brother-in-law, was with him, and also Mr. Thomas, who is now the husband of Mr. Tyler's mother. The remains were identified at that time by these people, who will be placed upon the stand, and who will testify before you, as those of Fred Tyler; their identification is positive; and we will introduce considerable detailed testimony and other evidence to show you that the remains found there were the remains of Fred Tyler.

The remains were taken to Wallace, the County Seat of Shoshone County, by the coronor or by his deputy, Mr. Williams, and were buried there, and afterwards at the time, or shortly before the time of the preliminary hearing, held before Judge Bloomer at Wallace, they were disinterred and taken to Court. This is practically all of the testimony we shall introduce upon that point.

The proof of the killing will rest largely upon the confession of Mr. Adams himself, which was made sometime later. Some time in the winter of 1905, I believe it was, Governor



5.

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Plaintiff's Opening.

Steunenberg was killed, and Mr. Adams was arrested in connection with that crime and taken to Boise, and while there he made a confession, which will later be introduced in evidence in this case, in which he admitted that he had killed Fred Tyler. The confession will state that upon this particular day--- which was sometime between the 6th and the 10th of August, 1904--- he went to the cabin of Mr. Tyler, in the Marble Creek country, in Shoshone County, in this state, in company with one L. J. Simpkins, I believe with him--

MR. KNIGHT: No, Mr. Mason.

MR. HANSON: (Continuing) No, Mr. Mason. During the time that Mr. Adams had been in the Marble Creek country, he had been to the city in company with Mr. L. J. Simpkins, with whom he seems to be associated in some way, and remained there, remained in the district, frequently in his company, until another crime had been committed, when he left the district: That upon this particular day, he went to the cabin of Mr. Tyler with Alva Mason and Newt Glover and, according to his statement, they arrived there sometime in the morning, and finding Tyler passing, remained there during the most of the day, and by sun-down they were concealed along the trail. Mr. Tyler came down the trail, and, in his language, he says: "standing behind a tree and held him up", and I believe he claimed to have taken a gun away from him.

They then took Tyler into his own cabin and kept him in there, I believe during the night; had considerable conversation with him, most of which---some of which---will appear in the testimony, which is offered for your consideration in this case; and in the morning they took him from the cabin--- I don't remember whether it was before breakfast or after breakfast; in fact, I don't think it was in the testimony, but in the



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Plaintiff's Opening.

morning, they took Tyler out of the cabin and took him some distance from it, up a little incline on the hill there, ~~and~~ keeping him in front of them all of the time; and, in the language of the Defendat, when they had gone about far enough, which was between a half a mile and a mile, the Defendant shot him; shot him behind the ear, and the bullet, the testimony will show, went into his head, came out of one of his jaw-bones, breaking the bone very badly. They then left him there, between the clumps of two trees and the description of the place where he was left will tally very closely with the description of the place where he was found; and I believe there will be no doubts in your mind that he was found in the exact spot in which he was left by Adams, Mason and Glover.

We will also <sup>introduce</sup> medical testimony to show that the condition of the body which was found, and which was identified to be that of Fred Tyler, was such that there was no doubt but what his death was caused by a gun-shot wound, a gun-shot wound in the head. Ther will be detailed testimony upon this point, upon the condition of the remains in which they were found, relative to gun-shot wounds, and I believe the testimony will satisfy you, beyond a reasonable doubt, that the remains found in the Marble Creek country were the remains of Fred Tyler; that the deceased came to his death by means of a gun-shot wound inflicted by the Defendant. And upon this testimony we will expect your verdict. I think that is all I care to say at this time.

THE COURT: You desire not to proceed further tonight I believe.

MR. KNIGHT: we prefer to take until tomorrow morning to arrange our testimony.



7.

Plaintiff's Opening.

THE COURT: That is agreeable to the Defendant, I suppose?

MR. DARROW: Yes sir.

THEREUPON, at 3:30 o'clock P. M., November 5th, 1907,  
the Defendant and counsel for the Plaintiff and Defendant being  
present, the Court admonished the jury, as required by law,  
and the officers were sworn to take charge of the jury, and the  
jury retired in charge of the sworn officers of the Court, and  
an adjournment was taken to Wednesday, November 6th, 1907, at  
10 o'clock A. M.



8.

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF  
KOOTENAI.

STATE OF IDAHO,	)	
	)	
PLAINTIFF.	)	
	)	
VS.	)	NO. _____
	)	
STEVE ADAMS,	)	
	)	
DEFENDANT.	)	

WEDNESDAY MORNING, NOVEMBER 6, A. D., 1907.  
MORNING SESSION.

At this time, the Defendant being in Court with his counsel, present as before, the record of Tuesday's Proceedings was read and approved, and the following Proceedings were had herein, to-wit:

THE COURT: Bring in the Jury.

THEREUPON, the Jury came into Court in charge of the officers, nad being duly polled, all answered to their names and the trial of this cause proceeded as follows:

MR. HANSON: If your Honor please, at this time, we will ask that the witnesses be excluded from the Court room during the trial and will also ask that Mrs. Thomas be ex-cepted from this rule.

MR. DARROW: Also Mr. Lillard and Mrs. Adams. We have no objections to Mrs. Thomas or to Mr. Thomas.



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9.

MR. KNIGHT: We would really like to have them both remain in.

WHEREUPON, Mrs. Annie Thomas, Mr. John R. Thomas and Mr. Logan were sworn as witnesses on behalf of the state.

THE COURT: You will have to keep watch of your witnesses as they appear and let them come forward and be informed of the rule.

MR. KNIGHT: We will carefully guard that.

THE COURT: This gentleman (Mr. Logan) will be required to retire.



10.

MRS. ANNIE THOMAS,

Called as a witness in behalf of  
the state, having been previous-  
ly sworn, testified as follows:

## DIRECT EXAMINATION

BY MR. HANSON:

Q You may state your name, residence and occupation?

A Annie Thomas; residence Santa; house-keeper.

Q How long have you lived in Santa?

A Four years last July.

Q Where did you live before coming to Santa?

A Michigan.

Q How long did you live in Michigan?

A All my life.

Q Do you know the Defendant, Steve Adams?

A Not until I saw him in Wallace last fall.

Q At the previous trial?

A At the previous trial.

Q Do you know Fred Tyler?

A That is my son.

Q Your son?

A Yes sir.

Q Did Fred Tyler ever live at Santa?

A Just a short time; not long.

Q How?

A Not very long.

Q About how long before his disappearance?



AT-D-11

A He came there in December, 1903, and went away in May; the last of May or the first of June; I think the last day of May.

Q Did he come to Santa before or after you came?

A After.

Q Where was your son living when he first came to Santa?

A My son?

Q Yes.

A He came from Michigan and worked in Montana for a while, then he worked in the Coeur d' Alenes, then came to Santa to his sister's house.

Q And he lived at Santa how long, did you say?

A Well, from December off and on, he was working at times, but he was there the most of that time until May; the last of May.

Q Did you see him frequently during the time he was at Santa?

A Yes sir.

THE COURT: Just a moment; I forgot to have Mr. Kane sworn.

WHEREUPON, Mr. A. E. Kane was sworn as deputy official reporter.

MR. HANSON: Q When did you last see Fred Tyler?

A Well, it would be the 31st of May.

Q 1904?

A 1904.

MR. DARROW: What was that date?

MR. HANSON: The 31st of May, 1904.

MR. HANSON: Q And what was his age at that time?

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AT-D-12

A Thirty-four years old in April; he went away in May.

Q A little over thirty-four years of age?

A Yes sir.

Q Mrs. Thomas, was there anything about your son, scars or other marks, which would distinguish him from the average individual?

A Well, the only thing would be that on his right hand he had an enlarged joint, on the little finger of his right hand; and his feet was calloused. If there was an examination of the feet, it would prove that they were different from the ordinary feet.

Q How did the joint---what joint of the little finger was it that was enlarged?

A The first joint of the little finger.

Q First joint?

A Yes sir.

Q How did that become enlarged?

A When he was young, playing base-ball, he was struck with a ball and it caused the enlargement of the joint.

Q Do you know what his age was at that time?

A About eighteen.

Q The joint was enlarged at the time he was about eighteen years of age?

A Yes sir.

Q And you say his feet were somewhat different from those of the ordinary person?

A Well, they were calloused very hard.

Q Well, you may describe to the Jury just how they came to be in that condition?



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AT-D-13

A He had them frozen and after the freezing the place seemed to be dead and hard around them, so I had to trim them so his feet wouldnt hurt him; his feet hurt him so he could hardly walk on them because of this callous; used to cause the flesh to be tender.

Q About how often did they have to be trimmed?

A Sometimes I would trim them once a week and sometimes a month; it would depend whether he was home with me. We used to keep them trimmed well when he was at home.

Q Did that condition extend over his feet?

A No.

Q What part of his feet?

A Along the heels and along the front part of the balls of the feet like and on the sides or around the heels.

Q About how far then did it extend on the heels from the bottom?

A I used to trim it just up along the part of the heel back; it extended higher than that, but not calloused.

Q Mrs. Thomas, do you know your son's manner of dress at the time he was in the woods, timber?

MR. DARROW: I object to that; that is the custom of his dress. What she saw about it at any time, I have no objection to.

MR. HANSON: I asked her if she knew.

MR. DARROW: Let her answer.

A Yes.

MR. HANSON: Q You may state what it was?

MR. DARROW: To that I object.

THE COURT: I think you better confine yourself to the

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time she saw him.

Q Well, how was he dressed at the times you saw him, when he was working in the woods?

A Of course, he wasn't really working in the woods, but he was getting out stay bolts in the woods right near his house---right near his home.

MR. DARROW: I object.

THE COURT: Sustained.

Q What was his manner of dress at the time he was engaged in---

MR. DARROW: To that I object; she can tell how she saw him.

MR. HANSON: I think it is proper to show what his habit of dress was and whether it was different at different times while he was engaged in laboring in the woods.

MR. DARROW: We object to that; that wouldn't show anything about how he was at this particular time.

MR. HANSON: It might.

THE COURT: I shall sustain the objection.

Q Well, how was he dressed the last time you saw him?

A Dark blue flannel shirt.

Q How?

A Dark blue flannel shirt; black pants; black hat and rather---a tan colored coat.

MR. DARROW: Just a moment: "Black hat and dark pants"?

THE WITNESS: Black hat and black pants.

MR. DARROW: "Black hat"; and what was the last?

THE WITNESS: Tan colored coat.



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MR. DARROW: Q Tan colored coat?

THE WITNESS: Yes; light coat.

THE COURT: Tan colored or light colored coat, she said. (Addressing the witness) It is pretty hard to hear in this room, Mrs. Thomas.

MR. DARROW: Speak as loud as you can conveniently, Mrs. Thomas, please.

MR. HANSON: Q You say he left on the 31st of May, 1904?

A I am positive it was the 31st.

Q Do you know where he went?

A To Santa.

Q How?

A To Santa.

Q How long did he remain at Santa, if you know.

A I am not positive, but one night I think.

Q Do you know where he went from Santa?

A Supposedly to his homestead on the claim.

Q Where wa his homestead?

MR. DARROW: Just a moment. I dont want to be over-particular about this, but it ought to be some direct information; something besides heresay.

THE COURT: Something besides supposition.

MR. DARROW: Yes.

MR. HANSON: Q Well, do you know where he went to?

A I had letters from him from his homestead after that.

MR. DARROW: We shall not object to the letters, if she shows the letters.

AT-D-16

MR. HANSON: We will offer them, Mr. Darrow.

MR. DARROW: Well, show the letters.

MR. HANSON: Yes, we will offer the same letters.

MR. HANSON: Q You sa his homestead was in the Marble Creek country?

A Yes.

Q In what county and state?

A Shoshone County, State of Idaho.

Q Did he have a homestead when he left Santa?

A No sir---oh, the locator was there ; they were just going to take up this homestead at that time.

Q He was going out to take up this homestead when he left this time?

A Yes sir:

Q Who was the locator?

A This young man that was there, Gus Kersting.

Q Did he go off in company with Kersting, or did he go alone?

A He went with Mr. Kersting.

Q They went off together?

A Yes sir.

MR. DARROW: Did you say he went off---

MR. HANSON: Off together.

MR. HANSON: Q Went up into the Marble Creek country?

A Yes sir.

Q You say you received some letters from him after he left?

A Yes sir.



AT-D17

Q And they were written from his homestead, I believe you said?

A One was written from Marble Creek settlement.

Q Was that the first letter you received?

A That would be the last one; that was the very last one.

Q About how often did you hear from your son after he left?

A Every week after he left, and sometimes oftener; whenever the pack train would come down he would send me a letter, if it was only a few lines.

MR. HANSON: Are those letters here?

MR. FOSTER: Yes, sir.

MR. HANSON: Q When did you last hear from him?

A His last letter was dated July 15, 1904.

Q Did you ever hear from him after that?

A Never.

Q Did you ever see him again?

A Never.

Q Do you know what became of him?

A Well, of course I was informed that he--

MR. DARROW: I object.

THE COURT: No matter about your information.

MR. DARROW: I object. She don't know.

MR. HANSON: What I wanted to show was that she never heard from him after that, the same testimony that she gave before, and that she made inquiries.

THE COURT: Here are those letters, Mr. Hanson.

THE CLERK: A lot of exhibits in there; I don't know what they all are.

MR. DARROW: I don't object to asking the witness if she ever heard from him or saw him after that.

Mrs. Thomas-D 18-

Q( Direct resumed) Did you ever hear from him again after that or see him?

A No, sir, not after that.

Q I hand you a letter marked Defendant's Exhibit No. 1-- I suppose they might as well be marked as they were before.

THE COURT: That can be marked the same as it was before, to save confusion.

MR. DARROW: Defendant had it marked before; we introduced it on cross-examination.

MR. HANSON: Yes, sir.

The letter was marked by the reporter Plaintiff's Exhibit No. 1.

(Handing witness letter) What is that, Mrs. Thomas?

A My son's writing.

Q Do you know where that letter was written from?

A From Alpena, Mich.

Q That was before he came out to this country, was it?

A The last letter written before he left Alpena to come west.

Q About how long was it before he left Alpena?

A Just a few days.

Q And he came out shortly after that, did he?

A Yes, sir.

Q The first page is marked No. 2 and the second No. 3.

Is there one page missing?

A Yes, sir.

Q Do you know where that page is?

A I do not; the letters, I have not taken any special care of them because I did not think I would ever use them again.

Archives



Mrs. Thomas-D 19-

MR. HANSON: I guess that page was not introduced at the time of the first trial, the first page.

MR. KNIGHT: The first page was not introduced.

MR. DARROW: No, it is just as it was. You need not make any special proof of that; it will go in without objection. That is the letter, and we will not object to it.

MR. HANSON: We will offer them all at once and save time.

MR. HEITMAN: Give the different dates.

MR. HANSON: This one (Plaintiff's Exhibit 1) there is no date to it.

MR. DARROW: What was it she said about the date?

THE WITNESS: It was written before he left Alpena.

MR. DARROW: Did she say when?

THE WITNESS: Between the first of June and the tenth of June; not later than the 10th and not as early as the first.

MR. DARROW: 1904?

A 1903.

MR. DARROW: Something over a year before he went away?

MR. HANSON: Yes, sir. The letter dated October 17th, 1903, Coeur d'Alene, Idaho, we ask to have marked.

The letter was marked by the reporter Plaintiff's Exhibit No. 2.

MR. HEITMAN: What date is that?

MR. HANSON: October 17th, 1903. The letter of July 15th there is no year given.

THE COURT: She had better state the year.

MR. HANSON: Q Do you know when that letter was written ?

A 1904, July 15th.

Q July 15th, 1904?

A Yes, sir.

MR. DARROW: That is the last letter, I take it.  
What exhibit is that going to be marked?

THE COURT: You had better put them in in their consecutive dates.

MR. HANSON: This one is dated "A long ways straight up, June, Sunday." Q Do you know when that letter was written?

A Written June 1904.

Q You don't remember about what date it was?

A No, sir.

The letter is marked by the reporter at request of Plaintiff's counsel, Plaintiff's Exhibit No. 3.

Q Letter dated July 15th, that you say was in 1904?

A Yes, sir. The same was marked Plaintiff's Exhibit 4.

MR. HEITMAN: That was the last letter?

MR. HANSON: That was the last letter.

Q Here is one written by yourself, purporting to have been written by yourself, dated August 19, 1904. Was that letter ever mailed, Mrs. Thomas?

A It never was mailed.

Q Was it written upon the date given in the letter?

A Part of it was, and part was written a little later on.

Q How long after that date?

A Perhaps three or four days.

MR DARROW: Can I see that again, Mr. Hanson? I don't recall it now.

MR. HANSON: Yes, that is the letter written by Mrs. Thomas to her son.

Q What was the reason that you did not send that letter to your son, Mrs. Thomas?

A Well, I got word that this Mr. Ed. Boulay was shot and that my son had disappeared; so I did not send the letter.

MR. DARROW: Please wait a minute until I read this.



(After reading) We will not object to this letter.

MR. KNIGHT: It went in on your cross-examination before?

MR. DARROW: Yes, sir.

MR. HANSON: Q Now, what was the reason that you did not send that letter, Mrs. Thomas?

A I understood that my son had disappeared, and there was no use sending it until I heard that he was back to his cabin again.

Q Did you ever send it?

A Never.

MR. DARROW: Hasn't she told?

THE COURT: She has told, I think, Mr. Hanson.

MR. HANSON: All right.

The letter is marked by the stenographer at request of plaintiff's counsel, Plaintiff's Exhibit No. 5.

MR. HANSON: I think I had better read these letters to the jury at this time.

I will read Plaintiff's Exhibit No. 1, the letter written from Michigan.

MR. DARROW: Along in June.

MR. HANSON: Along in 1903, early in June.

Mr. Hanson read Plaintiff's Exhibit 1 in evidence, as follows:

PLAINTIFF'S EXHIBIT NO. 1.

I couldnt. I have got rid of everything. What I couldnt sell, I gave away. Anything to get out of there. When Boyer pays me I will have \$43.00 and I bought a suit of clothes. So you see I can come straight through when I get started. You must not worry or anything because I am alright and only writing for money. I will send this to Charley & he can give it to you. I wish I was on my way now. Its awful lonesome here. I went to work this A. M. That will fill in the time some. Of course there will be only two days out, it will leave me something besides paying expenses. (Dec. Walloping) I got a letter for you from Bertha yesterday A. M. in answer to my telegram. It was far more than a surprise to her. I wrote her again tonight.

Well, I guess that's all.

Love to every one from

Fred.

Mrs. Dougald McDonald sends love and best wishes.

MR. HANSON: I will read Plaintiff's Exhibit No. 2.

The envelope is dated: Coeur d'Alene, October 17, 1903, addressed to Mrs. M. S. Tyler, Tyson, Idaho. (Reading):



PLAINTIFF'S EXHIBIT NO. 2.

Cour D' Alene, Ida.

Oct. 17-03.

Dear Mother and all

I just got back from Spokane last night, I got my coat and vest, but the pants & hat could not be found. And, of course, no trace of the money. The police found them in a pawn shop after the owner had been arrested for selling bogue jewelry. I may have to go back again if he is not convicted on the first charge. I am all alone 4 miles from town making ties. I am not making very big wages yet, but the timber is getting better. As soon as I possibly can, I want you to come here. I hardly dare ask how you are. I know you must be worried almost to death. It does seem hard. I worked hard, desperate hard for that money and then to get no benefit from it at all is awfully discouraging. Did you get the supplies? I wish you would write as often as you can. I dont go to town very much, but I can get my mail fairly regular. You can imagine how lonesome it must be here. I dont see any one from one day's end to the other unless I walk a mile. I think I will do pretty well this winter. I can get contracts here for nearly one half million feet to cut at 60cper thousand. Well, I must stop now. I am going to town this A. M. to get some things to eat. Love to all from

Fred.

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MR. HANSON: I will read Plaintiff's Exhibit No. 3, dated "A long ways straight up, June, Sunday."

MR. DARROW: It is possible the jury may not understand it. This is after he left home in 1904?

MR. HANSON: Yes, sir; written from his cabin in Marble creek, the summer of 1904; ( resuming reading)

"Dear Mother & All

The Pack train came in and brought your letter & was glad to hear from you but sorry you are not well. Now if you want anything you must tell Jock and he has got to get it. They had a summons served on all but me to appear in court, & show ~~xxxxx~~ what claim they had to their homesteads. There is nothing to worry about whatever My claim is a very good one and I have a good cabin. If you need any other medicine send for it. That is the bargain. If you want other than that, send a letter to the Dr. at the Maries and have a prescription filled, Do what you can to get as strong as you can.

This is an awful trail and I am afraid to have you try it. And it will be some time yet any way before you have to come. Simpson will help you on the way if you do come so that will make it easier. Did that plow do the ploughing? Now you must not worry at all for there is nothing whatever to worry about. For goodness sake send me something to read. They will be back here Wednesday.

Well, I guess this will do for this time.

Send me a line or two anyway.

Love to all from

Fred. "

MR. DARROW: That Simpson, you might explain to the jury



Mrs. Thomas-D-24-

if you want to.

MR. HANSON: Simpson is a brother-in-law of Fred Tyler.

MR. DARROW: And Jock.

MR. HANSON: Who is Jock, referred to in that letter?

A A locator that located my son on the claim.

Q The man you referred to as Kersting?

A Yes, sir.

MR. HANSON: I will read Plaintiff's Exhibit No. 4:

(Reading) " July 15" - This was 1904, I presume, was it not?

A Yes, sir.

MR. HANSON: (resuming reading) " Dear Winnie

I just got over in the settlement in time to find Jap Chambers here and my letter. I wrote you a good long one, over at my cabin so I will write a few lines and send it down now.

If Jock has not been in send word by John that you want to see him and tell him what I told you to say to him before. I just got your papers today and you may be sure I was glad. Tell me all about your cabin and all when you write. Tell Jock just what you want and he will get it for you. If you need medicine tell him so. Well, I can't think of a thing more. I will either come and fix your cabin up or make arrangements to have it done.

Love to all from

Fred.

Now, I want you to send word back by Jap whether Jock comes in or not and Jap will be back here Tuesday or Wednesday."

MR. HANSON: I will now read Plaintiff's Exhibit No.5,  
the letter written by Mrs. Thomas.

"Santa Idaho,

August 19,04

My dear Son

It seems an awful long time since I have even heard from you, and both Winnie and I have written continually. Both Jake and Mr. Thomas have gone out to work in harvest. There is nothing doing here. Of course if Jake could have got stock we would have had more work than he could have done for some time. It makes it pretty close times for us. They are out at Thornton; they get \$2.50 per day; have been gone a week. Winnie told you about Jake's well. Well, he came home one night and left Billy (the H) walk right into it, over 10 feet deep. Johnnie was here with his horse, so he went and got to sheep herders and a lot of rope, it took them till 12 o'clock to get him out, he was nearly used but, but he got over it nicely. He took him with him. Well, the survey inspectors are in here at last, they leave here for the Maries in the morning, supposedly for your place. So it looks as though it would be some time before filing. Mr. Thomas told be sure and send you his kindest regards. Havesland is on the way back with his big ditch survey. I wonder when you will be down. The children and myself have been having a run of fever. I have the children are all right now, but I do not get over mine so easily. My mouth has been sore for some two weeks; it is just about well now.

Saturday morning 11" P.M.

I have just come in from picking cran berries got two quarts of nice ones, but it is very hard for me to



Mrs. Thomas- D-26

get them. I have to climb so for them. Winnie and I together got them. Johnnie got a few last night and he has picked five or six quarts for me. I am writing this but don't know when I can send it to you. Jake and Mr. Thomas finished the cabin before they left so that we could live in it; so we stay down here the most of the time. They built me a bedstead, and Mr. Thomas made two trips to Charlie Tyson for boards for a table and door casings. We are using radishes and lettuce out of our own garen a and have nice sets on my cucumbervines. We have sweet peas and nasturtiums in blossom and will soon have some pinks. Aren't we doing well. You will hardly know the place when you see it.

Johnnie brings us a messof birds or fish once in a while. It makes quite a treat for us. We hear that you are waiting with the surveyors up there, is it true. Tommy Conally told it I believe. It is very lonesome herenow I can tell you. I got a letter Stella the other day, they are all well, when she wrote. I have been raking up the chips in the yard. I am getting it pretty well cleaned up now. I guessmy newsis all written now, so I will stop here till I find something more to write about. It looks like rain but it don't rain."

MR. HANSON: Q That letter, you say, Mrs. Thomas, was never sent to your son?

A Was never sent.

Q Mrs. Thomas, I will ask you to describe your son to the jury as you last saw him?

A His personal appearance.

Q Yes, sir.

Mrs. Thomas-D-27-

A Well, he was a man of about six feet eight inches and a trifle more; weighed about 162 pounds; light complexion--

MR. DARROW: You are wrong about that.

MR. KNIGHT: You don't mean six feet eight inches.

A (Continued) No, five feet eight inches, beg pardon, five feet eight inches, or a little more; weighed 162 pounds, average weight; brown hair, curly hair; fair complexion; blue eyes.

Q Did he wear a beard or was he smooth shaven?

A Smooth shaven always.

Q (Handing witnessphoto) What is that, Mrs. Thomas?

A It is a picture of my boy.

MR. DARROW: To that we object.

MR. HANSON: We have not offered it yet.

The witness: A picture of my boy.

Q When was that taken?

A About four years before he came to the west.

Q I will ask you whether or not his appearance was changed any from that shown in the picture, on

A Only that he was a heavier, larger man.

Q Otherwise, this is a good likeness of him, is it?

A A perfect picture.

MR. HANSON: We will offer this picture in evidence.

MR. DARROW: We object to that; I don't see that there is any competency in it. We object on the grounds it is incompetent, irrevelantand immaterial.

MR. HANSON: It is offered for the purpose of showing the shape of the man's forehead, the kind of hair he



were, and for the purpose of identifying the remains that were found in general as those of Fred Tyler. I think it will have some bearing upon the case. The Court is familiar with the evidence which was offered in the former trial; I think it appears very clearly from that that it is relevant, competent and material.

MR. DARROW: You cannot identify by a photograph of a man that a skeleton that was found was the man whose picture is shown by a photograph.

MR. HANSON: It would not prove it, but taken altogether, they all go to identify the remains found as being those of the particular person.

Objection overruled. Defendant excepts and exception allowed.

The photo offered was marked Plaintiff's Exhibit 6 and exhibited to the jury by Mr. Hanson.

MR. HANSON: Q Mrs. Thomas, state if you know whether or not your son smoked?

A He did, yes, sir.

Q What was he in the habit of smoking, if you know?

A A pipe or cigarettes, generally a pipe.

Q Do you know what kind of a pipe he smoked, if it was any particular kind?

MR. DARROW: I object to that, the pipe he generally smoked, on the ground it is incompetent, irrelevant and immaterial.

MR. HANSON: I think it is both competent, relevant and material.

MR. KNIGHT: I think the question should be changed a little bit.

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Mrs. Thomas-D-29-

THE COURT: I think the question is objectionable; I think you had better change the question. You can prove what pipes he may have had.

MR. HANSON: Q Well, was there any particular kind of pipe that your son smoked?

MR. DARROW: To that we object.

THE COURT: I sustain that objection. I think you can inquire as to whether he had a pipe or pipes and what they were.

MR. HANSON: We will adopt the suggestion of the Court. Q Do you know how many pipes your son had?

A Not more than one I understand.

Q What kind of a pipe was that?

A I think it would be what you call--

MR. DARROW: There is no time fixed here.

MR. HANSON: Q Well, at the time he left you to go to his homestead?

MR. HEITMAN: He might have had a different pipe at the time of his death.

THE COURT: That is very true.

MR. HANSON: I am asking what he had at the time she last saw him.

THE COURT: I am not ruling upon that. I think it is competent to show that he had one or more pipes and what they were.

Defendant excepts and exception allowed.

MR. HANSON: Q How many pipes did he have at the time you last saw him, if you know?

A One.

Q What kind of a pipe was it?

A It was a wooden bowl; one of those wooden pipes, I think as far as I can remember.



Mrs. Thomas-D-30

Q Do you know where he got that pipe?

A I do not.

Q What did you son usually work at, Mrs. Thomas; what was his business?

A Different kinds of work; he did clerical work for two years or more in the Boat Office and he worked in the lumber woods; and express and grocery stores.

Q What did he work at when he came to Idaho?

A In the lumber woods; making ties and such as that.

Q Where did he work in Idaho; where did he first work?

A In the Coeur d'Alenes, Coeur D'Alene City.

Q What was he employed at there?

A Making ties he wrote me.

Q Do you know who he worked for?

A Mr. Minnick is the man.

Q How long did he work for Mr. Minnick?

A I think he went therein September some time and worked until in December and came to Santa in December.

Q Where was he next employed?

A Well, up in the lumber woods around Santa, he worked up there.

Q Do you know for whom he worked at Santa?

A He worked for Mr. Rusnell for awhile.

Q What did he do for him?

A Just worked in the woods; I don't know what his work was.

Q How long did he work for Mr. Rusnell?

A I could not say just how long; perhaps a few weeks.

Q Did he work for any one else around Santa?

A For Mr. Abbott and Mr. Wunderlich, I think were the

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men he worked for besides.

Q What did he do for them?

A Just orid work in the woods.

Q Do you know how long he worked for those gentlemen?

A I cannot say just how long.

Q Did he work for any one else?

A He worked on the drive in the spring.

Q Who did he work for on the drive?

A I don't know.

Q How long did he work on the drive?

A Not very long; perhaps ten days; not more than that.

Q Did you see him at any time while he was employed, in the drive or in the woods that winter?

A Yes, sir; he came up to the house just after the drive was completed for a few days; then when he was working in the woods he was only a few miles from Santa anyway either time and he would come at intervals for a few days, visit or something of the kind.

Q Do you know what your son's manner of dress was when he was employed in the woods at that time?

MR. DARROW: Objected to on the ground it is incompetent irrelevant and immaterial.

Objection overruled. Defendant excepts and exception allowed.

A What was his manner of dress?

Q At that time?

A Yes, sir; when he was working ~~after~~ outside he would lay off his outside shirt; worked with a handkerchief tied around his neck, was the customary way of dressing.



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Q What kind of handkerchief, if any, at that particular time?

A Blue groundwork with white dots.

Q Did Fred Tyler have any ~~neigh~~ relatives in the neighborhood of his homestead?

A No, sir.

Q Did he have any relatives in any part of this Coeur d'Alene country?

A No, only at Santa.

Q And what relatives did he have there?

A Myself and his two sisters at the time he disappeared.

Q His sisters married or unmarried?

A One was married and one not married.

Q What was the name of the married sister?

A Mrs. Yaeger.

Q And the other one has since married?

A Mr. Simpson, J. W. Simpson.

Q How did your son wear his hair, Mrs. Thomas?

A Generally cut short at the top and longer in the front; combed to back.

Q What was the condition of his hair at the time you last saw him; how was he wearing it then?

A Just about the same as it is in that picture.

Q Is that any different from the description you have just given of his usual custom of his wearing his hair?

A I don't think it is.

MR. HANSON: You may take the witness.

CROSS-EXAMINATION BY MR DARROW.

Mr. Knight requested Mr. Thomas to retire during the cross-examination of Mrs. Thomas.

Q When did you move to Idaho?

A July, 1903.

Q And you moved from Michigan?

A Yes, sir.

Q What part of Michigan?

A Alpena, Alpena County, Lake Huron's shore.

Q Where?

A Up on Lake Huron's shore.

Q That is up in a timber country?

A Yes, sir.

Q Do you know whether B. R. Lewis operated up there?

A I never heard the name until I came here.

Q Never heard the name until you came here?

MR. KNIGHT: Some of the jurors are quite a distance from the witness, and I know I don't hear her very well, and I would like to have her speak so we can hear; I would like to have her speak loud enough so that everybody can hear her.

Q You son worked up therein the woods in Michigan?

A In Alpena County, yes, sir.

MR. KNIGHT: Is Mr. Hughes in the court room? I don't think he is; I think he is in town.

MR. DARROW: I don't care for Mr. Hughes anyhow.  
Q Did you know Archie Phillips or Lindley up there in Michigan?

A No, sir.

Q Ever hear of them up there?

A No, sir.

Q Did you have some relatives here before you came?

A One daughter.



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Q Was she married?

A Yes, sir.

Q That is, Mrs. Yeager?

A Mrs. Jacob Yeager.

Q How long had she been here?

A Two years or more.

Q That is the way you happened to come, is it?

A Yes, sir.

Q You were not married to Mr. Thomas at that time, were you?

A No, sir.

Q Now, when you came from Michigan you left Fred behind?

A Yes, sir.

Q Working in the woods?

A No, sir.

Q What was he doing?

A He was disposing of some personal property that I left there.

Q How long did you come before he did?

A I came in July and he came in December-- or he came in-- he came west in June, or about the 1st of June, possibly, because he--

Q (interrupting) He intended to come when you left, I suppose?

A Yes, sir.

Q As quick as he disposed of his personal property?

A Yes, sir.

Q Did you have any plan as to what you were going to do when you got here?

A Not at all.

Q And you moved right to Santa?

Mrs. Thom as-X-35

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A Well, I stopped in Boise a couple of weeks with a friend that I came west with and then came on to Santa.

Q Who did you come with?

A Mr. and Mrs. William Kissick, of Alpena, and their brother, Charles Sanford.

Q Then you came to Santa where your daughter was living?

A Yes, sir.

Q What did Fred do after he got here?

A He worked in the lumber woods in Montana.

Q How long?

A I could not tell you just how long.

Q About how long?

A About two months I should imagine; about that.

Q Then where did he go?

A Then he came to the Coeur d'Alenes.

Q What did he do there?

A He was working, making ties; worked in the woods.

Q What part of the Coeur d'Alenes?

A It must be near Coeur d'Alene City.

Q Who was he working for?

A Mr. Minnix.

Q Making ties

A Yes, sir.

Q Was that Mr. Minnix at Coeur d'Alene?

A Yes, sir.

Q Then where did he go?

A Up to us, to Santa.

Q When did he come to Santa?

A In December.

Q Stayed there until May?



Mrs. Thomas-X-36

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A No, sir.

Q Had you seen him since he came west before he got to Santa in December?

A No, sir.

Q So he was around here several months before you saw him?

A Yes, sir.

Q Heard from him, I suppose?

A Frequently.

Q Have you any of his letters now?

A No, sir, only the one that is marked Coeur d'Alene.

Q These letters are the only ones that you have?

A They are the only ones I have.

Q In the meantime you were living with your daughter?

A Yes, sir.

Q He came to Santa in December, and how long did he stay then?

A He stayed until after the holidays and then he went away to work?

Q Where did he go?

A I think to Mr. Abbott's camp.

Q Whereabouts?

A Just above Santa; I could not say just how far.

Q That is, working in timber?

A Yes, sir.

Q When did he come back to Santa?

A Probably he worked three or four weeks and came back for a day or two.

Q How far was he from you at that time?

A He probably would not be more than twelve miles.

Q And then went back again?

A Yes, sir.

Q And then came along in May, did he?

A No, he came before that.

Q When, as nearly as you can remember?

A Just a short time; he used to run home for just a short visit every little while.

Q How many days do you think all together he was at home between the time he left after the holidays and May?

A I could not tell you how much he was at home; how many days.

Q A week?

A He was, more than that I guess; more than that at one time after he quit work.

Q When was that?

A Along--

Q (interrupting) In May?

A No, he was not there very much in May; just a few days, but before that he had been home and cut wood and helped clear land; cut down quite a bit of timber for his brother-in-law.

Q About when was that, Mrs. Thomas? Not exactly.

A Between the last of February and the time he was away; I could not just give the dates.

Q Where was he working?

A On his brother's homestead, just around his clearing, around his house, that he would fell him timber.

Q How far from where you were?

A I was right there.

Q Now did you live right in Santa, or some little ways out?



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A No, sir; we lived on the homestead between two and three miles out of Santa.

Q That is, Mr. Yaeger's homestead?

A Yes, at that time I was living on Mr. Yeager's homestead.

Q When did you first hear Fredspeak of going down into the Marble Creek district?

A Just the day before he went away.

Q He had not talked of it before?

A He had talked of taking up other claims, but no definite claims.

Q You intended to go down there too and take up a homestead?

A Yes, sir.

Q Did you make up your mind just the day before he went away?

A No, sir.

Q When did you make up your mind to go down there?

A After this locator came back in there and he was talking about it and said that he would give me a good claim-- this particular claim that my son was located on was the claim that he said I could have.

Q Was that after Fred went or before?

A Perhaps a few days after he went there; he went up there and took him up there, and for some reason he put him on that claim.

Q You were going to have that one?

A I was to have that claim, yes, sir.

Q When did you first hear of your son having that claim?

A From this man when he talked about it, when he came in to bring me a letter from my son, this first letter that I got

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MR. THOMAS-A-700

Q And Fred was going to take another one?

A Yes, sir.

Q Right near there?

A No, sir; it was a mile away.

Q A mile away. Do you know where Kersting is now?

A I do not; he was in Santa; I heard that he had gone to Spokane but I don't know whether he has gone back to Santa or not.

Q Did you ever know Boulay?

A Never saw him.

Q Fred knew him, didn't he?

A I presume likely.

Q You know he did, don't you?

A I never heard him say whether he did or not.

Q Don't you know that Fred knew him?

A No, sir; not positively.

Q Not positively?

MR. KNIGHT: We object. It is not proper cross-examination.

Objection overruled.

Q Did you know the Chambers boys?

A I never saw either of them but once.

Q Where was that?

A On my own home stead?

Q When?

A Well, just a little while before the remains was found up in Marble Creek.

Q Fred knew them, didn't he?

A Yes, sir.

Q You knew that before Fred went away, didn't you?



Mrs. Thomas-X-40

A Yes, sir; I did, because they were supposed to be--

Q (interrupting) Which Chambers was it?

A There were two of them; Mr. Clarence Chambers and Mr. Jap Chambers, that is spoken of in that letter.

Q Which one came to your house?

A Mr. Clarence Chambers.

Q When did Fred get acquainted with them?

A Probably <sup>as soon as</sup> ~~since~~ he got to Santa.

Q They were around there more or less?

A Yes, sir; they lived in Santa.

Q Boulay was there too?

A That I don't know.

Q Don't you know that Boulay was in Santa then?

MR. KNIGHT: We object.

A By hearsay I know he was there.

Q Do you know what business relations there were between Kersting and Boulay?

A I was not aware that there was any.

Q Do you know what business relations there were between Kersting and Chambers?

A Mr. Kersting had worked for Mr. Chambers a good while; I know that.

Q At what?

A Well, around his residence; I don't know what other work he did.

Q Around his residence?

A Yes, sir.

Q Do you know whether he was connected with him in this locating business?

A Why, I think they were all together.

Q You think all of these people were working together at

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Mrs. Thomas-X-41

that business?

MR. HANSON: I object to what the witness thinks about it. It is immaterial, incompetent and irrelevant.

Q That was your understanding, wasn't it?

THE COURT: I think the question is proper.

MR. HANSON: Calling for the opinion of the witness, if your Honor please.

THE COURT: She can state what she knows or what she does not know upon that question.

Q Your son was there with Chambers a good deal, was he not?

A That I don't know.

Q You don't know that he was?

A I do not.

Q Didn't you so swear, that he was with him a good deal?

MR. KNIGHT: We object. If he is going to ask her what she swore to before, he must present her testimony to her.

THE COURT: Yes, present it.

MR. DARROW: I am going to. I was asking a preliminary question. Q Didn't you answer as follows.

MR. HANSON: I object to his asking the question until she is shown the testimony; she has a right to read it.

THE COURT: That is the rule under our statute. Present the written document or statement, whatever it is, to the witness and let her read it.

MR DARROW: Did you know Lewis & Company? B.R. Lewis?

A No, sir.

Q You have heard of him there?

A I have since my son's disappearance.

Q You heard of him before didn't you?



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Mrs. Thomas-X-42

A Not that I remember of.

Q Will you please read at the place marked here, page 28, at the bottom, down to the bottom of the next page I have marked there "You never saw him." I will mark that, "Did you ever see Mr. Boulay with him", the first mark I made there.

MR. KNIGHT: The bottom of the next page?

MR. DARROW: Down to the bottom of the next page.

MR. HEITMAN: Down to the bottom of page 29.

MR. DARROW: (Handing volume to witness) That is where you begin, Mrs. Thomas, and down to the bottom of the next page. The bottom of page 29 is as far as I care to have you read. You can read further if you wish.

THE WITNESS: I don't care to.

Q Haven't you read this testimony over since you came here?

A Yes, sir.

Q Before now?

A Yes, sir.

Q You have read it over to see just how you testified before, of course.

A Well, I read it over.

Q Well, what do you say now, wasn't your son with the Chambers boys?

A Not located with them in any business.

Q Was he around with them?

A He was in Santa undoubtedly with them.

Q Do you know whether he was or not?

A I do not.

Mrs. Thomas-X-43

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Q That is, you don't know whether your son was ever with them or not?

A Only as I have heard it, that is all.

Q From whom?

A I know that this Jock Kersting--

MR. HANSON: I object to any hearsay testimony; anything that the witness may have heard is incompetent.

Q Do you know whether Jock Kersting was connected with the Chambers?

A Yes, sir.

Q And was Boulay?

A Not that I know of.

Q And you know in that way that your son was connected with Chambers too?

MR. HANSON: I object; it is an improper question; the witness has not testified to any such thing.

MR. DARROW: I am asking her whether she did.

THE COURT: If she knows she may state.

MR. HANSON: Inquiring about certain statements she has not made.

MR DARROW: Q Is that true or is it not, that through him you knew that your son was connected with Chambers?

A Mr. Kersting told me that he was a locator and that Jap Chambers would do the packing in and out from the cabins and from the claims.

Q Did you say at the former trial that your son was located with the Chambers brothers at Santa and one or two others there, at the lower part of page 28?

A That is wrong.



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Mrs. Thomas-X-44

Q Was this question asked and did you make this answer: "Q Did you ever know of his talking with any one else about the Marble Creek district? A I don't know now about his talking with any one else; he was located with Chambers Brothers in Santa and one or two others there.

"Q He was in with Chambers?

"A Yes, sir. "

Q Did you make those answers?

A I think that means Mr. Kerating. I implied that in regard to him,

Q You mean you think it from the reading of it, or what?

A Yes, sir.

Q I will read furtherback then.

MR. KNIGHT: Q Do you know who he was working with?

A No, sir; I don't.

MR. KNIGHT: She testified she didn't know who her son was working with but she did know who Kersting was working for.

MR. DARROW: Now, let her be right about this. I guess ~~xxxxxxx~~ you better begin a little on page 27:

(reading):

"Q You were living there?

AA With his sister?

"QQ And he staid thereuntil when?

"A Until May.

"Q That is right; you say the last of May or the first of June. What did he do around there?

"A He helped around; cut firewood for the family, and so on while he was there.

"Q He didn't do anything except work around his sister's place?

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Mrs. Thomas-X-45

"A Yes, sir; he did other things some.

"Q For whom did he work; any lumber company?

"A He worked for Mr. Abbott and for a man by the name of  
Rushell.

"Q At Santa?

"A About Santa.

"Q Afterwards he went down in the Marble Creek district,  
that is right, is it?

"A Yes, sir.

"Q Do you know with whom he first talked of going to the  
Marble Creek district?

"A When did you say, no, I don't know when.

"Q Do you know with whom?

"A No, I don't.

"Q Did you ever say Mr. Boulay with him?

"A No, sir; I never saw him.

"Q You never saw him?

RA No, sir.

"Q Did you ever know of his talking with any one else  
about the Marble Creek district?

"A I don't know now about his talking with any one else.  
~~where~~ He was located with Chambers brothers in Santa and one  
or two others there.

"Q He was in with Chambers?

"A Yes, sir.

"Q Do you know who he was working for?

"A No, sir; I don't.

"Q Did you ever hear?

"A I don't think I ever did.

"Q But you know he was in with Chambers brothers?

"A I do.



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Mrs. Thomas-X-46

"Q What was Chambers brothers' business?

"A I couldn't say; lumber; I know Mr. Clarence Chambers  
lumber." You made those answers at the former trial, did you  
not?

A Yes, sir; I think I did, but I made a mistake; it was  
Mr. Kersting that I had reference to.

Q Is there any reference in there to Mr. Kersting?

A No, not in the printed.

Q There was not a question put about Mr. Kersting, was there?

A No, sir:

Q Why do you say that at that time you were talking about  
Mr. Kersting when the whole testimony is about Chambers?

MR. KNIGHT: We object to counsel's stating as to what  
the whole testimony was about. There is no mention of Mr.  
Kersting there but it is apparent that she knew what the son was  
doing.

MR. DARROW: Do you mean to say that there is any  
reference to Mr. Kersting there?

MR. KNIGHT: I don't mean to say Mr. Kersting's name  
is mentioned there.

THE COURT: I will overrule the objection. Let her  
explain.

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BT-D-1

MR. DARROW: Q Why do you say now that this testimony was in reference to Kersting whenever a question was in reference to your son?

MR. KNIGHT: That is the part we object to; there is nothing in the testimony that indicates that every question was in reference to her son.

MR. DARROW: If you will find that question, I will read it to her; I want to treat her fairly.

MR. KNIGHT: It is on a page farther back that Kersting is mentioned and her son---the only thing we object to is counsel stating what the testimony is ---his statement about it is improper.

THE COURT: I don't think so, I will overrule the objection.

Q Is there one single question that I have read in reference to Mr. Kersting?

A That you say now; not now, no sir; not there.

Q Then why do you say that these questions were in reference to Mr. Kersting at that time?

A Knowing that my son was not connected with him in any way and it is likely that I have got the impression that name was what was meant; that is all.

Q Well, then, if you did testify in this way with reference to your son before, you were mistaken, were you?

MR. KNIGHT: In what way; we want the page.

THE COURT: In reference to being in with Chambers; that seems plain enough.

MR. KNIGHT: That is what we want to know.

MR. DARROW: Q Then you were mistaken?



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AT-B-2

A Not in one way, but with Mr. Chambers, through Jock Chambers and the other brother being connected with him, would be the way I would connect them.

Q Kersting you mean?

A Yes.

Q In that way they were all connected together?

A Yes sir; in that way.

Q Do you know what Chamber's business was?

MR. KNIGHT: I object; it doesnt make a bit of difference what Chamber's business was.

THE COURT: I think not. The letters refer to Mr. Chambers; the letters are in evidence.

MR. DARROW: I dont know for certain whether the letters refer to Chambers or not.

MR. KNIGHT: One of them, I think, does.

THE COURT: That is the reason.

MR. DARROW: That is "Jack" or "Jock"?

MR. KNIGHT: That was Jack.

MR. DARROW: Q Then you referred to Chambers?

A Yes sir.

Q And you saw Chambers after your son went away?

A Just once.

Q Did your son have any money when he went away?

A Not a great deal.

Q What?

A Not a great deal.

Q How much do you mean by " a great deal"?

MR. KNIGHT: I object as immaterial.

THE COURT: The objection overruled.

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AT-B-3

A Well, possibly ten dollars; I dont know.

Q Well, didnt have that much, did he.

A Well, really I cant say.

Q How?

A Well, really I cant say.

Q Somebody furnished him the money to put up a cottage, didnt they.

MR. HANSON: I object as immaterial and irrelevant and not proper cross examination.

MR. DARROW: The whole relation of this man, in the matter has a bearing upon this whole---

THE COURT: Objection overruled.

A It is customary for locators---

Q That isnt the question. Did somebody furnish him with the money?

MR. KNIGHT: Answer what you know about it?

A I dont know.

Q You say you dont know that anybody furnished him the money?

A I cant say positively.

Q What?

A I cant say.

Q You stated before that your son didnt have any money to pay a locator, did you?

A Yes sir.

Q And that is true?

A yes sir.

Q And also there was an understanding that he was to be located and have a place there and pay for it after---



Thomas-B-4

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wards.

MR. HANSON: I object to this testimony without showing the witness the testimony.

THE COURT: It will have to be shown, under the objection.

MR. DARROW: Will you read page thirty, please? You might as well read it all, if you have any doubt who it refers to, Mrs. Thomas; you can look back.

THE COURT: Read all you want to satisfy yourself what you said, Mrs. Thomas; that is the intent of the rule.

MR. DARROW: Certainly.

(Witness refers to her testimony given in previous trial)

MR. DARROW: Q It was understood that somebody was to locate him and build a cabin for him on the claim where there was timber, wasn't it?

A A homestead.

Q On a claim where there was timber?

A Well, it was a timbered homestead.

Q You don't know who furnished him the money to get supplies?

A I don't know; not that.

Q You were to be located too, were you?

A I was.

Q In the same way?

MR. HANSON: I object as incompetent and immaterial.

MR. DARROW: Q Were your daughters going out there too?

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Thomas-B-5

MR. HANSON: I object.

THE COURT: Sustained.

Q Now, when he went away, did he walk or ride?

A He walked.

Q Mr. Kersting with him?

A Yes sir.

Q Kersting had a horse?

A Yes sir.

Q You knew where he was going?

A Supposedly.

Q Yes. That is, you knew or supposed he was going into that Marble Creek district where he did go?

A Yes sir.

Q And you never heard of that until the day before?

A I had heard of the Marble Creek country.

Q I mean about his going?

A No, just the day before.

Q How far, about, was that from where you were living, Mrs. Thomas?

A About twenty miles.

Q You wrote him a number of letters?

A Yes sir.

Q And he wrote you a number?

A Yes sir.

Q He wrote you a good many?

A Yes sir.

THE COURT: You have the letters there, Mr. Darrow.

Q He wrote you a good many that have not been offered in evidence here?



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Thomas-B-6

A Yes sir.

Q Do you know what he referred to in his letter that has been offered in evidence here for you not to worry about him?

A Just because he was away from me; that is all.

Q That is all was it?

A That was all.

Q It wasn't because he was in the claim jumping business?

A No sir; I didn't understand that he was in the claim jumping business.

Q How long had he ever been away from you before?

A The longest in all his life at any one time was not more than nine months.

Q And the time he wrote you not to worry was after he had been away about two weeks, was it?

A Yes.

Q Before he had been away for nine months, with you in Idaho and he in Michigan.

A Oh no; not that long.

Q Well, how long?

A Well, it was there in Michigan that he was away from me nine months at one time.

Q Up in the timber woods---in the woods?

A He wasn't in the woods all the time.

Q Where was he?

A In Grand Rapids.

Q And he was away from you a number of months with

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Thomas-B-7

you in Idaho and he in Michigan?

A Yes sir.

Q And he came out to Idaho here and stayed two or three months and didnt see you at all?

A Yes sir.

Q Did he write to you then not to worry?

A Yes sir; the letters are in evidence.

Q Did he write to you not to worry?

A Yes sir; he did.

Q At the time when he was in Coeur d' Alene and you were in Michigan, in each instance did he?

A How is that?

Q At the time when he was in Coeur d' Alene and you were in Michigan, in each instance, did he?

A I think in each instance.

Q Is there any reference in any letter about your not worrying until he went up into the Marble Creek district?

MR. HANSON: The letter must be shown.

THE COURT: The letter must be shown. The letters are here. You can show the copies; I think they will be easier read.

MR. KNIGHT: That Michigan letter, Mr. Darrow?

MR. DARROW: Yes, I see it is. I will call her attention to it in just a minute.

MR. KNIGHT: Coeur d' Alene City letter also.

MR. DARROW: Coeur d' Alene, October 17, isnt it?

MR. KNIGHT: Yes; about the middle.



Thomas-B-8

MR. DARROW: Now, Mr. Knight, I will just read that part if you want me to, to the Jury.

MR. KNIGHT: Well, you can, of course, use your own judgment about that.

MR. DARROW: I think it is only fair to the witness.

MR. KNIGHT: The letter must be shown to the witness.

MR. DARROW: Of course; but if there is no objection, I will read it. There is some reference in it, as the witness said; she is entitled to it. Now, the first is the Michigan letter, which was written a year or more before 1903. (Counsel reads from page forty of the record of the previous trial) # # # "I have got rid of everything. What I couldn't sell I gave away. Anything to get out of there. When Boyer pays me I will have \$43.00 and I bought a suit of clothes. So you see I can come straight through when I get started. You must not worry or anything because I am alright and only waiting for money. I will send this to Charley & he can give it to you. I wish I was on my way now. It's awful lonesome here!" # # # The next is (Counsel reads from page forty-one of the record of the previous trial) "Coeur d' Alene, Ida October 17-03. I just got back from Spokane last night. I got my coat and vest but the pants & hat could not be found", and so on. "I may have to go back again if he is not convicted on the first charge. I am not making--- I hardly dare ask how you are. I know you must be worried almost to death. It does seem hard. I worked hard, desperate hard for that money and then to get no benefit

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Thomas-B-9

from it at all is awfully discouraging." Now then, October 17, 1903, you referred that that worry must have meant over him, did you?

A Yes sir.

Q Now, in the letter of "June Sunday", that is the letter when he got up on the claim, reads as follows: (Counsel reads from page forty-two of the record of the previous trial) "The pack-train came in & brought your letter & was glad to hear from you but was sorry you are not well. Now if you want anything you must tell Jock and he has got to get it. They had a summons served on all but me to appear in Court and show what claim they had to their homesteads. There is nothing to worry about whatever. My claim is a very good one and I have a good cabin. If you need any other medicine, send for it. That is the bargain. If you want other than that, send a letter to the doctor at the Maries and have a prescription filled. Do what you can to get as strong as you can. This is an awful trail and I am afraid to have you try it. And it will be sometime yet anyway before you have to come. Simpson will help you on the way if you do come so that will make it easier. Did that fellow do the ploughing? Now you must not worry at all, for there is nothing whatever to worry about. For goodness sake, send me something to read." Now, that was the letter in June from the homestead. You thought that that was simply the natural worry of a mother over the son being away?

A Under the circumstances, yes.

Q What circumstances do you mean?



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Thomas-B-10

A I was just from the East and I had been informed of the animals and one thing another, and I was nervous in regard to that. I had nothing at that time to worry over at all, aside from that.

Q You had been informed of animals up in there?

A Yes sir.

Q What kind?

A Cougers and---

Q What?

A Cougers and such animals as that.

Q That may be your son might get eat up by the cougers?

A I dont know just what I thought; I was worried.

Q Didnt you think there was danger that the homesteaders might get him instead of the cougers?

A Not that time; no sir.

MR. HANSON: I object---

Q You were just from the East?

A Not very long before that.

Q When did you come from the East?

A July, 1903.

Q When?

A July, 1903.

Q Well, this letter was in June, 1904?

A Yes.

Q You had been from the East a year hadnt you?

A Yes.

Q And within twenty miles of that place?

A Yes.

Thomas-B-11

Q And you were still afraid of cougers?

A Never had anything to make me think any other way to that time.

Q You were living there on the homestead in the woods?

A Not far in the woods.

Q What?

A Not far in the woods, two miles and a half from town.

Q Did anybody up there tell you about cougers?

A Yes.

Q Who?

A Lots of people.

Q In Idaho?

A Yes sir.

Q Who?

A Well, my son-in-law and different ones have talked about the animals through there.

Q And about their being dangerous?

A Yes sir.

Q And that was what you were worrying about when he took up that homestead, was it?

A His being away from me.

Q And that he might get killed by wild animals?

A Anything.

Q Was it wild animals?

A That was what I thought of.

Q Nothing else?

A I had nothing else to think of at that time.

Q And it had no reference to his having taken a homestead?



Thomas-B-12

A No sir, only being away in the woods; away from me.

Q What?

A Being away from me; that is what I was worrying about at that time.

Q After you didnt hear from him now, you thought the cougers might have killed him?

A I was told that he was out cruising at his disappearance, but after that I didnt think so.

Q How is that?

A After Mr. Boulee was killed, I supposed that something else had happened to him.

Q Now, whatever you wanted, you asked Jock for, didnt you?

A No, I didnt have to ask him for anything.

Q Didnt you ask him for anything.

A Not for myself, I think.

Q For anybody else?

A For my youngest daughter; I think I had him get a couple of bottles of medicine for her.

Q He got it?

A Yes sir.

Q Your son said that was a bargain?

A Yes.

Q That was from Kersting?

A Yes sir.

Q When Fred went away did he have a gun?

A A small revolver.

Q Do you know where it came from?

A Yes, his sister gave it to him.

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Thomas-B-13

Q When?

A Just before he went away?

Q How big a revolver was it?

A I cant tell you the caliber.

Q How long was it?

A Oh, perhaps that size (indicating).

Q Are you familiar with revolvers?

THE COURT: You better put that in in intelligible form for the record.

Q About six or eight inches long?

A Possibly.

Q Are you familiar with revolvers?

A No sir.

Q Seen many of them?

A I have seen quite a few.

Q That is the reason you say it was a small one?

A I know it was a small one; I dont know what the calibre would be; I know it was a small revolver.

Q You mean short?

A Yes.

Q You dont know how many loads there were in it?

A I do not.

Q Did he ever carry a revolver before?

A Well, I dont know.

Q Ever see him with one before?

A No.

Q His sister went out to buy it for him?

A No sir.



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Q How did she happen to get it?

A She had it in the house and she gave it to him and told him to take it with him.

Q To kill cougers with?

A I dont know.

Q As far as you know, this was the first time he ever had any fire arms?

A I saw him with the gun.

Q What?

A I saw him with the gun.

Q When?

A In Michigan.

Q But you didnt see him with any in this country?

A I dont think I ever did.

Q Now, you say when he went away, he had a blue flannel shirt, black trousers, black hat; do you recall anything else that he had on?

A Light coat.

Q Light coat. What kind of material was the coat?

A Wool goods.

Q Soft?

A Yes.

Q And it was light brown?

A Yes--- well, lighter than brown?

Q How was that?

A It would be lighter; a brown shade; kind of brown.

Q Can you compare it with anything around here?

A I dont see anything like it.

Q Lighter or darker than that first juror has back there?

Thomas-B-15

A Lighter than that; lighter than either.

Q Lighter than any you see here?

A Yes sir.

Q Do you remember what kind of shoes he had on?

A Well, they were low light weight shoes.

Q You mean light in weight, not in color.

A No.

Q Dont know where he got them, I suppose?

A I do not.

Q Do you know anything about whether he had on any under-clothes?

A I do.

Q Do you know whether they were any special kind or color?

A Well, he wore a light mixed under-wear, fleeced lined.

Q Fleeced-lined?

A Yes.

Q Do you know where he got them?

A I do not.

Q But you are sure they were fleeced-lined?

A I am.

Q Do you remember anything else about his dress at the time he went away?

A Well, he had a handkerchief tied around his neck?

Q When he left?

A yes.

Q Are you sure about that?

A Yes.



Thomas-B-16

Q Didnt state that before, did you?

MR. KNIGHT: I object to that; the testimony is the best evidence of what she said.

MR. DARROW: I mean on direct examination.

Q To-day you didnt state it, did you?

A Well, I am sure he had it.

Q Well, did you state it before on direct examination?

A Well, I cant say positively.

MR. DARROW: Let me see what it was the other time.

MR. MCFARLAND: She stated that while he was at work he wore that only.

MR. DARROW: Yes, she did, that is correct.

THE COURT: But in direct examination to-day, I dont think she mentioned the handkerchief.

MR. KNIGHT: I dont think there was any examination on that.

THE COURT: You mean in direct examination this morning.

MR. KNIGHT: Yes, that is what I mean.

MR. DARROW: Page sixteen has some reference to this; you might find something I overlooked.

MR. DARROW: Now, in the other examination---I suppose you want her to see that, dont you?

MR. KNIGHT: Yes.

THE COURT: Pass it up to her. If you will indicate the page, the counsel can pass their copy.

MR. DARROW: Of course, there might possibly be something further on---I want to call your attention to two pages at once.

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Thomas-B-17

MR. KNIGHT: Page thirty-four, Mr. Darrow.

MR. DARROW: Thank you. Is that cross examination?

MR. KNIGHT: Yes. About five lines from the top---  
six lines.

MR. DARROW: Q On cross examination, you seem to have  
been asked this question: "Q Anything special about it to  
identify it? A I dont think so. He wore a blue and  
white handkerchief that was knotted around his neck. Q  
Cotton handkerchief? A Yes sir. Q Did he have more  
than one? A I dont know. Q That you know of? A I  
dont know. Q How long had he worn the handkerchief? A  
He wore it customary way, same as people usually wear it.  
Q As peaple usually wear it? Do you remember any other  
clothes he wore? A His underwear".

MR. KNIGHT: Let me explain, Mr. Darrow, the first  
question there refers to the coat.

MR. DARROW: That refers to the coat, certainly.

Q Are you sure he wore the tan coat when he went  
away?

A He either wore it or had it with him; he took it  
away with him.

Q You are sure he took it?

A I am.

Q And if he didnt have it on, he was in his shirt  
sleeves, was he?

A Yes sir.

Q Now, you didnt say anything about cougers before,  
did you?



Thomas-B-18

MR. HANSON: I object to that unless the witness is shown the testimony.

THE COURT He can ask that question.

Q Did you say anything about cougers before or wild animals of any sort?

MR. HANSON: I dont think that the witness can answer that without being under our rule; she ought to be permitted to read the testimony.

MR. DARROW: Well, I will let her read it at lunch time. to see whether she can find it.

THE COURT: very well, she can read it.

Q Did you not, Mrs. Thomas, worry on account of fearing difficulty over the claim, about that fact?

MR. KNIGHT: I object.

THE COURT: Overruled.

A No sir; I had nothing to worry over at that time?

Q What?

A I had nothing to worry over at that time.

Q You had been informed before that lawyers had been employed to take care of the contest if there was one, hadnt you?

A Yes sir.

Q Who informed you of that?

A This Mr. Kersting.

Q Mr. Kersting?

A Yes.

Q And that question hadnt any reference to your worrying?

A No.

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Thomas-B-19

Q Now, you say your son hurt h s finger in Michigan playing baseball?

A yes sir.

Q When was it?

A Well, when he was about eighteen years old, I should imagine.

Q Did he hurt his finger more than once playing baseball?

A Well, not to leave it injured.

Q was he in the habit of playing baseball?

A Yes sir.

Q Did he have any doctor for his finger?

A Well, not at home.

Q Well, so far as you know?

A I think he went to Dr. Secrest there and showed it to him.

Q Did you ever see him under any treatment with any doctor for his finger?

A No sir.

Q Or did you ever see it bandaged in any way?

A No sir.

Q He kept right on with his work, didnt he?

A Yes sir.

Q And with his baseball?

A Yes sir.

Q And that was about eighteen years ago?

A Not all of that; when he was about eighteen years of age.

Q Yes, when he was about eighteen years of age, and he was about thirty-four or five when you last saw him?



Thomas-B-20

A Yes sir.

Q You say he had chilblains on his feet?

A He froze his feet.

Q Froze his feet, when?

A Well, that would be---

Q (Interrupting) How is that?

A That would be along about sixteen or seventeen years ago anyway.

Q Where was he?

A In the lumber woods up in Michigan.

Q And after that his feet were tender?

A Yes sir.

Q And sore?

A Yes sir.

Q And they were calloused?

A After a while, yes.

Q Yes. He worked in the woods all his life?

A Oh no.

Q He worked in the woods for a great many years, didnt he?

A Not a great many years; a few years.

Q How many?

A I cant tell you just how many; he was a school boy until he was sixteen years old.

Q About how many years did he work in the woods?

A I cant tell you just how many years.

Q Cant you tell about how many?

A His time was mixed, a few months one time and a few months another so I never thought anything about it; I didnt keep track of the time.

Thomas-B-21

Q Did you ever see anybody's feet that were in the woods, where they were calloused?

A Not like his.

Q Did you ever see anybody's?

A No, I didnt.

Q Then, whether it was like his or not you dont know because you never saw any?

A Yes.

Q But you do know he cometimes complained of his feet?

A Yes sir.

Q And you pared them, is that it?

A Yes sir; trimmed the callouses off of them.

Q Whereabouts?

A Around the heels and under the feet, the balls of the feet.

Q When was the last time you had trimmed the callouses off of them?

A Just a little while before he went away.

Q About how long?

A Perhaps three or four days.

Q How long did it take?

A Somewhere from fifteen minutes to half an hour.

Q Got them all trimmed off did you, you think?

A I think so.

Q Both feet?

A I think so.

Q You say his hair was brown?

A Yes sir.

Q Any special shade of brown?



Thomas-B-22

A Dark brown, I would call it.

Q Sure it was dark brown are you?

A Yes.

Q Like yours about?

A Darker than mine.

Q Can you pick out anybody here with about the same shade of brown?

A Well, it is not as dark as Mr. Knight's, probably more like Mr. McFarland's; more like---possibly not quite as dark as that.

Q That is as near as you can come to it on anybody that you notice here?

A I think so; yes.

Q Not as dark as Mr. Knight's but about like Mr. McFarland's?

A Yes; possibly not as dark as Mr. McFarland's.

Q Mr. Knight's seems to be distinctively darker than Mr. McFarland's to you, does it?

A Well, as I see it from here, it looks so to me; perhaps the light is different.

Q Wasnt any special shade about it excepting it was dark, anyhow.

A Dark brown hair.

Q When you spoke about its being curly, did you mean real curly hair or wavy?

A Well, wavy; it would curl when he was a boy, but not after he got to be a man; it was wavy.

Q Didnt curl after that?

A No sir.

Thomas-B-23

Q So his hair wasnt curly?

A Not to curl in ringlets.

Q Beg pardon?

A I would call it curly hair.

Q Well, it wasnt as curly hair as some people have?

A No.

Q You mean just slightly wavy?

A Well, it was quite---it was not just ordinary wavy hair; more than ordinary wavy; it would curl totally in time if it was let go.

Q He wore it cut short behind and long in front?

A Cut shert behind and long in front, yes sir.

Q Now, when did you see him have a pipe?

A Well, every little while when he was at home; he was always smoking.

Q saw him have a pipe in Michigan?

A Yes sir.

Q His father had a pipe?

A Very seldom, he smoked.

Q I say his father had a pipe?

A I dont think it.

MR. KNIGHT: I dont think that would be material.

MR. DARROW: You asked that; she volunteered that.

I shall not follow this very far.

Q You saw him have a pipe in Michigan?

A Yes sir, a good many times.

Q Have the same pipe you saw in Idaho?

A that I cant say.

Q You dont know anything about it, do you?

A I do not.



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Thomas-X-D-21

A Not all over.

Q Whereabouts?

A On the heel and pretty well up and on the balls of the feet, also the balls of the toes.

Q Both of them calloused alike so they were makes?

A Yes sir, they were.

Q Calloused on the heel and the ball of the foot and the toes?

A Yessir.

Q Ever see anybody's feet that was not calloused there?

A Yes sir; not like hisn.

Q Did you ever see any that were not calloused there?

A That I cant tell for certain. Most all men have callouses that travels more or less.

Q You sa the same kind of performance again, did you?

A Yes sir.

Q When was that?

A I think that was the last time that I was there.

Q At the same house?

A Yes sir.

Q And the same people present?

A What?

Q Abd the same people present?

A Yes sir.

Q Was that at the time you saw the joint of the little finger?

A The first I noticed the finger was over by my cabin.

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Thomas-X-D-22

Q Which finger was it?

A It was his little finger.

Q Which hand?

A That I cant tell.

Q Was it crooked or just large?

A It was a little crooked and large, just real large.

Q You have got a large joint there, have you?

A Me?

Q Yes, on one of your fingers.

A No, mine is real small.

Q And di you compare it with the other fingers?

A Yes sir.

Q Was it stiff or dont you know?

A I dont know,---when he was alive.

Q Yes.

A Yes sir.

Q Stiff. Which joint was it?

A It was the first joint from the end.

Q Sure?

A Yes sir.

Q I believe you said you are not sure which hand it  
was?

A No sir.

Q Well now, when you saw this skeleton down in the  
woods, was both hands on it?

A Not in sight.

Q Well, do you know whether both hands were there?



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Thomas-X-D-23

A I dont think they were---that is, together---  
they had fallen to pieces; I found the bones underneath.

Q The other hand wasnt on the skeleton; is that right?

A Not that I can remember of seeing.

Q Any other part of the body missing, or the skeleton?

A Any other part of the body missing you say?

Q Yes.

A Not that I noticed.

Q Were the fingers there?

A yes sir.

Q Nothing but the bone?

A Just very fine skin that held the joints together.

Q All of them?

A All of them

Q Were they straight or crooked.

A They was middling crooked; in that shape.

Q All of them crooked?

A Yes sir.

Q Never saw a skeleton where they werent , did you.

A I never saw many; I saw some.

Q The fingers were all crooked?

A yes sir, of this as it laid over the logs.

Q There were no shoes on the feet?

A No sir.

Q But somebody found a shoe around there?

A Yes sir.

Q How much of it was there?

A There was a sole and a little piece of the upper;  
I think there was about two eyelets in it.

Q About two eyelets. About the same all along back and front?

A No sir.

Q Which was the most, front or back?

A Most of it was right up in here where the eyelets was; it was very little upper leather to the sole.

Q Well, was it such if a ---for instance, taking your foot there; we will say these two eyelets were there---

A (Interrupting) Yes sir.

Q Now, was it all in front; how did the---

A (Interrupting) I think it was more in this shape. (illustrating) sidewise; the rest of it had been eaten off by mice or rats or something.

Q You mean right square in front it was good, was it?

A All of this in front was good, and all the way around excepting just a little piece come up here from the sole.

Q Fastening to hold the eyelets at least?

A Yes; all I can remember now of it.

Q How much was there in the back?

A How much what?

Q How much of the shoe was there in the back---back part of the heel?

A There wasnt any on the sole by the heel?

Q Nothing left but the sole?

A I dont think---I dont remember about that.

Q Did you examine the shoe?

A I did, some.

Q Was it pegged or sewed or what? Was it pegged or sewed or nailed, if you remember?



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Thomas-X-D-25

A That I dont remember.

Q Dont remember?

A No sir.

Q You cant tell about that can you?

A I think the shoes were nailed; nailed shoes.

Q Sure about it?

A Not sure.

Q Hobnails?

A yes sir.

Q Were they large head and---

A (Interrupting) Small---I am not positive about that, but it seems to me there was small hobnails in these shoes.

Q Now, this hat you have seen him wear was a soft hat?

A yes sir.

Q And low crowned.

A Yes sir, I would call it a low crowned hat.

Q Did you ever see him wear any other sort of a hat?

A No sir.

Q You never saw him wear any other clothes than the ones you have described that you can now think of?

A Not to be certain of.

Q Did anybody untie any knot in the handkerchief?

A Untie it?

Q Yes.

A I dont think they did.

Q They took everything there just as it was and bundled it up, didnt they as far as you could see?

Thomas-X-D-26

A Yes sir.

Q And who took it away?

A Mr. Williams, myself and Theriaut, Mr. Gentry,  
Mr. Simpson and Mr. Yeager.

Q And the place where these logs were was about half  
a mile from Jack Simpkin's cabin?

A Somewhere in the neighborhood of half a mile.

Q And how far was Tyler's cabin from that?

A I cant tell you where his cabin was.

Q You didnt see that?

A No sir, I never saw his cabin.

Q And about three quarters of a mile from Russell's  
cabin?

A Yes sir.

Q Where di you take these remains?

A The remains?

Q Yes.

A We took them out to the head of navigation and from  
there Mr. Williams, I went with him in as far as St. Maries  
and he went on to Wallace.

Q You didnt go to Wallace?

A No sir.

Q And you dont know anything about their burial,  
do you?

A No sir.

Q Nor his brother-in-law didnt?

A No sir.

Q His two brothers-in-law were there, werent they?

A Yes sir.



Thomas-X-D-27

Q They turned and went home?

A They went across the mountain home and I went with the remains.

Q Did they do anything else?

A We separated when we got down to The Meadows.

Q Didnt do anything towards calling a coroner's jury and investigating it?

A Not then; it was understood between myself and Mr. Williams that there was to be a post mortem examination at Wallace.

Q But you never heard of any?

A No sir.

Q And there never was any, as far as you know?

A Not as far as I know.

Q You didnt know where he was buried until you heard about it after this case began?

A No sir.

Q After Adams was arrested; that is right, isnt it?

A That is right.

Q Did you ever do anything to find out?

A Yes sir.

Q What?

A I wrote to Mr. Williams to get an answer, what they was going to do, and I didnt get no answer; and my wife wrote, I think, to Mr. Gyde and I think she got an answer from Mr. Gyde.

Q He was State's Attorney?

A yes sir.

Thomas-X-D-28

Q When was that---about how long after you discovered this---

A (Interrupting) I cant tell.

Q Well, can you tell about how long?

A It was after we had taken---had him taken out.

Q What?

A Quite a long time afterwards.

Q was it before Adams was arrested or afterwards?

A That I cant tell.

Q You dont know whether you ever heard from Mr. Gyde until after Adams was arrested, do you?

A No, I dont remember.

Q No. When was it you went in there after that skeleton?

A In 1905.

MR. DARROW: Do you remember the date, Mr. Knight?

MR. KNIGHT: I disremember whether it was August or September, 1905; I was thinking it was later than that. Mr. Thomas said it was August; it was either August or September.

Q Well, it was late in September or early in the fall of 1905.

MR. KNIGHT:" Our next witness will be able to tell.

MR DARROW: Yes, I suppose so.

MR. DARROW: That is all.



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...CUMS-B-KD-D-29

RE-DIRECT EXAMINATION

BY MR. HANSON:

Q You stated in answer to one of Mr. Darrow's questions that you partially identify the remains of Fred Tyler---that as being the remains of Mr. Tyler, by the shape of the skull, did you?

A By the skull.

Q By the shape of the skull?

A Yes sir.

Q Now, is the skull, as you saw it in his hands, in any different condition now from what it was at that time?

A I couldnt tell; I havnt seen it close enough.

MR. HANSON: Well, I will show it to you. (Hands witness skull)

A This seems to be broken away more than it was when we found it.

MR. DARROW: Q What seems to be broken away?

A This broken part from handling.

THE COURT: The lower part of it?

A Yes sir. There was a hole right in here somewhere (indicating); but I am satisfied that is the same skull.

Q Well, you didnt pick up that skull, and after looking at it, without any further adue, say that is the skull of Fred Tyler, did you?

MR. DARROW: I object to that.

THE COURT: Sustained.

Q And you also stated, I believe, that there was some skin on the forehead when you first saw it?

Thomas-RD-D-30

A Yes sir.

Q Now, I want to understand you clearly, Mr. Thomas. I believe you stated that you examined the remains you found there and examined the condition and found one little finger with a large joint, examined the heel and foot and the clothes, and after making a thorough examination of everything you found, that you decided that was the remains of Fred Tyler?

A Yes sir.

MR. DARROW: Wait a moment. I object to that.

THE COURT: Objection sustained.

MR. DARROW: I ask that the answer be stricken out.

THE COURT: The answer will be stricken.

Q Now, you stated you thought those shoes were nailed. Do you mean you thought they were nailed shoes originally or that they had had hobnails put in there after the shoes were made.

A They had hobnails put in them after they were made, I thought.

Q You are not positive as to that?

A I am not positive no. There was only one found.

MR. DARROW: What is this?

MR. HANSON: He said there was only one shoe found. That is all.

RE-CROSS EXAMINATION

BY MR. DARROW:

Q There is enough of that skull left to identify Fred Tyler by, for you?



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Thomas-RX-D-31

A Yes sir.

WHEREUPON, the Jury was duly admonished by the Court, as required by law, and the officers were duly sworn in whose charge the Jury retired and the Court took a recess for ten minutes.

Court convened pursuant to the foregoing adjournment and thereupon, the Jury was brought into Court in charge of the officers and being duly polled, all answered to their names and the trial of this cause proceeded as follows:

The State having announced that the witnesses they desired to produce next were not within reach of the sheriff, and after a brief discussion by counsel, the Court admonished the Jury, as required by law, and thereupon, the Court was adjourned until ten o'clock, Thursday Morning, November 7th, 1907.

WITNESS EXCUSED.

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF  
KOOTENAI.

STATE OF IDAHO,  
PLAINTIFF,  
VS.  
STEVE ADAMS,  
DEFENDANT.

NO. \_\_\_\_\_

WEDNESDAY MORNING, NOVEMBER 7, A. D., 1907.

MORNING SESSION.

At this time, the Defendant being in Court with his counsel, present as before, the record of Wednesday's Proceedings was read and approved, and the following Proceedings were had herein, to-wit:

THE COURT: Bring in the Jury.

THEREUPON, the Jury came into Court in charge of the officers, and being duly polled, all answered to their names and the trial of this cause proceeded as follows:

WHEREUPON, Messrs. Stansbury, Gentry and Hughes, witnesses on behalf of the State, were duly sworn.

THE COURT: You other two gentlemen please retire to the Jury room and be in call.



GENTRY-D-1  
A-2

JOHN R. GENTRY,

Called as a witness on behalf of  
the State, having been hereto-  
fore duly sworn, testified as  
follows:

DIRECT EXAMINATION

BY MR. KNIGHT:

Q State your name?

A John R. Gentry.

Q Your residence and occupation?

A Coeur d' Alene City; and I am a timber cruiser.

Q How long have you been engaged in timber cruising?

A About three years.

Q Who are you working for?

A I worked for the Rutledge Timber Company.

Q What were you doing during the year 1904?

A Working at Sandpoint for the Humbird Lumber Company.

Q Humbird Lumber Company?

A Yes sir.

Q During that time did you do some cruising on Marble  
Creek?

A No sir; not in 1904.

Q What is that?

A No sir, I did not in 1904.

Q In 1905 you did the cruising?

A In 1905 I worked on Marble Creek.

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Gentry-D-2  
A-3

Q During the time that you were engaged in that country did you discover a skeleton there?

A Yes sir.

Q When was that?

A On the 23rd day of July.

Q 1905?

A 1905.

Q Where was that skeleton, Mr. Gentry?

A It was in section twelve, the northwest of the southeast quarter.

MR. KNIGHT: I suppose we may as well put up the map.

MR. DARROW: Is that the map that was used before?

MR. KNIGHT: Same one used before.

Q I didnt understand just where that body was found?

A It was found in section twelve, forty-four, two East.

Q Just point it out on the map, if you will Mr. Gentry

A We found him very closely right there.

Q You better mark it "A", Mr. Gentry.

(Map is marked with letter "A")

Q And you found him at the point marked "A" near Eagle Creek?

A Yes sir.

Q That would be in the southwest quarter of the southeast quarter of section twelve?

A Yes sir.

Q Who was with you when you found that skeleton?

A Ed. Stansbury.



Gentry-D-3  
A-4

Q Your assistant was he?

A I was his assistant.

Q What time of day did you find that?

A About ten o'clock in the morning.

Q How did you come to find it?

A We were running through looking at timber.

Q You located the lines in there, did you?

A Yes sir.

Q In what county was that?

A That was in Shoshone County.

Q State of Idaho?

A State of Idaho; yes sir.

Q How far was the body from Eagle Creek; about how far?

A It would be about twenty rods.

Q Do you know where Fred Tyler's cabin is?

A No sir, I do not.

Q Do you know where Jack Simpkin's cabin is?

A Yes sir, I do.

Q And how far was the body from Jack Simpkins' cabin?

A It would be in the neighborhood of three quarters of a mile.

Q In a direct line?

A No sir; it would be a little north of west.

Q But do you mean it would be in the neighborhood of three quarters of a mile in a straight line?

A Yes sir.

Q And was there a trail leading from Simpkins' cabin to this point?

Gentry-D-4  
A-5

A No sir.

Q What was the nearest trail to where the body was?

A About three quarters of a mile.

MR. DAWROW: By the trail you mean?

A Three quarters of a mile from where the body was found to the trail.

Q Where was Jack Simpkins' cabin located; was it at the point marked "Simpkins' cabin" here? It is a leading question, of course. Just notice this; it is marked "Jack Simpkins' cabin". Is that the proper location of his cabin, do you know?

A I dont.

Q Do you know in what subdivision his cabin is located exactly.

A No sir, I do not.

Q Southeast of the southwest?

THE COURT: Southeast of northwest.

MR. KNIGHT: Yes, of eighteen.

Q Did you examine the corpse that you found there?

A Not very much.

Q What was the nature of the country where it was situated?

A Very bushy country.

Q Very bushy country?

A Yes sir; been burnt and second growth timber came up very thick.

Q What kind of timber?

A It was---by fir and tamarack; some white pine, very small.



Gentry-D-5  
A-6

Q And how was the body situated when you found it?

A It laid down between two logs, with his head laid between two logs; head fell off and was in between the two logs, and his feet lay across the pole.

Q That is, there was a pole laid across the two logs?

A Yes sir, and his feet laid on this pole.

Q And his head dropped down between the logs?

A Yes sir.

Q His body being supported by the two logs?

A Yes sir.

Q The logs were laying parallel or nearly so?

A Parallel together, probably six inches apart.

Q And were these logs large or small logs?

A They were middlin' small; werent big logs; probably eighteen inches-sixteen inches.

Q And how far was the body up from the ground?

A It would be possibly sixteen or eighteen inches.

Q How was the body dressed, if you remember.

MR. DARROW: Is there any use spending time on that?

MR. KNIGHT: I think so; the first man that saw it.

MR. DARROW: I know; but there would be no questions raised---all right.

MR. KNIGHT: Q Go ahead, answer.

A I think he had an under-shirt on, a pair of overalls and two pair of socks on each foot.

Q That is two socks on each foot?

A Yes sir, two socks on each foot.

Q What kind of under-shirt?

Gentry-D-6  
A-7

A Some kind of brown wool under-shirt.

Q Brown wool?

A I think so; I wouldn't be sure it was wool or cotton;  
I can't say on that; I couldn't say.

Q And what kind of over-alls?

A He had a pair of blue over-alls.

Q Did you examine the clothing in any way at that time?

A No sir, not much.

Q Didn't go into the pockets?

A No sir.

Q I will just ask you, Mr. Gentry, showing you State's  
Exhibit No. 9, how the color of the under-shirt compared  
with this?

A It would be something like that.

Q What was the state of the clothing at that time as  
to decomposition?

MR. DARROW: There seems to be two garments of differ-  
ent colors.

MR. KNIGHT: I show him this one.

MR. DARROW: Let him say which one, if he knows.

MR. KNIGHT: All right. Q Which garment do you  
say?

A I think this brown one.

Q The brown one?

MR. DARROW: The dark one?

A The darkest one.

MR. KNIGHT: They are both under-garments found around  
the body. Q What was the state of the clothing as to  
decomposition?



A They were in a pretty good state of preservation.

Q Pretty fair state of preservation?

A Yes, sir.

Q Q They were on the body, were they?

A Yes, sir; they were.

Q No shoes on the body?

A No, sir.

Q What did you do at that time?

A We left it lay just as it was and went and notified the coroner, Mr. Stansbury, notified the coroner; I stayed in the woods at the time.

Q And did you do anything further until the coroner came?

A No, sir.

Q Did you return there with the coroner?

A Yes, sir; I did.

Q Who else was with him?

A Mr. Theriault, Mr. Williams and one other,  
I believe.

Q Mr. Williams, deputy sheriff?

A Deputy sheriff, and Mr. Thomas.

Q Mr. Thomas?

A Thomas, and Mr. Yeager, and there was some one else  
along.

MR. DARROW: Mr. Simpson?

MR. KNIGHT: Mr. Simpson, was it?

A I believe so; a young man.

Q And when was it you returned to the place?

A It would be a few days later.

Q Do you remember the day?

A No, I don't exactly.

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Gentry-D-8  
B-9

Q Have you any data there from which you can fix the date?

A I have, yes, sir; I have a diary.

Q What is that you are referring to now?

A This is my diary that I kept the time of; I always kept a diary of the days and where I am and what I do when I am in the woods, every day.

Q This was made at that time, was it?

A Yes, sir.

Q And from your diary what would you say about the day that you returned there?

A On Friday, the 28th.

Q Friday, the 28th of July?

A Yes, sir.

MR. DARROW: Q That is the day you went with the coroner and deputy sheriff, is it?

A Yes, sir; I came in on the 27th; he staid with me all night, and the next morning I went out and showed them where it is, and he gathers up the bones and put them on a horse and starts for the St. Joe, on the 28th.

MR. KNIGHT: Q Do you know what was found there at that time?

A I don't know much about what was found there.

Q Do you know anything that was found there?

A They found a bottle of horse radish there; I saw that.

Q You saw that, did you?

A Yes, sir.

MR. DARROW: I object to that unless this witness knows whether it is horse or horse radish.



MR. KNIGHT: He testified so before.

MR. DARROW: He testified something that you had sworn to before.

MR. KNIGHT: That I had sworn to?

MR. DARROW: Yes, sir.

MR. KNIGHT: He did not testify to anything of that kind.

MR. DARROW: I ask to have that part stricken out. The witness can state what he saw and describe what he saw. The Court has been over this and the attorney has been over it.

THE COURT: I understand that no person can identify that as a bottle of horse radish.

MR. KNIGHT: I don't understand your Honor to rule that a witness can't testify it is horse radish surely.

MR. DARROW: You know that he could not identify that or anybody else.

MR. KNIGHT: No, I don't know that.

THE COURT: I shall not strike it out, but I think the cross-examination will show very plainly.

MR. KNIGHT: That is the privilege of the cross-examination.

MR. DARROW: I want that stricken out and except to the ruling.

THE COURT: Your motion will be denied and exception allowed.

MR. KNIGHT: What kind of a bottle was it?

A common bottle like a mustard bottle would be; ordinary bottle of that kind.

MR. DARROW: Let him describe it first, Mr. Knight.

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Conroy-D-10

B-11

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MR. HEITMAN: Let him describe it, Mr. Knight, before you show it to him.

MR. KNIGHT: Would you like to conduct this direct examination, Mr. Heitman?

MR. HEITMAN: I would like to keep it within proper bounds.

MR. KNIGHT: Q I hand you State's Exhibit 11 and ask you whether or not you have seen it before?

A I could not say.

Q I will ask you whether or not the bottle you found there resembled that one?

A Yes, sir.

MR. DARROW: That I object to, whether it resembles it or not.

THE COURT: Objection overruled.

Q As to size and shape?

A It resembled that very much; similar to that very much.

Q Did you read any inscription on the bottle?

A No, sir.

Q You stated that it was a bottle of horse radish?

MR. DARROW: I object to that question; that has been answered.

MR. KNIGHT: There has not been a question.

MR. DARROW: Then I object to your making an argument at this stage.

MR. KNIGHT: I am not making an argument.

MR. DARROW: I object to your making a statement.

THE COURT: The question will be asked and I will listen to you then.



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Gentry-D-11

B-12

MR. KNIGHT: Q You stated it was a bottle of horse radish; from what did you conclude it was a bottle of horse radish?

MR. DARROW: To that I object as a leading question; it is his business to describe the bottle and anybody else can tell.

Objection sustained.

MR. KNIGHT: I can't see how the question could be asked in any other way. It is certainly not a leading question.

THE COURT: I think it is perfectly proper to describe the bottle with some particularity, if you desire.

MR. KNIGHT: Why, Mr. Gentry, did you state it was a bottle of horse radish?

MR. DARROW: To that I object. It is his business to describe the bottle.

MR. KNIGHT: That is entirely a new objection to me. Certainly the question is not objectionable under any rule of evidence as announced anywhere.

THE COURT: It is certainly in the nature of cross-examination, but I will overrule the objection.

Defendant excepts and exception allowed.

A It was in a bottle that resembled, like they put up horse radish in; a white substance and looked like horse radish; I could not swear positively it was horse radish, but it looked like horse radish from the outside.

Q Any other articles picked up there that you remember of?

A No, sir.

Q Do you know where that bottle was found?

A No, sir.

Q What was there about the clothing or on the

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B-13

body, if you remember?

A Not anything that I remember.

Q Did you state that there was some sack found there?

A There was a sack, a gunny sack there, laid on his leg.

Q Right on his leg?

A Yes, sir.

Q Did you examine that gunny sack yourself?

A Not very much.

Q Do you know how it was made up, or anything of that kind?

A No, sir; I didn't touch it at all.

Q You didn't touch it at all?

A No, sir; didn't touch nothing.

Q Who did make an examination?

A Mr. Williams.

Q Do you know what was done with the remains there?

A They put it up in a gunny sack and carried it with them.

Q And how long did you remain with them?

A I stayed there most all the time while they were gathering up the bones.

Q Did you come up with them?

A No, sir.

Q Did Mr. Theriault have anything to do with gathering up the remains?

A He was there, yes, sir.

Q He didn't assist in taking up the stuff.

MR. DARROW: Objected to as leading.

MR. KNIGHT: Q Did he or did he not assist in taking up the stuff?



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MR. DARROW: That is a leading question.

A Yes, sir; he did

MR. KNIGHT: It is preliminary.

MR. DARROW: I don't think so. You are trying to excuse Mr. Theriaut's absence.

MR. KNIGHT: You can see so many things that other people can't.

MR. DARROW: That may be.

THE COURT: No matter; proceed.

MR. KNIGHT: Q Did you come out with them,

Mr. Gentry?

A No, sir.

Q These people were there on the 28th, you say?

A Yes, sir.

Q Did they go out that night?

A They went out that evening, yes, sir.

Q Do you know where Mr. Russel's cabin was there?

A Very closely.

Q About how far from the point where the body was found?

A Well, it would be a mile, I should judge.

Q A mile?

A A mile and a half.

Q Describe the ground, as to whether it was level or mountainous at this place?

A The ground was mountainous, sloping to the east.

Q Sloping to the east?

A Yes, sir; sloping to Eagle Creek, to the east.

Q And about how high from Eagle Creek would you say it was?

A I would judge it would be probably 60 or 70 feet above

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B-15

the elevation of Eagle Creek at that point.

MR. KNIGHT: Take the Witness.

-----CROSS-EXAMINATION-----

CROSS-EXAMINATION BY MR. DARROW:

Q You are a surveyor?

A No, sir.

Q What are you?

A Timber cruiser, sir.

Q Who were you working for at that time?

A Working for the Rutledge Timber Company, in Spokane.

Q You were surveying or cruising that land for them?

A Yes, sir.

Q Where is their place of business?

A Their place of business is in Spokane, Peyton  
Block, Spokane.

Q What Block?

A Peyton Block, Spokane, 4th floor.

Q Do you know who is connected with it?

A No, sir; the Weyerhauser Syndicate, so I understand.

Q The Weyerhauser Syndicate?

A Yes, sir.

Q You were cruising for them?

A Working for them, yes, sir.

Q What territory were you cruising over?

A I was cruising over the Marble Creek territory at  
that time.

Q That whole country?

A Yes, sir.

Q Especially those sections around where the marks are?  
(referring to map)



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B-16

A Yes, sir; we cruised all of this land except 18 at that time.

Q You did not find out the purpose; you just did the cruising?

A Yes, sir.

Q You are familiar with the woods and the section lines, are you not?

A Yes, sir.

Q Will you look at the map and tell us from the map how far it is in a direct line from Jack Simpkins's cabin to where this body was found?

A Yes, sir; about three-quarters of a mile.

Q Will you look at the map and measure it up in a direct line?

THE COURT: You can tell from the section lines; you can tell exactly from the rule?

A It would be a half a mile there and a half mile there. (Indicating on map).

Q Is that what you call a direct line?

A A direct line would be a little over three quarters of a mile; about a mile.

Q Now, you have not got Jack Simpkins's cabin at all; you have got another one. Jack's cabin, don't you know where that is on there?

A Is that his cabin here? (Indicating on map).

Q That is not his cabin there.

MR. KNIGHT: It is marked Jack Simpkins's cabin.

THE COURT: It is marked Jack Simpkins's cabin.

MR. DARROW: Very well. You say it would be about three quarters of a mile?

A It would be about a mile; a little better than a mile.

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B-17

Q Can you measure it with a rule?

A I suppose I could if I had a rule.

Q There is a rule right there.

THE COURT: The e is no scale on this.

MR. DARROW: Q There is a scale on the map, by the quarter sections, isn't there?

MR. KNIGHT: pretty hard to tell by the diagonal distance across two quarter sections without some kind of a scale.

MR. DARROW: Q Isn't it perfectly easy with a rule to measure a straight line and measure how much it is by those quarter sections?

A It would be very easy I suppose.

THE COURT: Get a scale rule.

MR. DARROW: Q Try it with this rule, then.

MR. KNIGHT: I don't think the scale of that map is given, Mr. Darrow.

MR. DARROW: You know how far it is, don't you?

MR. KNIGHT: No.

THE COURT: A section line is a mile, is it not?

MR. KNIGHT: Yes, sir.

THE WITNESS: " It would be 80 rods across there and 80 rods across there, a forty.

MR. DARROW: Q How far is it?

A Three inches on this map from Jack Simpkins's cabin to the place where the body was found.

Q How do you know where the body lay?

A I was pacing, sir, and found it.

Q Pacing.

A And running a compass at the same time, yes, sir.



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B-18

Q Where did you pace?

A Paced from the corner of 16 to the southeast corner of 12

Q How many paces was it?

A It would be---

Q Well, do you remember how many paces?

A Yes, sir; I do.

Q How many?

A It is 400 paces across a 40; four tallies across a 40.

Q I don't care anything about that. Do you remember how many paces you took before you got up to where that body was?

A Yes, sir.

Q How many?

A Six hundred twenty-five.

Q Did you set them down anywhere, sir?

A No, sir.

Q You arrive at six hundred twenty-five by knowing how many paces there are in a mile?

A Yes, sir; I know how many paces there are in a mile.

Q Now, you tell me you have counted how many paces there were between that corner and where you found this skeleton?

A Yes, sir; I mean I counted those paces.

Q What for?

A To tell where I was.

Q What did you do when you counted them; set them down anywhere?

A No, sir; I did not.

Q Carried them in your head ever since?

A Yes, sir.

Q Is that right?

A Yes, sir.

Q What?

A You bet you.

Q It is right?

A I carried them in my head, yes, sir; the number of paces.

Q And you know you took just six hundred and twenty-five?

A Yes, sir.

Q Not six hundred and twenty-four or six hundred and twenty-six?

A No, sir; six hundred and twenty-five.

Q Six hundred twenty-five make a mile?

A No, sir.

Q How much does it make?

A It makes 100 rods.

Q How many rods in a mile?

A Three hundred sixty rods in a mile.

Q Then six hundred twenty-five paces would be about a third of a mile, would it not?

A Yes, sir; from the corner.

MR. KNIGHT: He is telling from the corner.

MR. DARROW: Q From what corner?

A From the southeast corner of 12.

Q From the southeast corner of 12?

A Yes, sir.

Q That is from here, is it? (Indicating on map).

A Yes, sir.

Q So it is a third of a mile from there?

A Six hundred twenty-five paces, yes, sir.

Q From there?

A Yes, sir.



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B-20

Q On a straight line?

A Yes, sir.

Q Did you go on a straight line?

A Yes, sir.

Q You went straight in there, did you?

A Yes, sir.

Q For what purpose?

A To look timber.

Q Were you looking at timber all the time you were going in?

A Yes, sir.

Q And pacing it at the same time?

A Yes, sir; my partner was looking that timber and I was helping him; I was his assistant.

Q And you were pacing while you were going in?

A Yes, sir.

Q Do you do that when you look at timber?

A Yes, sir.

Q Do you make any memorandum of it?

A Yes, sir.

Q In what?

A A little book we generally carry.

Q You have got that book with you, haven't you now?

A No, sir; not that one.

Q You have got a book that you make memoranda in, haven't you?

A Yes, sir, where I was.

Q Have you got a book of where you make memoranda of timber?

A Yes, sir.

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Q Where is it?

A I suppose in Spokane, at the office.

Q Is that the one that you have got a record in of the number of pages that you took?

A Yes, sir.

Q When have you seen it last?

A I have not seen it since last we used it.

Q What?

A I have not seen it since July.

Q When was that?

A 1905.

Q How many days did you spend up there?

A I was in there about all summer.

Q You could lay your hands on that book, couldn't you?

A I don't know whether I could or not.

Q What do you think? Will you get that book and bring it in and show us the number of pages, please.

MR. KNIGHT: Now, if your Honor please, that is rather a peremptory command.

MR. DARROW: That is a request.

THE COURT: That is a request. He says, "Will you get it?" Can you get it, Mr. Gentry?

A No, sir; I don't see how I could.

MR. DARROW: Q Why not?

A It is in the vault at Spokane.

Q Have you asked the Boss whether you can get it?

A No, I have not asked him.

MR. KNIGHT: You have not asked him to look for it?

A No.

MR. DARROW: Q Will you do that?

A No, sir.



entry-X

2-12

Q Why?

A Because.

Q What?

A No, sir; I won't.

Q Don't you know as well as you sit there that you never made any such figures in your life?

A Yes, sir; I did.

Q Of the number of paces between that section and where you found this body, did you? Did you?

A Certainly, we kept track of it.

Q Did you make any figures with the number of paces between that section line and where you found this body?

A I don't know as I did.

Q That is what I thought.

Q So you could not bring them, could you?

MR. KNIGHT: He has not answered it, did he?

MR. DARROW: Now that is for the jury; it is not for you and me to fight over.

Q You said awhile ago that you thought that looked like a mustard bottle that you found, didn't you?

A No, sir.

Q Didn't you say that in direct examination?

A I said it looked something like a horse radish bottle; I said something similar to a horse radish bottle.

Q Didn't you say in your direct examination that it looked like a mustard bottle?

A I don't think so.

Q Did it look like a mustard bottle, sir?

A I don't think it did.

Q You say now that you don't think it did?

MR. KNIGHT: The witness did say that it did

look something like a mustard bottle.

MR. DARROW: We know that.

MR. HEITMAN: The jury knows that.

MR. DARROW: Q Any label on the bottle?

A I don't know that there was any.

Q It might have been all covered with letters and you would not remember it?

A No, sir; I would not have noticed it.

Q You would not have noticed it?

A No, sir.

Q Was there any coloring on it?

A I don't know.

Q You don't know. You don't know whether there was any paper labeling on it or not?

A I don't know.

Q Could you tell whether it was round or square?

A It was a round bottle.

Q Could you tell what kind of a stopper it had in it?

A No, sir.

Q Where did you ever see a horse radish bottle before?

A Well, I saw a few; carried a few with me in the woods.

Q You have seen them put up in round bottles, have you?

A Yes, sir.

Q Well, how much stuff was there in this bottle when you saw it?

A Probably a half an inch, I should judge.

Q A half an inch in the bottle?

A I should think so.

Q What color was it?

A It was whitish.



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Q Was it fine or was it in stocks?

A I don't know; it was fine.

Q What?

A It was ground up fine.

Q Any liquid?

A No liquid on it.

Q Anybody open the bottle?

A I don't know whether they did or not; I did not.

Q So, if this should be the bottle, somebody has taken the contents out, haven't they?

A I don't know.

Q Look at it?

A I see.

Q You don't see any, in it, or half inch of horse radish, do you?

A No, sir.

Q Or any?

A No, sir.

Q Do you see anything in there?

A No, sir; I don't see anything, only a little dirt, or something of that kind.

Q If this is the bottle, somebody has taken the contents out?

A I don't know, I am sure anything about that.

Q This may be just the way it was then?

A There was a half an inch of horse radish or something in the ~~haxks~~ bottom of the bottle; a white substance in the bottle.

Q So this could not be the way it was then?

A I don't know.

Q If it is the bottle?

Gentry -x

B-25

A No, sir; it can't be.

Q You don't know whether it is the bottle or not?

A No, sir.

Q And you don't know whether it is the same size,  
do you?

A No, sir; I could not say.

Q or the same shape?

A The same shape.

Q Now, you say there were two logs there, laying  
practically lengthways?

A Yes, sir.

Q And another one on top?

A A small one laying across, crosswise.

Q Any other logs connected with it at all?

A Why, I think not; there might have been other logs  
laying there; there would be in the woods.

Q Let us see whether we get this substantially right.  
If those were the two logs laying lengthwise--

A (Interrupting) They lay lengthways, parallel to one  
another.

Q A little closer, parallel?

A Yes, sir; close together; six inches apart.

Q And this other log lay here? (Illustrating)

A Yes, sir; a small pole across, like that. (Illustrating)

Q And that was in so it left a little space there?

A No, sir; them logs are parallel to each other?

Q Absolutely parallel?

A Yes, sir.

Q One did not lay on the other?

A No, sir;



Gentry-X

B-26

Q They lay like that (Illustrating) did they?

A They lay like that.

Q And they lay that way?

A Yes, sir.

Q Did you notice them carefully?

A Yes, sir.

Q You could not be mistaken about that?

A No, sir:

MR. DARROW: Can I take this bottle out of the court room?

MR. KNIGHT: I would like to be with counsel.

MR. DARROW: I guess counsel would be willing that I should take it for a few minutes.

MR. KNIGHT: We will want the contents of that bottle looked after by some one appointed by the Court.

MR. DARROW: Will it be satisfactory if Judge McBee is along?

MR. KNIGHT: We don't think it ought to be carried out of court; it is an exhibit in court.

THE COURT: Mr. Hanson can go with Mr. McBee.

MR. MCBEE: No matter.

MR. DARROW: Q The head you say lay over that top log?

A The feet lay over the top log.

Q The feet lay over the top log?

A One foot lay over the top log.

Q Where was the head?

A It lay in between those logs; it fell off between those logs.

Q A Where was the body?

A The body lay up; could not get in between the logs.

Q The shoulders, where were they?

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Gentry-X

B-27

A They werelaying between the logs like.

Q The feet were up higher than anything else?

A Yes,sir.

Q The feet were up over the logs?

A One foot was over this pole.

Q Was the ground sloping there?

A Yes,sir.

Q Was the ground sloping there where the trees were?

A Yes,sir; it sloped to the east.

Q Were the feet up hill or down?

A The feet were down hill, sir.

Q And then the log that lay on the top of the other  
was on the lower part?

A Yes,sir.

Q Now, you say there were two pair of socks on this  
sk eleton?

A Yes,sir.

Q Do you know what color they were?

A They were of abrownish color?

Q Take any of them off?

A No,sir; I did not.

Q Did you notice them closely?

A Not very closely, no,sir.

Q Did you see the feet of the skeleton?

A I did not see it after the socks wereoff.

Q You did not see through the socks?

A No,sir.

Q Did you look at both pair of socks?

A No,sir.

Q Or did you look at both feet?

A Yes,sir; I seen both feet.



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Gentry-X

B-28

Q Did you see any of the heel part of the foot at all?

A No, sir.

Q The socks covered that entirely?

A Yes, sir.

Q You did not feel of them?

A No, sir.

Q The socks seemed to be in good repair?

A Yes, sir.

Q How did you see there were two pair?

A I saw the tops sticking out; one was shorter than  
the other.

Q That is the only way you could tell?

A yes, sir.

Q Aside from that they were whole, in good shape?

A I think so.

Q Now, there was a pair of blue overalls and  
you think a brownish undershirt?

A I think so.

Q Do you know whether there was one undershirt or two?

A I could not say now.

Q Do you know as to the bag you spoke of, how it was  
made to be carried?

A No, I don't.

Q You don't?

A No.

Gentry-X-  
C-1

Q You have seen mustard bottles, have you?

A Yes sir.

Q Never saw one that looked like this?

A I dont know but I have.

Q What?

A I dont know but I have.

Q Well, have you or havnt you?

A Yes sir, I have seen bottles that resembled that very closely.

Q Seen mustard bottles that did?

A Yes sir.

Q Didnt you say awhile ago you hadnt? (After a pause)  
Or dont you remember? (After a pause) From the bottle,  
you wouldnt know whether it was a mustard bottle or a  
horse radish bottle?

A No sir.

Q Did you ever buy a bottle of anything like this?

A Yes sir; I bought mustard.

Q Do you know where you got it?

A Yes sir.

Q In this section of the country?

A Yes sir; I bought several bottles in this section of the country?

Q Do you know who put it up?

A No sir.

Q Ever buy horse radish bottles like that?

A Yes sir, I have.

Q Do you know where you bought them?

A Different stores.



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Gentry-X-  
C-2

Q Different stores?

A Yes sir.

Q Which ones?

A Fernwood---

Q (Interrupting) Where?

A St. Joe.

Q What store?

A Coeur d' Alene City also.

Q What store?

A Brown Table Supply Company.

Q Just this style of bottle?

A Something resembling this very closely.

Q I didnt ask you that. You have looked at this  
bottle havnt you?

A Yes sir.

Q Do you know whether it was fluted on the bottom,  
the ones you ever bought? Look at it and see; do you  
know whether you ever got a horse radish bottle like that?

A No sir, I do not.

Q You do not know?

A No sir, I do not.

Q I show you this bottle; did you ever get a bottle  
like that?

A I dont know that I have got a bottle like that.

Q Same kind are they not.

A The same kind, it seems to me they are.

Q Can you tell whether this is mustard or horse  
radish?

A It looks like mustard.

Gentry-X-  
C-3

Q You havnt any doubt about that?

A I wouldnt think so.

MR. KNIGHT: Better make them exhibits.

MR. DARROW: Better open a general store. I guess  
thats all.

MR. KNIGHT: We will pay the price if you will make  
them exhibits. I think we are through with this wit-  
ness; do you care for him?

MR. DARROW: No.

WITNESS EXCUSED.



Stansbury-D-  
C-4

EDWIN STANSBURY,

Called as a witness on behalf  
of the State, having been here-  
tofore duly sworn, testified as  
follows:

DIRECT EXAMINATION

BY MR. KNIGHT:

Q Mr. Stansbury, state your name, your residence and  
your occupation?

A Edwin Stansbury.

Q You have been sworn, have you?

A I was. My residence most of the time is Coeur d'Alene

THE COURT: Speak pretty loud, Mr. Stansbury.

Q What is your occupation?

A Timber estimator.

Q How long have you been engaged in that occupation?

A About eight years.

Q Are you a surveyor?

A No sir.

Q Where were you engaged during the summer of 1905?

A Well, different places, most of the time though  
in---up the St. Joe River and the Marble Creek country.

Q Who were you working for?

A Rutledge Lumber Company.

Q During that year did you find a dead body some-  
where?

A I did.

Q Where was it?

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Stansbury-D-  
C-5

A It was on the southwest quarter of the southeast quarter of section twelve, forty-four, two east.

Q Do you know where Eagle Creek is?

A Yes sir.

Q About how far was the body from Eagle Creek?

A It was about fifty rods, I should judge, west of one branch of Eagle Creek, forty or fifty.

Q Fifty rods?

A Forty or Fifty.

Q Do you know where Jack Simpkins' cabin was, or is?

A Yes sir.

Q With reference to Jack Simpkins' cabin, where was the body with reference to Jack Simpkins' cabin?

A Pretty close to three quarters of a mile, I should judge.

Q Did you measure it?

A No sir.

Q Will you point out on the map here about where the body of Tyler was found on section twelve, forty-four, two east?

A That is about it. (Witness indicates on map)

Q About the point marked "A"?

A Yes sir; might be trifle farther west than that, but it is near that place.

MR. DARROW: What way is west on that map?

A That way (indicating).

MR. KNIGHT: Q Might be a trifle farther west, you say?



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Stansbury-D-  
C-6

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A Yes sir.

THE COURT: Then that point "A"?

THE WITNESS: Very little; that is nearly the location.

Q Who was with you when you found that body, if anyone?

A John Gentry.

Q And how did you come to find it?

A Because I was looking at that particular piece of land.

Q And you were examining the timber on it?

A I was; yes sir.

Q What kind of country was it?

A Why, it was very brushy.

Q What kind of brush?

A Mostly firs and hemlock.

Q Was there a trail to it?

A No sir.

Q How far was it from a trail?

A Well, it must have been over half a mile to a trail.

Q Can you, by examining that map, and by measurement, tell how far it was from Simpkins' cabin?

A Well, not---

MR. DARROW: I object; he doesn't know where Simpkins' cabin is.

THE COURT: He has not said.

MR. KNIGHT: I think we asked him.

THE COURT: No, I think not.

Stansbury-D-  
C-7

Q Do you know where Simpkins' cabin was?

A I know the section.

Q Do you know the sub-division of the section?

MR. DARROW: DONT look at the map.

A Well, two or three of the cabins Mr. Simpkins had in there, I believe; the one that he had at that time---

Q (Interrupting) Where was the one he occupied at that time, if you know?

A I would not be positive, but I think it was on the northwest quarter of the northwest quarter of section eighteen.

Q You are not sure about that, you say?

A No sir, I would not be certain; it would be on the northeast of the northwest of eighteen.

Q You say there were two or three cabins there?

A Why, as I understood it, they were Simpkins' cabins, but the one he occupied was near the line.

Q And the cabin you understood he was living in then, if you remember, was approximately three quarters of a mile you say?

A Yes sir, I should judge it was approximately three quarters of a mile.

Q What was the condition of the body at the time you found it?

A It was badly decomposed.

Q Any clothing on it?



Stansbury-D-  
C-8

A Yes sir.

Q What kind of clothing?

A I didnt make a very close examination of it; there was woollen socks on the feet without any shoes and, if I am not mistaken, overalls; but as to whether there was a shirt or a coat, I would not say.

Q You would not say as to that?

A No sir; I didnt make no examination at all.

Q Where and how was the body lying?

A It laid on two old logs close to each other, and the body laid partly between and on top of the old logs.

Q Did you see the head?

A No sir.

Q You didnt see the head?

A No sir.

Q At that or any other time?

A No time.

Q Did you examine any of the bones?

A No sir.

Q Do you know what was---did you find anything else there?

A I didnt investigate at all; I left it as I found it, and made no investigation whatever.

Q What did you do after you found it?

A I went out and reported.

Q Did you return there.

A No sir.

Q You didnt return?

A No sir.

Stansbury-D-  
C-9

Q You knew of the coroner coming in there?

A Yes sir.

Q Mr. Williams?

A Yes sir.

Q But you made no further examination after you discovered the body?

A No sir.

Q Do you know what county that was in?

A In Shoshone County.

MR. DARROW: We are not going to raise any question on the county.

MR. KNIGHT: All right.

Q It was in Shoshone County was it?

A Yes sir.

Q Do you remember the date you found that?

A It was the 25th day of July, 1905.

MR. KNIGHT: That is all.

CROSSEXAMINATION

BY MR. DARROW:

Q You think Jack Simpkins' cabin was on the northwest of the northeast?

A The northwest of the northwest.

Q Yes.

A Of eighteen; yes sir.

Q Well, do you claim to know?

A No sir, I do not.

Q That is just your impression?



Stansbury-X-  
C-10

A That is my impression.

Q You think it is about three quarters of a mile from there?

A I should think it was, yes sir, about that.

Q Do you know how far it is from Fred Tyler's cabin?

A I dont know where Fred Tyler's cabin was; I never saw that.

Q Do you know how far it was from the nearest cabin to the body?

A Well, the nearest---no, I do not.

Q You didnt make any exact measurements?

A No sir, I made no measurements.

Q Either by pacing or any way?

A No sir, not to determine the location of the cabins, or anything like that.

Q Or the body?

A I know about where the body was from the section lines in measuring the lines.

Q Well, you know about where; but did you make any exact measurements?

A No sir, I did not.

Q Now, you are sure you found this on the 25th day of July?

A Well, it was either the 25th or the 26th; I would not be positive; the books are in the office.

Q Well, you neednt bother about it. Did you go back there the next time?

A No sir.

Q You didnt take much notice of it?

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A No sir.

Q You think there was some blue overalls and some stockings on it?

A I do; yes.

Q Did you examine the feet, or any other part of the body carefully?

A No sir.

Q And you think there were two logs, parallel with each other, or how were they laying?

A Not exactly parallel; they crossed each other, as I remember it; they came together, one laid across the other as I remember it and didnt lay quite parallel.

Q Any other log there?

A I couldnt say as to that.

Q I mean on top or under it; or dont you know for sure?

A No, I dont know for sure.

Q Did you see the hand or either hand there?

A No sir, I dont know.

Q You dont know whether you did or not, is that it?

A No sir, I didnt notice them.

WITNESS EXCUSED.



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JACOB YEAGER,

Called as a witness on behalf  
of the State, after being first  
duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KNIGHT:

Q State your name, your residence and your occupation, please?

A Jacob Yeager; live at Santa, Idaho; shoe-maker by trade.

Q How long have you been engaged in shoe-making?

A Thirty-two years, off and on.

Q How long have you lived at Santa?

A Five years.

Q Have you been engaged in that business there?

A Yes sir.

Q Where were you during the year 1904?

A In Sandpoint, part of the year.

Q At what part of the year were you at Sandpoint?

A Went there the 1st of April and stayed until the 1st of July.

Q Where were you the rest of the time?

A I was at Santa; two miles west of Santa on my homestead, from the first of the year until well, along about the 15th of January; I went to St. Maries and worked for J. P. White at St. Maries.

Q How long did you work for J. P. White at St. Maries?

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- A Until the 1st of April.
- Q The time you went to Sandpoint?
- A Yes sir, the time I went to Sandpoint.
- Q Did you make any shoes that year?
- A Yes sir.
- Q Do you know Steve Adams, the Defendant here.
- A Know him by sight.
- Q Saw him on the former trial?
- A Saw him on the former trial.
- Q Did you know him prior to that time?
- A No sir.
- Q Did you know Fred Tyler in his lifetime?
- A Yes sir.
- Q How long had you known him?
- A About ten years; a little over, I guess.
- Q What relationship does he bear to you, if any?
- A He was a brother of my wife.
- Q When were you married?
- A Nine years ago, in June.
- Q Did you know Fred Tyler well during that time?
- A Yes; I knew him pretty well.
- Q When did you last see him?
- A I think it was sometime along in March, 1904.
- Q Where?
- A At my place.
- Q At St. Maries or Santa?
- A At Santa.
- Q Near Santa?



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A Near Santa, on the homestead.

Q What was he doing there?

A He was stopping there.

Q How long did he stop there at that time?

A I couldnt say just how long; I was away myself.

Q How much time while you were there?

A Well, he was there all the time that I was there.

Q Describe Fred Tyler's personal appearance.

A Well, he was about five feet ten in height, I should think; weighed about one hundred and sixty pounds--- sixty-four or five---something like that.

Q What was his complexion?

A Fair complected; brown hair, rather wavy; blue eyes.

Q When did you---you say you last saw him in March of that year?

A I think it was in March, the last that I saw him; I dont remember though whether I saw him when I come home the first of April or not; I went home just before he went away.

Q You dont remember whether you saw him then or not?

A I dont remember whether I saw him then or not.

Q Do you know what became of him after that?

A When I was at Sandpoint, he went up in the Marble Creek country there on a homestead.

Q Did you ever see him after that, dead or alive?

A Well, I saw what I recognized as his remains.

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Q When; do you know about when Mr. Yeager?

A About the last of July or say the last of July  
or the first part of August, 1905.

Q Where was that?

A In the Marble Creek country.

Q How did you come to go up there?

A Well, we had word that they had found the remains  
there; I went up there to help take it out.

Q Who did you go with?

A Mr. Thomas and Mr. Simpson, John Simpson.

Q Who is John Simpson?

A He is a brother-in-law of mine.

Q Your wives are sisters?

A Yes sir.

Q Did any one else go in with you?

A We met Harry Williams in Mica Meadows and he  
went in with us.

Q Any one else?

A Well, when we got up to Gantry's camp, John  
Gentry, he went in with us from there.

Q Do you know Mr. Theriaut?

A Well, I met Mr. Theriaut.

Q Did he go in with you?

A No, he didnt go in with us---he was there---yes,  
he went in, but he didnt go after the remains.

Q Didnt go after the remains?

A He stayed at the camp.



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Q He stayed at the camp, did he?

A Yes sir.

Q Who went after the remains?

A Mr. Williams and myself and Mr. Thomas and Mr. Simpkins---Simpson, and Mr. Gentry.

Q Where were the remains when you found them?

A Well, they was---I dont remember the section it was on.

Q Well, what part of the country?

A They was up in the Marble Creek country there, about half a mile, I should judge from Simpkins' cabin.

Q Do you know where Simpkins' cabin was?

A Yes sir, we came out by the cabin?

Q Do you know where Eagle Creek is?

A I dont know the name of the Creek.

Q You are not familiar with the geography of that country?

A No sir.

Q What kind of a country did you find the body in?

MR. DARROW: Havnt you got that proven all right; we are not going into that question.

MR. KNIGHT: We certainly will go into it.

MR. DARROW: Well, I object; what is the use of killing time.

THE COURT: The objection will be overruled. I wish you would shorten it as much as possible.

MR. KNIGHT: I will shorten it as much as I can.

MR. DARROW: Your Honor would not hold that they could bring an indefinite number of witnesses as to the

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condition of the country.

THE COURT: No.

MR. KNIGHT: He is one of the most important witnesses as to the condition of the body.

MR. DARROW: You have had three witnesses, going to prove the nature of the country.

THE COURT: Proceed.

A It was then on a hill; two creeks coming in this way---on kind of a hilly point and right in a jungle of needle fir so thick you would have to part it to get through.

Q Describe the particular position of the body at the time you found it?

A It was laying on three logs, two logs laying about a foot apart, I should judge; not quite a foot apart; another log lay across them and the body was laying between the two logs and the head and one arm dropped down in between, and the feet was up over the other log that run across-the cross logs.

Q How was the body dressed?

A It had a pair of overalls, an under-shirt and drawers and a pair of socks.

Q What was the condition of the body as to decomposition, decay?

A Pretty well decomposed; wasn't very much flesh left on it.

Q Did you find anything there, clothing or anything else?

A Found a hat.



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Q What kind of a hat?

A A black hat.

Q Soft or stiff hat?

A Soft hat, middlin wide brim hat, I should think it was; most all eaten off---part of the rim was eaten off.

Q Did you recognize the hat in any way?

A I recognized it as a hat Tyler had wore---that is it looked the same as a hat he had wore the last time I seen him, same make of a hat.

Q What do you mean by same make? Was there any mark as to the make on the hat?

A Well, the same style.

Q Same style of a hat was it?

A Yes sir.

Q I hand you PLAINTIFF'S EXHIBIT NO. 10, and ask you whether you ever saw that before?

A Well, that looks something like what we found there by the body.

Q What else did you find there?

A Well, we found a shoe; part of a shoe.

Q What kind of a shoe or part of a shoe did you find?

A It was a pegged shoe, an outside counter and half sole nailed onto it; a shoe that I recognized as one that I had made.

Q When did you make it, if you remember?

A Along before Christmas of that year---of 1903 sometime.

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Q What did you do with the shoe when you made it?

A I had them to my place when I went to work for a while, then I left them at Hughes' store for selling.

Q Where?

A At Santa.

Q How did you recognize the shoe as one you had made?

A I recognized it by the work---workmanship, shape of the shoe.

Q What was the size of the shoe, if you know?

A Number Eight.

Q Do you know whether the shoe was hobnailed or not?

A I dont think it was; it was not when I let it go, I know, and I dont remember as to whether there had been any hobnails put on it or not.

Q Did you find more than one shoe there?

A No sir, I found one.

Q You say part of the shoe; what part--- part of it gone?

A The most of the upper had been eaten up by wood-rats or squirrels or something.

Q What part of the upper remained?

A Just the outside counter and a little piece of the upper; it had some eyelets and hooks were left in it; I recognized them.

Q You recognized them?

A Yes sir.

Q Do you know about how many eyelets there were?



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A Four eyelets.

MR. DARROW: Excuse me. You mean four eyelets in the shoe you found?

THE COURT: Yes, four eyelets in the shoe he found; there was only one shoe found.

THE WITNESS: Only one shoe found.

MR. KNIGHT: Q Now, what kind of a shoe was it, when you made it?

A It was a french kip shoe---kip upper.

Q Black or tan.

A Black leather.

Q How many eyelets in it when you made it?

A Four eyelets on a side.

Q Four eyelets on a side?

A Yes, then hooks the rest of the way up.

Q How is that?

A Then hooks the rest of the way up the leg.

Q How high was it?

A Ten inch top.

Q Ten inch top.

A Yes sir.

Q Were any of the hooks on there when you found it?

A yes, all the hooks on one side; just the one side left of the shoe.

Q One side with the hooks on?

A With the hooks on.

Q The other side was gone was it?

A The other side was eat off.

Q And that part, together with the counter, was about

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what you found?

A Yes sir.

Q The counter was yet remaining on the heel?

A Yes sir; the counter was remaining.

Q You say it was an outside counter?

A Outside counter.

Q What was there particular about the shoe that caused you to recognize it as your own make; describe the shoe to the Jury, the particular thing that caused you to recognize it?

A Well, the make of the shoe, as much as anything else.

Q And the eyelets you say?

A The eyelets---and one thing was my hookswent--- didnt set the hooks all alike. Had to use a hammer on it and some would be set square and some around to one side, and I noticed that.

Q That is, it was hand-setting?

A Yes, hand-setting.

Q Hooks are usually set by machinery, are they?

A Yes sir.

Q You say you left that shoe with Mr. Hughes for sale, that pair of shoes?

A Yes sir.

Q Well, what else did you find there, if anything?

A Well, found a pipe.

Q What kind of a pipe, if you remember?

A Corn-cob pipe.

Q Did Fred Tyler smoke, do you know?



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A Yes sir.

Q Do you know what kind of pipe he smoked?

A He smoked generally a corn-cob pipe.

Q Did he ever smoke any other kind, do you know?

A I dont remember of him ever smoking any other,  
any other kind.

Q Do you remember whether he had a pipe when he was  
at your place?

A Yes sir.

Q What kind of a pipe did he have there?

A Corn-cob pipe.

Q Was there anything else you found up there?

A Yes there was a little bottle found there, horse  
radish bottle, I think, it was.

Q What kind---where was that bottle found?

A That was found in a gunny sack that he had on.

Q What kind of a gunny sack did he have?

A Just a plain gunny sack, common gunny sack, grain  
sack.

Q Did you examine that sack?

A Yes sir.

Q Well, was it just a plain sack or made up in a  
particular manner?

A It was fixed for a pack

Q For a pack on the shoulders, was it?

A Yes sir.

Q Was there anything else in that sack, if you know.

A Yes, I think there was some fern leaves--- something  
of that sort.

Q Some fern leaves or something of that sort?

A Yes sir.

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Q What kind of bottle was that, round or square, do you know?

A Round bottle.

Q I hand you State's Exhibit B, and ask you whether you recognize that?

A Looks like the same bottle.

Q Looks like the same bottle, does it?

A Yes sir.

Q Did you open that bottle at the time?

A I didnt; some of them opened it, I think, and they couldnt make out whether it had been horse radish or what held in it.

Q Did you look into it?

A Yes sir.

Q What was in it or appeared to be in it?

A Appeared to be stuff in the bottom that looked like it might have been horse radish.

Q How much stuff was there in the bottle.

A Not very much; dried down.

Q Dried down?

A Yes sir.

Q was there any water in it at that time?

A No sir.

Q Was there anything else found there that you remember of?

A A handkerchief.

Q What kind of a handkerchief?

A Blue handkerchief; blue and white spotted, white



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dotted.

Q Where was that handkerchief found?

A Down under between the legs where the head part  
of the body---

Q (Interrupting) Did you pick it up?

A No sir.

Q Who did, if you know?

A I dont know whether Mr. Thomas or Mr. Williams,  
one or the other.

Q Did you ever see Fred Tyler have a handkerchief  
of that kind?

A Yes sir.

Q When.

A Well, he most always had a blue or---

Q (Interrupting) Did he have any---

THE COURT: Let him finish the answer.

MR. DARROW: We object to that.

THE COURT: Yes.

A (continued) most always blue handkerchief, spotted  
handkerchief, one that he would wear around his neck  
occasionally.

MR. DARROW: Read that answer.

(Latter part of the answer read by the stenographer)

Q Was there anything else found there that you re-  
member of?

A I dont remember of anything else.

THE COURT: Oh, lead him, Mr. Knight.

Q Did you find a tobacco box?

A Oh, yes, there was a tobacco box there.

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Q What kind of a tobacco box was that?

A Curved out.

Q What?

A Curved out tobacco.

Q What kind of box was it?

A Tin box.

Q What was the shape of the box?

A Curved; flat box curved the same as these plug  
cut tobaccos come in.

Q I hand you State's Exhibit No. 8, and ask you  
whether you ever saw that before.

A That is the same kind of a box.

Q And what do you say as to the general exterior ap-  
pearance of that box at this time?

A Well, that looks a great deal like the same.

Q Well, now, from what you saw there, the remains and  
everything else, did you recognize the body?

A yes, I was satisfied---

MR. DARROW: Wait. I object to that; what was the  
question?

MR. KNIGHT: Did you recognize the body?

MR. DARROW: To that I object, he has told us what  
he knows about it.

THE COURT: The objection will be sustained; it is a  
very important subject.

Q Did you examine the body in any way, that you found  
there?



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A Well, I looked at it as the rest of them was examining it; I didnt do any examining.

Q Was there any peculiar marks about Fred Tyler that could be recognized, that would cause you to recognize him?

A Well, he had a crooked finger on one hand.

Q Do you know what hand that was on?

A I think it was the right hand; I would not be positive.

Q Do you know what finger.

A Little finger.

Q Did you find the hands of the body there?

A Yes sir, the bones.

Q Was there anything distinctive about the bones of the fingers found there?

A Well, there was one finger that showed crooked.

Q What finger was it?

A I think it was on the right hand; little finger on the right hand.

Q What joint was crooked?

A I couldnt say; it was either one of the two end joints.

Q One of the two end joints?

A I think it was the last joint.

Q You think it was the last joint of the little finger of the right hand. Now, what joint of Fred Tyler's little finger was crooked, if you know?

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A No sir, I cant tell.

Q Do you know it was his little finger?

A I know it was his little finger, but I cant tell which hand, not positive which hand it was on.

Q Now, I will ask you again whether, from everything that you found there, whether or not you recognized the body---

MR. DARROW: To that we object again.

MR. KNIGHT: Impressions of the witness, in a case of this kind, may be given, if your Honor please, under our best authority, Mr. Elliott, Mr. Greenleaf---

MR. DARROW: Well, you will have to bring in your authorities.

MR. KNIGHT: Well, I will bring them in.

MR. DARROW: This man has told us what he saw.

MR. KNIGHT: The general rule is that passing things, impressions may be given by the witness of any event. They are such things as impressed themselves upon the mind of the witness at the particular time, and they may be given by the witness; they are not opinions. It is not objectionable under the opinion rule and it is a well established rule and perfectly proper for us to have the opinions of the witness on passing events or what was transpiring.

MR. DARROW: You have not asked him that question; you have asked him whether he recognized this and he has told us all about it. In the first place, he said he did, which was not competent, but which we let go in. Now, he has told us everything he saw about it.



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THE COURT: I think I will sustain the objection for the time being.

MR. KNIGHT: Will your Honor hear some authorities on the proposition during the day?

THE COURT: Yes, I will hear you later.

MR. KNIGHT: Q Did you, yourself, examine the hair found up there, Mr. Yeager?

A Yes sir.

Q What kind of hair was it?

A Brown hair, wavy, the same as Tyler's hair was.

Q Did you examine the feet?

A Yes sir.

Q Can you say as to the size of the feet that you found there? You are a shoe-maker?

A Yes sir; they would be about the size that would wear a Number eight shoe.

Q Do you know what sized shoe Fred Tyler wore?

A He wore Number eight.

Q You have sold him shoes or made shoes for him, have you?

A No, I never made any shoes for him; I fixed shoes for him.

MR. KNIGHT: Take the witness. That one proposition we will ask to introduce that later.

CROSS EXAMINATION

BY MR. DARROW:

Q How long did you know Fred Tyler before he disappeared?

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A About ten years.

Q How tall did you say he was?

A I think he was about five feet ten.

Q The last time you swore five feet eight, didnt  
you?

A I dont remember.

Q You dont. I will call your attention to it, page  
108. (Counsel hands witness transcript of record in the  
previous trial). Right there where I marked it.

MR. KNIGHT: We should have the question and answer  
read.

THE COURT: He is showing it to the witness first.

A I dont remember whether I said five feet eight or  
five feet ten; I know he was over five feet eight; if I  
said five feet eight, I made a mistake, because I know  
he was taller than that.

Q At the last trial, wasnt this question asked you?

"Q Will you describe Mr. Tyler to the Jury, please. A He  
was a man about five feet eight, somewheres along that  
height---"The witness, I know he was---

MR. KNIGHT: Read the rest of the answer.

MR. DARROW: (Reads) "a little stooped in the  
shoulders". What has that got to do with it?

MR. KNIGHT: We have a right to the whole answer.

MR. DARROW: Q Did you say that before?

A I might have said that, but I dont remember.

Q You think he was five feet ten?

A Very close to that.

Q Two inches in the height of a man makes quite a



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difference, doesnt it?

A It might make two inches difference.

Q Not so much as it does on the end of a shoe?

A Hardly.

Q What?

A Hardly, as much.

Q You have known him for ten years?

A Yes sir.

Q What color was his hair?

A Brown.

Q You say this hair that you found there was the same color?

A Looked very much the same.

Q Well, was it the same color?

A Well, the hair that we found there was--- Had been laying in the damp.

Q Well, I know that, but I asked you if it was the same color.

A yes sir, the same color.

Q That is what I asked you. Was his hair light brown or dark brown?

A rather dark brown.

Q How did it compare with yours?

A Wasnt as dark.

Q How did it compare with mine?

A I cant tell what color your hair is from here.

Q Well, I will get closer. What do you say?

A Oh, it would be as dark as yours, just about.

Q Just about the same color?

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A It would be about as dark, I think.

Q Well, would it be darker?

A I couldnt say.

Q You couldnt say whether it would be darker or lighter, is that it?

A Yes sir; yours looks to me as if it was getting gray.

Q Well, cant you find a little of it there that isnt gray?

A I might.

Q Can you tell, sir, how it compares with the color of my hair; there isnt enough gray in there so but what you can tell the color of it, is there?

A Well, his hair was brown.

Q Can you tell how it compared in color with my hair?

MR. KNIGHT: The witness has already answered that it is about the same.

MR. DARROW: Why do you tell him then?

MR. KNIGHT: I am not telling him; I object to your reply.

THE COURT: Overruled.

MR. DARROW: Q Now, what do you say?

A There isnt no great deal of difference in the color of it between his and your hair as I can see from here.

Q That question was asked you before, wasnt it?

A Not about your hair.

MR. KNIGHT: We object to that.



A (Continued) No---

MR. KNIGHT: Any such question must be shown to the witness.

MR. DARROW: I didn't ask him; I asked him whether it was---

MR. KNIGHT: We will take a ruling of the Court.

Q What do you say, lighter or darker than yours?

A Lighter than mine.

Q How does it compare with the reporter's hair who is writing?

A Well, compares pretty good with his.

Q About that color?

A Yes, sir.

Q How does it compare with McFarland's hair and Mr. Knight's?

A It was not as dark as theirs.

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Q You don't know what color my hair is, is that it?

A It is pretty hard to tell.

Q You would call it gray, would you?

MR. KNIGHT: Will you give us a sample of your hair?

MR. DARROW: Yes, I am willing to give you a sample if you want it; give anybody a sample. Q Do you know what color it is?

A I did not say it was gray.

Q Well, I am not sensitive about it; I understood you to say that was the reason you could not tell. Do you know what color it is?

A It looks to me to be brown from here.

Q Well, you are close enough, are you not; if not, you can get closer.

A Close enough.

Q Was it about the shade of brown of Fred Tyler's?

A I could not say.

MR. KNIGHT: The witness has answered as to that twice.

THE COURT: I think Mr. Darrow is right in his cross-examination.

MR. DARROW: I don't want to pursue it any further than necessary.

Q Can you tell me now. Now, have you not got my hair sized up?

A There is not a great deal of difference.

Q Will you read here the lower part of that?

MR. KNIGHT: What page?

MR. DARROW: Page 98, lower part.

MR. KNIGHT: It cannot be.

MR. DARROW: That is the preliminary examination; I will pass it to you.



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MR. KNIGHT: Let me see it.

MR. DARROW: Certainly. (Passing it to Mr. Knight).

Q You testified on the preliminary examination, didn't you?

A Yes, sir.

Q Did I then ask you these questions, and did you make these answers:

"Q How did it compare in color with mine?

"A I should think it was a little lighter than yours; not much different; his hair was not the color of yours;

"I should say yours was very near black. His was brown."

Did you make that answer before?

A I might have.

MR. KNIGHT: You may have been using peroxide.

MR. DARROW: Do you think my hair has changed color since last September?

A It might have changed some.

Q That is the way you would explain that, is it?

MR. DARROW: Where is this hair?

THE COURT: In an envelope.

Q (Taking envelope) Now, you could tell from that hair that that came off from Fred Tyler's head, could you?

THE COURT: Give the reporter the exhibit number.

MR. DARROW: Calling your attention to Plaintiff's Exhibit No. 14.

MR. KNIGHT: Is that marked in the second trial?

MR. DARROW: Second trial, Plaintiff's Exhibit 14.

Q You could tell from that hair that that came off from Fred Tyler's head, could you?

A That looks very much like his hair.

Q That is not what I asked you. I asked you if you will swear from that hair that that came off of Fred Tyler's head,

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his hair alone?

A No.

Q Is there anything but the color that you testify from?

A That is all; the color and the curl; it was a little curly.

Q You could tell whether that was curly, could you, after it had been laying out a year?

A Not after it had been laying out a year.

Q You don't know whether you have got there is curly or not?

A It is curly now.

Q But you don't know whether it is caused by the weather or not?

A No, sir.

Q You are a shoemaker, are you not?

A Yes, sir.

Q What is the color of Simpson's hair, your brother-in-law

A Black.

Q Dark, jet black, is it?

A Yes, sir; jet black.

Q What is the color of your wife's hair?

A Light.

Q Light brown, or --

A (Interrupting) Blonde.

Q Blonde. What is the counter of a shoe?

A It is the stiffening in the heel, is a counter.

Q In the heel. Will you point to it in your shoe?

A Yes, sir; the piece that goes around the outside of the shoe there. (Indicating)

Q That is the counter?

A Yes, sir.



Q What did you do with this shoe that you found there?

A We fetched it out with the rest of the stuff.

Q Have you seen it since?

A No, sir.

Q You have not seen it in this pile of stuff?

A No, sir.

Q It is not there, so far as you know?

A No, sir.

Q Well, how much of it do you say there was?

A There was a sole and a heel and a little piece of upper left on it.

Q How much upper?

A Not very much.

Q Well, how much?

A Just a little strip where the eyelets went up on one side.

Q How many eyelets were left?

A Four eyelets.

Q Four eyelets left?

A Yes, sir.

Q Any hooks?

A Yes, sir.

Q How many?

A Five hooks, I think; I would not be certain.

Q There were four eyelets and five hooks on this piece of shoe, is that right?

A Yes, sir.

Q That you remember?

A I am not positive about the number of hooks, but I am about the eyelets.

Q Are you positive there were any hooks?

A Yes, sir.

Yeager-X  
D-5

Q That would leave pretty much the whole of one side, would it not?

A It just left a strip; it was eaten out in this shape (Illustrating); just left a little strip there that the eyelets were on.

Q Clear to the top?

A Clear to the top.

Q Now, you testified in reference to that, didn't you?

MR. KNIGHT: We object.

A Not in reference to the eyelets, I did not.

MR. DARROW: We will show it to you.

THE COURT: Yes, show it.

MR. KNIGHT: What page?

MR. DARROW: This is the preliminary, page 94. (Handing same to witness). Will you read the parts marked there, sir?  
A (After reading) That is all right there.

MR. KNIGHT: Let me see it.

(Mr. Darrow hands Mr. Knight record shown to the witness).

Q You have read this, have you?

A On the former examination of this case?

MR. KNIGHT: Preliminary examination.

MR. DARROW: Preliminary examination. Was not this question asked you--

MR. KNIGHT: That is not Mr. Yeager's testimony, is it, you have there?

MR. DARROW: Yes, sir.

MR. KNIGHT: All right.

MR. DARROW: " Q Have you ever seen that shoe before?

" A Yes, I recognize that as a shoe I made.

" Q Describe the shoe?



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Yeager-X  
D-6

"A Well, what was left of it was only this sole and counter. It is a <sup>pegged</sup> shoe with an outside counter, made out of French kip stock entirely.

"Q Was all of the shoe there?

"A Just the sole and the counter; the upper had been eaten off, all but just a little ragged edge next the sole."

Did you say that before?

A Yes, sir.

Q That is not true?

A It came to my mind afterwards by the eyelets and the hooks; I didn't think of it at that time.

Q When did it come to your mind about the eyelets and the hooks?

A After coming to think over the shoe; thinking of the shoe, I remembered there was a little piece of string left with the eyelets and the hooks on it.

Q This was the preliminary examination, you remember, don't you?

A Yes, sir.

Q And you did swear this way?

A Yes, sir.

Q And when did it come to your mind that there was anything about eyelets and hooks?

A Why, just lately when I got to thinking about the shoe, I remembered that the eyelets and hooks were on it, on one side.

Q When was that?

A Somewhere in the last year it came to my mind.

Q This was within a year, wasn't it?

A Well, I don't remember just when it was that this came to my mind about the eyelets and hooks being on there,

but I remember it.

Q Where were you when it came to your mind?

A I don't remember.

Q Did you talk with anybody?

A No, sir; I was just thinking it over in my mind.

Q And you don't remember when or where?

A No, sir.

Q Well, about how long ago was it?

A I could not say as to that.

Q No idea about it?

A It was after the other trial that I got to thinking about it.

Q After the other trial or after the preliminary, which?

A After the last trial.

Q And now you remember distinctly there were four eyelets, do you?

A Yes, sir.

Q And some hooks?

A And some hooks.

Q Well, at the last trial you testified too? Didn't you?

A Yes, sir.

Q Do you remember how many hooks there were?

A It had not come to my mind about the hooks being on there.

Q Had you thought this thing over between the time of the preliminary examination and the time of the first trial?

A No, sir.

Q You had not. Do you know what you testified to in the first trial about this?

A About the shoe?

Q Yes, sir.



Yeager-X  
D-8

MR. KNIGHT: We object. If he wants to ask him what he testified to at the first trial he must show the witness the testimony.

MR. DARROW: I am going to; I am asking him if he knows.

THE COURT: The objection is premature; he is going to show him the record.

MR. DARROW: Q Do you remember what you testified to at the former trial?

A I can't remember word for word what I said.

Q You don't know now, as you look back, just how many hooks there were?

A No, sir.

Q But you know there were some?

A Yes, sir.

Q And you do know there were four eyelets?

A Yes, sir.

Q MR. DARROW: On page 114, Mr. Knight: Q If you will look at that page, 114, where it is marked. (Exhibiting same to witness).

MR. HEITMAN: That is the evidence on the first trial?

MR. DARROW: That is the evidence on the former trial.

A (After reading). Well, I spoke of the hooks there, anyway I don't know whether I had remembered them up to that time or not; I know I remembered them after the first examination anyway.

Q On the former trial of this case was this question asked you and did you make this answer: "Q Well, what was the condition of the shoe?"

"A The top had been most all eaten off of it by some

Yeager-X  
D-9

animal; don't know what it was; all that was left was the  
"sole and counter and a little piece of the tongue, and a  
"couple of hooks and eyes." Did you say that before, sir?

A I might have made that remark.

Q Do you know whether you did or did not?

A I think I did; I see it there.

Q And now you have been thinking more about it, have you?

A Yes, sir.

Q Now, you have got it up to four eyes, have you?

A Yes, sir; four eyelets.

Q You don't think you could raise it any more, do  
you, by any possible thinking?

A No, sir; that is the amount that I always put in.

Q So you could not make it any more because you don't  
put in any more, is that it?

A Yes, sir.

Q Well, we will have to stop there. Have you talked with  
anybody about this four hooks and eyes, or four hooks or four  
eyes?

A No, sir.

Q Never talked to anybody about it. You recognized  
that shoe by the hooks and the eyes, did you?

A By the workmanship of the shoe.

Q What was there about the hooks and eyes that was  
peculiar?

A Nothing peculiar, only the kind of eyelets that I used.

Q What kind did you use?

A Perfection eyelet.

Q Beg your pardon?

A The Perfection eyelet it is called.

Q Where do you get them?

A Get them in Spokane.



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Yeager-X  
D-10

Q Do you know where they are made?

A I don't know; I suppose they are made back east some where

Q The regular commercial eyelet, are they not?

A Yes, sir.

Q Used by all shoemakers, almost all?

A A good many of them use them.

Q Are they any different from any other eyelet?

A They are a heavy eyelet, on purpose for heavy work.

Q You can buy them anywhere in the stores can't you?

A No, sir.

Q Anywhere that you can buy eyelets?

A Well, most all wholesale leather houses keep them.

Q Anything strange about the hooks?

A Brass Army Stud they are called.

Q Where did you get those?

A I don't remember whether I got those in Spokane or  
Seattle, I think it is where Seattle where I got  
that stock.

Q They are sold in the regular way at the wholesale  
places, are they not?

A Yes, sir.

Q Was there anything else about the shoe except the hooks  
and eyes that made you recognize it?

A Yes, sir; the style of shoe, the way it was made.

Q What part of it?

A The whole of it.

Q Anything about the sole of the shoe?

A Yes, sir.

Q What?

A The way it was made, the workmanship.

Yeager-X  
E-11

Q What?

A The way that it was made; the workmanship.

Q What was there about the workmanship and the way it was made?

A I don't know that I can tell you just what there was about it; only that I can recognize my own work wherever I see it.

Q But you can't tell anything about it that is any different from any other shoe, is that right?

A The only difference is in the workmanship.

Q Well, can you tell what the difference is?

A No, I couldn't tell what the difference was.

Q Was it pegged or sewed or nailed, or all three?

A It was a pegged shoe with a heavy sole nailed on.

Q Are you sure about that?

A Yes, sir.

Q A ~~heavy~~ pegged shoe, with a heavy shoe nailed on. Made on a regular last?

A Yes, sir.

Q Where did you get the last?

A I got it from J. P. White.

Q How many pairs of shoes do you make a year, or did you at that time?

A I made I guess a hundred pair a year, or somewhere in that neighborhood.

Q What?

A In the neighborhood of a couple of hundred pair a year.

Q You said you sold a pair of shoes to Hughes?

A Yes, sir.

Q Were they high or low?

A It was a 10-inch top shoe.



Yeager-X  
B-12

Q Well, is that a high or a low shoe?

A It is just a medium.

Q What is yours?

A The height of them?

A Yes, sir.

A About 18 inches.

Q What are these in front here that the jurors are wearing?

A Six inch tops; five and a half inches.

Q And the other you say was a ten inch top?

A A ten inch top, yes, sir.

Q Did you make any other sort?

A Yes, sir.

Q What kind?

A I make from the ankle shoe to an eighteen inch top; all lengths pretty much.

Q How many eyelets and hooks do you have on an eighteen inch shoe?

A Generally put four eyelets and run from 13 to 14 hooks on an eighteen inch top on the side.

Q How many on a ten?

A Five hooks and about four eyelets on a ten inch top.

Q About four?

A Four eyelets on a ten inch top, or on any shoe; any regular shoe of that style that I make is four eyelets.

Q You put the same number of eyelets?

A Yes, sir.

Q Did you make any other but ten inch tops that year, about that time?

A Yes, sir; made all kinds.

Yeager-X  
B-13

Q Do you have any way of remembering the height and top of this pair of shoes that you sold to Hughes?

A Yes, sir.

Q How?

A That was the only pair that I had at that time, I had it left when I quit business there and went to work for White and those I left with Hughes to sell.

Q You know they were ten inch tops?

A Ten inch tops.

Q They were not what you call "cruisers" shoes, high shoes?

A No, sir; they were a wood shoe, working shoe.

Q And pegged and nailed, with a heavy sole nailed on them?

A Yes, sir.

Q Were those nailed with hob nails?

A No, sir; wire clinched nails.

Q You say that the little finger of one hand was crooked in the skeleton?

A Yes, sir.

Q And you don't remember what joint?

A No, sir.

Q The bones were bare, weren't they, practically?

A Yes, sir.

Q Were not all of them crooked, all of the fingers, as the skeleton lay there?

A No, sir.

Q What?

A No, sir; just the one finger that I noticed was crooked

Q And all of the rest were straight, were they?

A Yes, sir.



Yeager-X

B-14

Q Is that right?

A Yes, sir; I think so.

Q Did you look to see ?

A Not particularly.

Q You did not examine it particularly?

A No, sir; not particularly but the one finger.

Q But you did see that one was crooked?

A yes, sir.

Q You don't remember which joint?

A I don't remember whether it was the first joint or the second joint of the little finger.

Q This matter of the crooked finger has been talked over considerably amongst you, hasn't it?

A No, sir; not by me.

Q What?

A No, sir.

Q Hasn't it been talked over between you and Mr. Thomas and Mrs. Thomas?

A No, sir.

Q Never referred to it?

A It might have been referred to some time, I remember for the last, probably seven or eight years since I first heard it spoken of, b

Q But it has been talked over, hasn't it?

A No, sir.

Q A number of times?

A No, sir.

Q Haven't you spoken of it together?

A Might have spoken once or twice altogether, but never talked it over.

Q You have spoken of it since that skeleton was found,

D-15

haven't you?

A Yes, I think we have.

Q And it was spoken of down there that day that you got it on the log, wasn't it?

A Yes, sir.

Q Did you see more than one hand there?

A Yes, sir.

Q Sure about that?

A Yes, sir.

Q Where were they?

A One hand was laying up on top of the log and the other one was down underneath when they took the body apart.

Q Was the hand detached from the body, separated from it?

A There were parts of it that was.

Q Was any of it connected with the rest of the arm, the body?

A Yes, sir; I think it was.

Q What parts were separated?

A I could not say.

Q Did you look at it?

A I looked at it, but I did not see them taken up; I was in the brush most of the time looking for other stuff while they were taking it up.

Q Everything was taken up together, you suppose at least?

A Well, I didn't think there was anything left there.

Q You say there was a pair of blue overalls on this skeleton. How many undershirts were there?

A One.

Q Were there not two?

A I did not see but one.



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Yeager-X  
D-16

Q Well, have you seen more than one since?

A No, sir.

Q How many pairs of drawers?

A One pair of drawers.

Q The same color as the undershirt?

A I think they was.

Q The drawers and undershirt to match. Was there an outside garment or pajamas?

A No, sir.

Q Nothing of that sort. And there was a low-crowned hat you think?

A yes, sir.

Q Did you ever see Fred Tyler wearing a black hat when he was living?

A yes, sir.

Q You say that that was low-crowned, do you? (Referring to hat, Plaintiff's Exhibit \_\_\_\_\_)

A Medium crown; I would not call it a high or a low crown; medium.

Q This hat that you see here looks like a low-crowned hat to you?

A It is about the same height of crown as what he wore.

Q Does it look like the same hat he wore as to description?

A It is pretty badly out of fix now.

Q Well, making allowance for that?

A Making allowance for that, it looks like the hat.

Q You remember testifying about that at the former trial?

A yes, I remember something about it.

Q How many times have you seen this hat before since you found it up there at the logs, if this is the same one?

A I have seen it once.

Q Where?

Yeager-X  
D-17

A At Wallace.

Q Did you see it at the preliminary examination?

A I guess I did; I must have seen it twice then.

Q Is this the same hat that you picked up at the log  
do you think?

A I didn't pick it up there.

Q That was picked up?

A Some of the rest of them picked it up.

Q You saw it, didn't you?

A Yes, sir.

Q Is this the same one?

A It looks very much like it.

Q It does. I will call your attention to page 116 of the  
testimony of the former trial; read the part I mark  
there.

MR. KNIGHT: Ask him those questions direct, if you  
want to.

MR. DARROW: I will ask him. (Handing witness record).

THE WITNESS (After reading) That is all right.

Q Was this question asked you and did you make this  
answer: (Page 116): Q Have you seen it since?

(Referring to the hat)

"A Not until just now.

"Q You say you see it now?

"A If that is it there.

"Q I don't understand you there.

"A If that is it, that is the first time I have seen it  
but it don't look to me the same hat." Did you say that  
before?

A Yes, sir; it don't look the same as it did when  
we first found it, because it has been mashed up out of shape.



Yeager -X  
D-18

Q You say now that it doesnot look the same?

A It don't look the same.

Q About two minutes ago you said it did?

A I said the style of the hat looked the same, but  
it is not in the same shape as it was.

Q What do you mean by the "style of the hat"?

A Why, the hat, if it was in shape, would be the  
same style as it was when ~~ixxms~~<sup>picked</sup> up there, but it is all  
mashed up there and it looks different; it is crushed.

Q Does the hat look the same as it did wen you  
pickedit up?

A well, didn't I just say that it did not?

Q Yes; I heard you distinctly, and didn't you, just  
before I showed you this, say that it did?

A I did not say it looked the same as it did when I  
picked it up first.

MR. DARROW: All right, we will leave it there.  
There may be a very few questionsmore.

Whereupon, the jury was duly admonished by the Court,  
as required by law, and the officers were duly sworn to  
take charge of the jury; the jury was admonished as required  
by law and the court took a recess until Thursday, November  
7, 1907, at 2 o'clock P.M.

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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF  
KOOTENAI.

STATE OF IDAHO,	)	
	)	
PLAINTIFF,	)	
	)	
VS.	)	NO. _____
	)	
STEVE ADAMS,	)	
	)	
DEFENDANT.	)	

THURSDAY AFTERNOON, NOVEMBER 7, A. D., 1907.  
AFTERNOON SESSION.

At this time, the Defendant, being in Court with his  
counsel, present as before, the following Proceedings were  
had herein, to-wit:

THE COURT: Call the Jury.

THEREUPON, the Jury came into Court in charge of the  
officers, and being duly polled, all answered to their  
names and the trial of this cause proceeded as follows:

THE COURT: You are not through with Mr. Yeager?

MR. DARROW: We are ready, your Honor.

WHEREUPON, Mr. Jacob Yeager resumed the stand for fur-  
ther cross examination.

BY MR. DARROW:

Q Mr. Yeager, you stayed there while they bundled up  
these articles, did you?

A Yes sir.



Q Put in a gunny sack then, werent they?

A Yes sir.

Q Picked up everything you could find?

A Well, the rest of them picked them up; I didnt.

MR. KNIGHT: A little louder.

THE COURT: Speak up, please.

A I didnt pick them up.

Q Picked up the shoe?

A I picked up the shoe.

Q And the little finger?

A No, I didnt pick it up.

Q Well, it was picked up then?

A Yes sir.

Q And the feet?

A They was all bundled up and put in a sack together.

Q All put in there together safely werent they?

A Yes sir.

Q You havnt seen the shoe since have you?

A No sir.

Q Nor the little finger?

A No sir.

Q Nor the feet?

A No sir.

THE COURT: Speak up please.

Q You have looked for the shoe, havnt you?

A Not since then.

Q You have asked for it?

A No sir, I havnt asked for it.

Q Well, it hasnt been shown you anyhow?

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Yeager-X-  
E-3

A No sir.

Q And then you loaded these onto a horse and started down to the head of navigation?

A Yes sir.

Q Did you go along with it?

A No sir, I didnt go.

THE COURT: Speak up, please.

Q You went back to?

A Yes sir, I went back.

Q Mr. Thomas went back to.

A He went to the head of navigation with it, or as far as the---I think he went clear through to the Maries.

Q Where did Mr. Simpkins go?

MR. KKNIGHT: Simpson, you mean.

MR. DARROW: Simpson.

A He went back home with me.

Q You never heard any more about it, did you, until Steve Adams was arrested

A No sir.

Q You dont know where it was buried or who buried it?

A No sir.

Q Do you?

A No sir.

Q Ever write to find out anything about it?

A No sir.

Q Dont know whethr any inquest was held or any prosecution commenced until Steve Adams was arrested?

A No sir.



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Yeager-X-  
E-4

Q Never inquired to know whether there was?

A No sir.

Q Stayed there with your mother-in-law for the next year?

A I lived right along side of them.

Q Yes. As far as you know, she didnt do anything about it?

A Yes, she made inquiries.

Q Did you hear her make any?

A I didnt hear her, no.

Q No. Did you read any letters that she received about it?

A No sir.

Q Before Steve Adams was arrested?

A No sir.

Q You told her who you thought this skeleton was?

A Yes sir.

MR. DARROW: I guess thats all.

MR. KNIGHT: Now, if your Honor please, I wish to ask this witness whether, from the remains he found up there, he recognized the skeleton as that of Fred Tyler?

THE COURT: I will hear you.

WHEREUPON, Mr. Knight read from Lewis' Edition of Greenleaf, Volume 1, Article 440, from Elliott, Volume 4, 3044, and a case from the Supreme Court of Massachusetts, "Gray vs. The Commonwealth", 47th American Reporter, page 736.

MR. KNIGHT: In this case the witness has testified as to the particulars, now we ask for this question.

Yeager-X-  
E-5

MR. DARROW: Your Honor, the witness has already testified to what he found---

THE COURT: Yes, I shall sustain the objection, Mr. Darrow.

WITNESS EXCUSED.



Hughes-D  
E-6

PERRY F. HUGHES,

Called as a witness on behalf  
of the State, having been pre-  
viously sworn, testified as fol-  
lows:

DIRECT EXAMINATION

BY MR. HANSON:

Q Mr. Hughes, you may state your name, residence and  
occupation?

A Perry F. Hughes; Santa, Idaho; mercantile busi-  
ness.

Q How long have you resided at Santa?

A Four years.

Q Been in the merchandising business all the time?

A All except about two months.

Q Do you know the Defendant, Steve Adams?

A I do not.

Q Did you know Fred Tyler in his lifetime?

A I did.

Q At the time of his disappearance, how long had you  
known him?

A About eight months.

Q That was in 1904, was it?

A Yes sir.

Q Do you remember when he disappeared?

A Well, not exactly.

Q You remember it was in the summer of 1904?

A Yes sir.

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Hughes-D-  
E-7

Q About how long before he disappeared was it that you saw him?

A About three months.

Q You stated you had known him for about eight months?

A Yes sir.

Q Did you see him frequently during that time?

A Quite frequently, yes.

Q Were you quite well acquainted with him?

A Yes sir.

Q When did you last see him, where were you both at that time?

A In Santa.

Q Where was it in Santa?

A In my store.

Q Did you transact any business with him at that time?

A I dont remember if I did or not.

Q Did you ever sell him a pair of shoes in the summer of 1904?

A No sir, not in the summer; in the spring.

Q Well, in the spring of 1904, what date was it, if you remember?

A I dont just remember the date; it was early in the spring.

Q Well, as near as you can remember it?

A Oh, in March or February, I presume---March or April.

Q Under what circumstances was the sale made; did he purchase them himself?



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E-8

A Yes sir.

Q At your store?

A Yes sir.

Q What kind of shoes were they?

A They were a lumberman's shoe.

Q Hand-made or machine-made.

A Hand made.

Q Were they of medium weight or heavy weight; what is that kind of shoes called in your neighborhood? Mr. Hughes (After a pause) Cruiser's shoes, lumberman's shoes, any particular name for it?

A Lumberman's shoe, I suppose.

Q Do you remember the height of these shoes?

A Not exactly; it was about twelve or fourteen inch top, I think.

Q Are you sure?

A Not quite sure, no.

MR. DARROW: What was that answer?

(Stenographer read the answer)

THE COURT: Speak louder, please, Mr. Hughes.

Q Where did you get those shoes, Mr. Hughes?

A I bought them of Mr. Yeager.

Q Was Mr. Yeager the cobbler at Santa?

A Yes sir.

Q What was the price of them, if you remember?

A I don't remember exactly; it was eight and a half or nine dollars, I think.

Q Do you remember when you got them from Mr. Yeager?

A Not exactly, no.

Hughes  
E-9

Q How did you come to get them?

A Took them on an account.

Q Did you ever buy any other shoes from Mr. Yeager?

A No sir.

Q Before or after?

A No sir.

Q That is the only pair you ever bought from him?

A Yes sir.

Q And you sold those to Fred Tyler?

A Yes sir.

Q What color were the shoes?

A Black.

Q You testified at the last trial of this cause, did you not, Mr. Hughes? On page 179, Mr. Darrow.

MR. DARROW: What is this question?

MR. HANSON: Page 179.

MR. DARROW: Well, I object.

MR. HANSON: I am going to ask the witness to read some of his testimony given on the former trial?

MR. DARROW: No, you aren't, not if I can help it.

MR. HANSON: I am going to, if the Court will permit me.

MR. DARROW: No, you went.

MR. HANSON: I am going to give him an opportunity to read it before I ask him the question.

MR. DARROW: I object.

THE COURT: I think it should be sustained.

MR. KNIGHT: Our statutes---I would like to call the Court's attention to our statute on that proposition.



Hughes-D-  
E-10

MR. DARROW: What do you claim the statutes are; maybe we can agree to it.

MR. KNIGHT: I am sure we can, after we read it.

MR. DARROW: We dont generqilly, even after we read it.

MR. HANSON: That is true sometimes, some people.

MR. DARROW: Thats what you thought in the other case and you didnt touch it.

MR. KNIGHT: We will get to that later.

MR. KNIGHT: Section 6080 is as follows(Mr. Knight reads from the statute).

MR. DARROW: That doesnt touch this question at all; the statements were not in writing.

MR. KNIGHT: This Court has held several times that this testimony is admissible---this Court has held, and it has been the practice in this district.

MR. DARROW: I dont care what the practice is; his statement is not in writing; it was oral testimony taken down, and it means if his testimony was written; I dont think it can be---

MR. KNIGHT: If the Court so holds, we will ask him the question.

THE COURT: Let me see the statute. What do you say Mr. Darrow about Section 6080?

MR. DARROW: That is the last section.

MR. MCBEE: What is the number in ink right opposite the section?

THE COURT: 448-9.

MR. MCBEE: It isnt a part of the penal code.

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THE COURT: (Reads the same section of the statute as read by Mr. Knight).

MR. DARROW: If they want to show that he made other statements, at other times, they can; they can call somebody and prove it.

THE COURT: I think they can do it by his own testimony.

MR. DARROW: They may, but not by this witness. They might prove it by somebody else, but I don't understand that the testimony they are showing him now is the testimony in reference to the matter they are asking him about.

MR. HANSON: It is exactly, that is the reason I called your attention to the page.

THE COURT: I shall allow it.

MR. DARROW: If it is just that part, I have no objection to it.

MR. HANSON: Page 179, the lower half of the page.

MR. KNIGHT: Can you describe that more particularly.

MR. DARROW: All right, show him just that part of it.

MR. HANSON: Q Did you testify in this case on the former trial in Wallace, in February last?

A I did.

Q Just read that portion I have marked there, Mr. Hughes. Now, at the former trial of this case, Mr. Hughes, were you asked this question and did you make the answer

as follows: "Q Can you describe them more particularly than you have, Mr. Hughes, high top, low top or black or red? A They were black shoe with medium high top, I think, perhaps about eight inch top or ten inch", did you



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make that answer to that question?

A I did.

Q Is that correct?

MR. DARROW: I object; that is all there is to it.

MR. HANSON: All right.

Q Which of these statements is correct?

MR. DARROW: I will object.

THE COURT: Objection overruled.

Defendant excoets and exception allowed.

A What was the question, please?

Q Which os these statements is correct, the eight or ten inch or twelve or fourteen inch?

A I wouldnt say which is correct.

Q You wouldnt say which?

A No sir.

Q Couldnt be certain?

A No sir.

Q Do you remember whether you said it was a light sole or medium sole?

A I think it was a medium sole.

Q What kind of counters did it have?

A I believe an outside counter.

Q Do you know what size the shoes were?

A Not for certain; about an eight, I should think.

Q Well, was it a sewed sole or a pegged sole?

A I dont remember just now.

Q Do you remember whether it had hobnails in it?

A I could not say for sure.

Q Not sure?

A No.

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Q What kind of shoes were you carrying at that time, outside of this particular pair, Mr. Hughes?

A Wasnt carrying any others.

Q That was the only pair of shoes you had in the place was it?

A At that time.

Q Did you ever sell Tyler any shoes outside of this particular pair?

A No sir.

Q You did not?

A No sir.

MR. HANSON: Take the witness.

CROSS EXAMINATION

BY MR. DARROW:

Q What was the date of this, Mr. Hughes?

A How?

Q Do you remember the date of it?

A That I sold these shoes?

Q Yes.

A I dont remember the date; I have the date in the book at home, but not here.

Q Are you still in the mercantile business?

A I am.

Q You didnt look at the date before you came, did you?

A No sir.

Q You didnt look at it before either when you came, did you?



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A How?

Q The other time, you didnt look at the date before you came, did you?

A You mean when I was at Wallace?

Q Yes.

A Yes sir.

Q You think you did?

A I did.

MR. KNIGHT: Just a moment. We desire further direct examination on a matter we have overlooked.

THE COURT: very well.

DIRECT EXAMINATION (Continued)

MR. HANSON: Q Did you ever sell Mr. Tyler anything besides the shoes in the spring of 1904?

A Yes sir.

Q What was it?

A I sold him clothing, I dont remember just exactly what, some under-shirts and I sold him---

MR. DARROW: Just a moment. Sold to Mr. Tyler, that is what he asked.

THE WITNESS: I sold Mr. Tyler---

MR. KNIGHT: I know and you know when you made that objection.

MR. DARROW: Let him go if he wants to.

MR. HANSON: Q Ever sell him any socks?

A Some other clothing bought at the time I dont remember just what it was now.

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Q Dont remember whether you sold him any socks or not?

A I cant say for certain.

Q What kind of under-wear was it, woolen or cotten?

A I dont remember for sure.

Q What color, light or dark?

A I think it was rather light brown, if I remember right.

MR. HANSON: Yes. That is all.

CROSS EXAMINATION (Continued)

BY MR. DARROW:

Q Did you charge these things in the book?

A yes sir, I did.

Q You have never had your pay since, have you?

A No sir.

Q Do you know when that was with reference to the time he went into the woods?

A It must have been two---at least two months before he went into the woods.

Q Do you know eher he was living then?

A I think he was making his home with his mother near Santa.

Q Do you know how much underwear you sold him?

A I do not.

Q Do you know how many suits?

A No sir; not more than one anyway.

Q Have you any way to remember the kind of underwear you sold him?



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A No sir.

Q Do you remember any other underwear you sold that day?

A No sir.

Q Or a few days after or before?

A No sir.

Q Or any time that year?

A Sold underwear every few days I guess.

Q What?

A I had underwear for sale, and when anybody wanted it I sold it.

Q I know; but do you remember any particular article of underwear you ever sold anybody else?

A No sir.

Q Did you have more than one kind of underwear in your store?

A Yes sir.

Q Different colors and different kinds?

A Yes sir.

Q You have nothing whatever to remember this by?

A No sir, nothing, only the price.

Q Well, how much was it?

A I dont remember; I have it on my books at home.

Q Then that wouldnt help you much, would it?if you cant remember the price, if you dont remember the price?

A No sir.

Q Well, you still have the books?

A Yes.

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Q Now, as to the shoes, you dont remember whether they were eight inches high or fourteen inches high?

A Not for certain, No.

Q Or anywhere between the two.

A No sir.

Q You thought once they were eight or ten inches and you thought to-day they were twelve or fourteen inches?

A I dont remember the height of them.

Q You dont remember whether they were pegged or not?

A No sir.

Q You dont remember whether they were extra half-sole or not?

A I think there were not.

Q You think not. You dont remember whether there were any hobnails in them?

A I do not.

Q How long had you had them from Yeager before you sold them?

A I dont remember.

Q Dont remember that. The only pair of shoes you had in the store?

A At that time, yes sir.

Q Did you ever talk to Mr. McParland, James McParland, the Denver detective about this case?

A Not in regard to this case, no.

Q Did you see him down in Wallace?

A I met him in Wallace, yes.

Q Did you talk with him?

A Very little; not anything in regard to this case.



Q You didnt talk to him about this case?

A No sir.

Q Quite sure of that are you?

A I think I am.

Q Did you ever talk in his presence about this case?

MR. DARROW: Is Mr. Bailey going to testify in this case?

MR. KNIGHT: I havnt any intention of calling him.

(Question read)

MR. DARROW: Mr. McParland's presence.

A Not that I remember of.

Q You had a conversation with Mr. Knight about it, when you were telephoned to come down there, didnt you?

MR. KNIGHT: Do you know which one of us is Mr. Knight?

MR. DARROW: This is Mr. Knight (indicating).

A That was at the preliminary?

Q Preliminary.

MR. KNIGHT: I think you remember that, Mr. Darrow, that he was mistaken on that proposition.

Q You had a conversation with Mr. Gyde about this matter when you were telephoned to come down to Wallace?

A Yes.

Q And there were some other people in there and all discussing this case and your testimony?

A I think there was some one else there, I think Mr. Thomas or Mr. Yeager, one was present.

Q Was Mr. James McParland, the detective from Denver there?

A Not at that time.

Q Was he at any time discussing this case and taking a hand in the discussion with you?

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A No sir.

Q Did he hear the talk between you and Mr. Gyde in reference to this?

A Not that I am aware of.

Q Will you read from the latter part of page 116 and the upper part of page 117 of the Preliminary, the part that is marked. (Hands witness Transcript)

A (Witness examines Transcript handed him)

MR. KNIGHT: Let me see that, please.

MR. DARROW: Q In the former trial, was this question and this answer given: "Q Who first called your attention to this matter? A What matter have you reference to? Q I refer to your testimony about sending these overalls to Tyler."

MR. KNIGHT: I object to any further question on that proposition because it is not proper cross examination; this witness has not testified at all about overalls.

THE COURT: The objection will be sustained.

MR. DARROW: Well, cut it out.

Q You say you are still running your store up at---

A (Interrupting) Yes sir.

Q And have you seen Mr. McParland since you got here this time?

A I saw him to-day on the street; but not to speak to him.

Q Not to speak to him?

A No.

MR. DARROW: That is all.

WITNESS EXCUSED.



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GEORGE H. ROOT,

Called as a witness on behalf  
of the State, after being first  
duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KNIGHT:

MR. KNIGHT: The testimony of this witness will be  
out of regular order. Our next witness in regular order will  
be Mr. C. H. Williams, who is not here and will not be  
here until this evening.

THE COURT: Proceed.

Q State your name, your residence and your occupa-  
tion?

A George H. Root.

Q Where do you live?

A In the southern part of the county.

Q What county?

A Shoshone.

Q Do you know what county this is?

MR. DARROW: Well, he means Shoshone anyway.

Q Do you know what county this is?

A Yes; I mean the southern part of Shoshone county.

Q Whereabouts in Shoshone county; what particular  
district?

A In what is known as the Marble Creek district.

Q How long have you lived there?

A I have been in that neighborhood about seven years.

Q What is your occupation?

A Farmer.

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Q How long have you been engaged in farming?

A Practically all my life.

Q Well, you have some other occupation, havnt you, Mr. Root?

A Yes, I sometimes do other work.

Q What other work are you engaged in at different times?

A I do carpenter work and clerical work.

Q Clerical work. Where do you do clerical work?

A I have recently been engaged as a clerk in a store in Wallace.

Q Now, you took up a homestead in that Marble Creek district, did you?

A I did.

Q When?

A In 1901.

Q Where are you located, Mr. Root; do you know the numbers of your land?

A Lays in twenty-seven and eight.

Q What township?

A Township forty-four, range three.

Q Range three; what particular sub-division do you know? just mark that with a "X" if you will.

A The east half of the southeast of twenty-eight and the west half of the southwest of twenty-seven.

Q Were you in there during the summer and fall of 1904?

A I was.

Q At what times were you in there, do you remember?

A I cant remember the exact dates.



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Q Were you in there in the month of August of that year?

MR. DARROW: I object to that; it is up to him to tell what time he was there; it is your witness.

Q Can you remember what month you were in there?

A I was there in August.

Q Any other month?

A In April.

Q Any other month?

A October and November.

Q Do you remember what part of August you went in there?

A I went in there sometime during the month of July and came out in August.

Q Do you know the defendant, Steve Adams, the gentleman sitting next to the lady there?

A No sir, I do not know him.

Q Have you seen him before?

A Yes sir.

Q Where did you see him?

A I saw him over at Wallace, Idaho.

Q Where else?

A Over on Buzzle Creek.

Q Where is Buzzle Creek?

A Buzzle Creek is in---

MR. KNIGHT: Loud enough so everybody can hear, Mr. Root.

A Buzzle Creek is in township forty-two, forty-three and four; it empties into Marble Creek.

Q How far is the place on Buzzle Creek, where you saw this defendant, from Jack Simpkins' cabin, if you know;

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about how far?

A I should judge about as far as a mile and a half or two miles.

Q You know where Jack Simpkins cabin was, dont you?

A I have been there.

Q Q There during the year 1904?

A I think so.

Q Were you introduced to this Defendant at that time?

A yes, I met him there at Buzzle Creek.

Q Did you learn what his name was there?

A He was introduced to me as Dixon at that time.

Q What Dixon?

A I am not sure as to whether his given name was called or not; a Mr. Dixon.

Q He was introduced as Mr. Dixon or you learned that he was Mr. Dixon?

A Yes sir.

Q He was called Mr. Dixon?

A Not other than at the time I was introduced to him.

Q Who introduced you?

A A man by the name of Simpkins.

Q Jack Simpkins?

A Yes sir.

Q Who else were present at that time?

A At the time I was introduced?

Q Yes.

A There were no others present; just us three.

Q What took place in Buzzel Creek that day that you were introduced to this Defendant as Mr. Dixon?



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A Well, I was fishing on Buzzle Wreck a great part of the day.

Q How many fish did you catch?

A I got quite a bunch.

Q What else were you doing?

A I attended a little meeting there.

Q Who was with you fishing?

A There was August Hanson.

Q What?

A August Hanson, Will Chandler and myself and I dont remember whether Steve Logan wa with us or not.

Q Was that the Chandler who testified in this case at Wallace?

A Yes sir.

Q It was.

A Yes sir.

Q And who else were present at that meeting?

A Well, my memory is poor, I dont remember names; I cant call them.

Q Give us as many as you can remember?

A I have named about all that I can.

Q How is that?

A I have named about all that I can call to mind.

Q Do you mean to say that all the persons you have named as being with you fishing and Jack Simpkins and this defendant, were all at the meeting?

A Were they there?

Q Were they all there?

A Oh yes.

Q How many persons were present at that meeting, I mean about how many?

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A There must have been seventten or eighteen.

Q Then there were others present than those you have named?

A Oh yes.

Q Can you name any of them?

A No, I cant remember the names of any of the others.

Q Did you see this Defendant and Jack Simpkins at that meeting?

A I did.

Q What was that meeting called for, if you know?

A I dont know that the meeting was called. I just accidentally happened to be there.

Q What was said or done at that meeting?

A There was a disoussion regarding the Northern Pacific scrip that had been filed on the homesteads and some talk of some claim jumpers that went into that district a short time before.

Q Were there any names of claim jumpers mentioned that you heard?

A No, I dont remember the names of any of them.

Q What was the talk about the claim jumpers?

A The only talk I heard regarding them was that it seems that some one of them had been arrested and the case was pending at that time in the Court and the question was as to whether they were going to attempt to chase them out of the country or wait and see what disposition the Court made of this case that was pending at that time.

Q You had some talk there with Jack Simpkins, did you?

A And others.

Q Yes. And Jack Simpkins you say introduced you to this Defendant?



A He did.

Q Was anything said to you or done by Jack Simpkins in the presence of this Defendant, relative to the claim jumpers.

MR. DARROW: I object to that, assuming that there was anything done by anybody at all.

THE COURT: Change that question to read "Jack Simpkins or anybody else?"

Q Was anything done by Jack Simpkins or anybody else, said or done in the presence of this Defendant, concerning the claim jumpers?

A I suppose everything that was said was in his presence, so far as that is concerned.

Q Mr. Root, will you tell us just what Jack Simpkins said and did when he introduced you to this Defendant?

MR. DARROW: I object to that. I am willing he shall tell what everybody said and did, including Jack Simpkins.

THE COURT: Change the question to conform to counsel's objections.

MR. KNIGHT: Q At the time he introduced him to you or in the presence of anybody else at that meeting?

MR. DARROW: Just tell the whole story, Mr. Root, that is the way to get at it.

MR. KNIGHT: Now, I would like to ask these questions myself. I am perfectly willing to take a suggestion from the Court, but counsel for the Defendant should not make suggestions.

Q (Question read)

Q Now, the question will be, what did Jack Simpkins or anybody else say or do concerning the jumpers in the

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presence of this Defendant at that time?

A Well now, that is a question that I cannot swear to, as to his being present to overhear the conversation. It could have been in the presence of everybody attending the meeting, or there might not have been any one within hearing of any conversation that passed between Simpkins and myself.

Q Mr. Root, didnt you tell me, a few minutes ago, in the prosecuting attorney's office, and didnt you tell me at Wallace, in the store of the hardware company for which you were engaged at that time, that at the time Simpkins introduced you to this Defendant, he said or did some particular thing there in the presence of this Defendant relative to the meeting?

MR. DARROW: To that I object; that is an impeaching question.

THE COURT: I think he is entitled to refresh his memory; I cannot see that it is impeaching.

MR. KNIGHT: It is not impeaching; I dont want to impeach the witness.

MR. DARROW: That is a leading question; doesnt ask him for anything.

MR. KNIGHT: This question is asked under section 6080 of the statutes of Idaho.

MR. DARROW: I object to it.

THE COURT: Objection overruled.

Defendant excerpts and exception allowed.



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MR. DARROW: It might help out, if you want, Mr. Knight, I withdraw the objection to stating what was said and done in anybody's presence.

MR. KNIGHT: No, we have had a ruling of the Court; I would like to have this question answered.

MR. DARROW: Just thought it might help it out, that is all.

A Well, I can answer that question in this way: After there had been some little general talk, Jack Simpkins indicated to me---

MR. DARROW: What did he say, Mr. Root?

MR. KNIGHT: Or do?

MR. DARROW: What did he say or do?

A That he would like to speak to me, and following the indication that he would like to speak to me---

MR. KNIGHT: Go on.

A (Continued) he crossed the creek on a foot-log---

Q He what?

A Crossed Buzzle Creek on a foot-log and I followed him. When we stepped off the end of the foot-log on the other side of the creek, I was then introduced to Mr. Dixon and at that time the three of us were standing close together and it is my recollection that I turned to step away from Mr. Dixon to have this conversation that Simpkins had indicated he wanted to have with me. Now, that is about all that I can---

Q What did Simpkins say then in the presence of Adams or of Dixon, if anything?

A He said something to the effect that this man was all right; that he would vouch for him; but at that time

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I had my back turned to him and I couldn't say whether he was within hearing distance of Simpkins and I or not?

Q That is, as to the conversation that followed?

A As to the conversation that followed.

Q Now what was said between you and Simpson there concerning the gentleman?

MR. DARROW: I object to that, unless what was said by everybody be permitted to go in.

MR. KNIGHT: We are willing that anything said by anybody go in or everything said by anybody go in.

THE COURT: Go ahead, then.

MR. HEITMAN: Not shown to have been in the hearing of Adams.

MR. DARROW: This is not shown to have been in the hearing of Adams.

THE COURT: No, he said whether or not Adams was in hearing he could not say.

MR. KNIGHT: Q How far away was Adams while you held the conversation?

A I can't say as to that, because I turned my back to Mr. Dixon, or Adams, and whether he stood where he was at the time he turned around I can't say, possibly 12 feet.

Q Did you hear Simpkins make a speech during the day?

MR. KNIGHT: I want to withdraw that question and ask another one. Q How far was Adams from you at the time you held this conversation with Simpkins?

A I don't know exactly how far it was.

Q About how far?

A It could have been anywhere from 5 to 10 or 12 feet.

Q Now, in what tone of voice did you hold this conversation with Mr. Simpkins?

A Just moderate tone of voice.

Q As loud as you are talking now?



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A No, sir.

Q Not as loud?

~~A No, sir.~~

MR. DARROW: Show me what pages this is, Mr. Knight.

MR. HANSON: It extends over several pages; from 1300 to 1303.

MR. KNIGHT: Q Now, as a matter of fact, Mr. Root, you were talking loud enough so that you could be heard for 10 or 12 feet easy enough, were you not?

MR. DARROW: I object to coaching him. Let me read a minute.

MR. KNIGHT: This witness is an extremely unwilling witness.

MR. DARROW: How can you tell that?

MR. KNIGHT: Through this man's manner.

MR. DARROW: Do you think that is out of friendship for Mr. Dixon or Simpkins?

MR. KNIGHT: This witness testified he was a friend of Mr. Simpkins on the former trial.

MR. DARROW: Not much of a friend.

MR. KNIGHT: He testified he was a friend.

MR. DARROW: You think that is the reason he is reluctant here?

MR. KNIGHT: I do; I haven't the slightest doubt about it.

MR. DARROW: I hate to say I don't believe you.

MR. KNIGHT: I have said a good many things that you don't believe, and expect to continue to say things that you don't believe, because you only believe those things that tend to promote your own interest.

THE COURT: I shall overrule the objection and allow the question.

The last question was read by the stenographer.

A Our conversation was in a moderate tone of voice, as any two persons would be talking if they had met on the street or any other place.

Q Now, please relate that conversation.

MR. DARROW: Please tell me where this is found.

MR. KNIGHT: It ~~is~~ not in there; it was not brought out before; we were unable to get it, but we think we are absolutely entitled to it and we want it. The witness has testified it was an ordinary conversation, such as two people would have on the street in an ordinary tone, and that the defendant was from 5 to 10 or 12 feet away. Now, it is a matter of common knowledge that a conversation can be heard for 10 or 12 feet very easily, and for a considerably greater distance than that.

MR. DARROW: I object to it, because it appears affirmatively that whatever was said was not in the hearing or presence of Adams.

MR. KNIGHT: The limit given was from 5 to 10 or 12 feet. It is a question for the jury as to whether he heard it.

THE COURT: Q How far was Dixon from you when you turned your back towards him?

A I had just shook hands with him.

THE COURT: And you turned immediately?

A I did.

THE COURT: " Q And Simpkins had said "I vouch for him?"

A He did.

THE COURT: I will admit the question.

Defendant excepts and exception allowed.

A This is the conversation that took place between



Simpkins and myself at that time.

MR. KNIGHT: Q Yes, sir; relate it fully.

A That was just a question in regard to my answer.

THE COURT: Go on and answer.

A Simpkins asked my advice regarding what he should do in regard to some one that had built a house on his claim. He said "You seem to be pretty well posted in these matters, and I would like to have your advice regarding what is the best thing for me to do." I told Simpkins that as long as there was one case up for trial, that it was my opinion the best thing that could be done was to wait until that was settled; that there was no question in my mind but what every one of the fellows that had come in there to jump claims would be ousted; that the claimants that had settled on and built cabins we all knew had been located a long time before these fellows came in, and that the men had been living on them and were living on their places at the time these fellows came in to jump them, and that I would not advise anything only that we let it go and have the Court render a decision. That was practically all that Simpkins and I talked of at that time.

Q Now, you have related what you said. Will you relate what Mr. Simpkins said?

MR. DARROW: He has already related it. I object. .  
He has already related what Simpkins said.

THE COURT: You can ask him if there is anything further

MR. KNIGHT: Is that all that Simpkins said?

A Simpkins seemed bewildered; he didn't know what to do. He said "I don't know whether I am going to have money enough to take this thing through court or not." That was all the conversation we had there.

Q Now did he or did her not suggest what he would do if he did not have money enough to take it through?

A He did not.

Q He did not. Now, later on, or prior to that time, at that meeting, did Simpkins deliver a speech on the jumper question?

A Not that I remember.

Q You say that you do n't remember anything of that kind?

A I don't remember of Simpkins making a speech; he might have; there were quite a number of talks made at the meeting

Q Now, did Simpkins make a talk then?

A It is my belief that he did.

Q Do you remember what he said in that talk?

A No; I can't say.

Q You can't say what he did say?

A No, sir.

Q Did any one else make a talk?

A They did.

Q Who?

A I made a short talk at that meeting.

Q You say you made a short talk?

A I did.

Q Who else?

A A man by the name of Logan.

Q Steve Logan?

A Yes, sir.

Q Who else, if any one?

A I don't remember any other one; there were others though that talked during the meeting.

Q What is that?

A I don't remember any other one; there were others



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t hough that talked during that meeting.

Q Now, what was the general trend of the talks at that meeting?

MR. DARROW: We don't offer any objection here.

A What was the question?

Q What was the trend of the talks made at that meeting?

A The general trend of the talk was regarding the Northern Pacific script

Q What was the trend of the talk concerning the jumpers; the people that were alleged to be jumpers?

A All of the conversation I remember regarding that was along the line of my conversation with Simpkins after we had crossed the creek, that it would be best to leave them be, let them go.

Q Better than what?

A Better than attempting to give them notice to get out of the country.

Q Do you remember about the date of that meeting, Mr. Root

A It was the latter part of August.

Q The latter part of August?

A Or of July.

Q The latter part of July?

A Yes, sir.

Q You are positive it was before the first of August, are you?

A It could have been the first day of August; it was either the last of July or first of August; in that neighborhood somewhere.

Q Did you ever see Dixon again, or this defendant, until you saw him at Wallace?

A I did not.

Foot-D  
D-7

Q About how far did the meeting take place from  
Simpkins's cabin, did you say?

A I should judge it was in the neighborhood of a mile  
and a half.

Q A mile and a half. How long had Mr. Chandler  
been with you at that time?

A At what time?

Q At the time of the meeting?

A He had been to my place the evening before and stayed  
all night with me.

Q And went fishing next morning?

A Yes, sir.

Q Was Chandler a homesteader, do you recollect?

A No, sir; I think not.

Q Do you know how long he had been up in that district?

A About a year and a half.

Q Chandler had been up there a year and a half?

A Yes, sir.

Q Had you ever seen-- I believe that you stated that you  
had not seen this defendant-- before that time?

A I never did.

Q Do you know whether or not he was a homesteader?

A I can't say.

Q You never heard of him having a homestead there?

A No, sir.

Q Did you hear him called by any other name than Dixon  
up there?

A No, sir.

Q Did you hear him called "Red"?

A I can't say that I did.



Root-D  
D-8

MR. DAROW: Mr. Knight, at the bottom of page 1304 and first line of page 1305 he makes a statement about the distance.

MR. KNIGHT: Q Do you know where Price's place was up there, Frank Price's place?

A Yes, sir.

Q How far was this meeting from Price's place?

A About 9 miles.

Q State about how far was Jack Simpkins's place from Price's place?

A There were two trails that led in to Simpkins's place from Price's. Over one trail I should say it was about seven miles or seven and a half; over the other it would be about twelve miles.

Q Do you know where Alva Mason lives?

A Where he lives?

Q Yes, sir; out on the river?

A I do.

Q How far is ~~that~~<sup>it</sup> from Alva Mason's place to ~~this~~ the place of this meeting?

A About seventeen or eighteen miles.

Q Was Alva Mason at that meeting?

A I can't say if he was or not; I don't remember him.

Q How far is it from Alva Mason's place to Simpkins's cabin?

A On his river ranch or homestead?

A River ranch?

A About the same distance as to where this meeting was held; seventeen or eighteen miles.

Q There is a trail there, is there?

A There is.

MR. KNIGHT: I think that is all.

-----CROSS-EXAMINATION.

BY MR. DARROW: Q Mr. Root, you took up a homestead up there a number of years ago?

A Yes, sir.

Q Haven't you ever proved up on it?

A No, sir.

Q You worked in a hardware store more or less down at Wallace?

A When I am not on the ranch.

Q How long ago did you take up this homestead?

A 1901.

Q You knew the people around there, more or less, homesteaders, in the vicinity of where you lived?

Q And how far was this meeting from where you lived?

A About two and a half miles.

Q Out in the open forest, wasn't it, or closed forest, right out in the woods, this meeting was held; it was not in a house?

A It was where a regular trail crossed Buzzle Creek.

Q No house there?

A No, sir.

Q Eighteen or twenty people there, were there not?

A Yes, sir.

Q Middle of the afternoon, was it?

A About noon.

Q Had a chairman at the meeting?

A No, sir.

Q What?

A A chairman?

Q Yes.

A No, sir.

Q And everybody got up and said what they pleased; is that right?

A Yes, sir.

Q And they were discussing the timber and the Northern



Root-X  
D-10

Pacific scrip?

A Yes, sir.

Q That they feared were going to take away their homesteads?

A Yes, sir.

Q And the feeling was not friendly either to the jumpers or to the Northern Pacific scrip, was it?

A No, sir.

Q And a great many people expressed their feelings against both, didn't they?

A Yes, sir.

Q You had ~~something to say~~ something to say yourself?

A I did.

Q And about how many other people had something to say?

A I don't think more than five or six.

Q Are you any special friend of Jack Simpkins?

A No, sir.

Q Any more than you were of the rest? I take it?

A Sir?

Q Not any more his friend than the rest of the people?

A No, sir.

Q Do you recall who else spoke besides you?

A I don't remember, other than that Mr. Simpkins, Steve Logan and myself spoke.

Q But there were some others?

A There were some others.

Q And the speeches were all along the line of opposition to the jumpers and opposition to the Northern Pacific and the question of what jumpers were going to do to protect their claims, ~~were they not?~~ were they not?

Root-X  
D-11

A Yes, sir.

Q From the Northern Pacific Railroad and from the jumpers?

A Yes, sir.

Q Steve Adams did not talk any particularly on this,  
or did he?

A If he did I did not hear him say anything.

Q You did not hear Steve make a speech?

A No, sir.

Q Do you think he was close up in front when the rest  
were talking?

A I don't remember noticing him until Simpkins intro-  
duced him:

Q Did you see any guns around there?

A Yes, there were several of the boys had guns.

Q Most of them had them, didn't they?

A I can't say as to that. The majority of the settlers  
carry guns through that district?

Q Were they revolvers or guns or both?

A Both.

Q Did you have one?

A I did.

Q Steve Logan have one?

A I can't say as to that.

Q How long did this meeting last?

A Oh, possibly we were there an hour and a half or two  
hours.

Q Then you all separated and went your several ways?

A We continued our fishing trip on down the river.

Q You think this was the latter part of July or the first  
day of August?

A Yes, sir; about that time.



Q Anything said about the B. R. Lewis Lumber Company sending these jumpers in?

A No, sir; not to my knowledge.

Q Any lumber company?

A I don't remember any having been mentioned at that time.

Q Were the names of particular jumpers mentioned there?

A There were some names mentioned, but I was not acquainted with any of them and don't remember the names.

Q Bouley, Lindsley and Phillips and Tyler?

A I knew Bouley; his name was mentioned.

Q Do you know the Lindsleys and Phillips?

A I have heard those names.

Q Griffiths?

A I have heard all of those names.

Q Tyler?

A Yes, I heard that name.

Q You knew there were jumpers over in that country, didn't you?

A Yes, sir.

Q Did you know whether there were in the other sections?

A I don't remember of any.

Q You knew they dropped in there; began about as soon as the snow was off that spring?

A Yes, sir.

Q Did you know Alva Mason or Newt Glover?

A I know both of them.

Q Both of them. You did not see them there that day.

A I did not.

Q You would probably have remembered them if they had been there?

A I can't say that I would.

Root-D  
D-13

Q Most likely remember Newt Glover, would you not?

A No, I don't know that I would have remembered him.

Q Anyhow you don't remember him?

A No, sir.

Q That is, you don't remember that they were there?

A No, sir.

Q Now, out of this eighteen or twenty people, the only one you can remember is Steve Logan, Chandler, Simpson, Dixon and yourself?

A Shall I tell you how I happen to remember those?

A No, I don't care how you happen to remember them. Are those the only ones you can remember, Mr. Root?

A That is all I remember now.

Q And you don't remember hearing the names of anybody else, do you? If you have you have forgotten the names of the people who were there?

A I can't say whether I heard the names of any others that were there or not.

Q Do you know whether Engstrom was there?

A Fred Engstrom?

Q Fred Engstrom?

A I don't know if he was there or not.

Q Do you know whether he was president of an organization up there?

A I never heard of any organization in there, except outside of the Marble Creek district; we never knew of anything of the kind existing.

Q In the district?

A In our neighborhood there; that was all outside talk.

Q Anyway, you can't give me any more names, but these men were all, most all of them, homesteaders?



Root-X  
D-14

A That were there?

Q Yes, as you understood it?

A All that I have mentioned being there.

Q The rest were, as you understood?

A Yes, I understood they were.

Q And they were all armed, or nearly all?

A Not other than what they always go in that district.

Q They had arms, they had guns, and some revolvers,  
didn't they?

A Yes, sir.

Excused.

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Logan D  
D 15

STEPHEN LOGAN,

A witness called on behalf of  
Plaintiff, having been hereto-  
fore duly sworn, testified as  
follows:

DIRECT EXAMINATION

MR. DARROW: Was this witness called before?

MR. KNIGHT: Yes, he was called in rebuttal, and you  
objected to his testimony as not being rebuttal.

MR. KNIGHT: Q State your name?

A Stephen Logan.

Q Where do you reside?

A Gem, Idaho.

Q What is your business?

A Mining.

Q How long have you been engaged in mining?

A Two months; a little over.

Q What was your occupation before that time?

A I was leasing and working in the creek there  
prior to that time.

Q You own a homestead up in the Marble Creek County,  
don't you?

A I used to; I don't now.

Q Have you sold it?

A Yes sir.

Q When did you sell it?

A I sold it last summer, a year ago, I think it was.

MR. DARROW: One other question I wanted to ask Mr.  
Root.

MR. KNIGHT: Call him back right now.



MR. DARROW: If you will let me read that, I won't bother about calling him back.

MR. KNIGHT: I don't see the materiality of it, but we don't object to your reading it or calling him back.

MR. DARROW: I will read it now.

THE COURT: All right.

MR. DARROW: On the last examination this question was asked Mr. Root, and this answer was made:

"Q Your claim is two miles beyond Simpkins's claim, is it not?

"A Yes, sir.

"Q And furtherin from the head of navigation, or from Price's?

"A Yes, sir.

"Q About three miles from Simpkins's there is the nearest point, is it not?

"A It would be about three miles from Simpkins's place.

"Q There was a trail up through there?

"A Between my place and Simpkins's, do you mean? Yes, there is. "

MR. DARROW: I am not sure whether that refers to this meeting point or not. You better look that up tomorrow.

MR. KNIGHT: It refers to his place, to his ranch, not to the meeting.

MR. KNIGHT: Q When did you locate up there?

A I located up there in 1901.

Q Where were you then; what was your number, do you know?

A Section 33.

Q Section 33?

A yes, sir.

Q What range?

A I think it is Range 3, East.

Q Down here somewhere, was it? (referring to map)

A Yes, a mile strip.

Q A mile strip. Were you up there in the summer of 1904?

A Yes, sir.

Q What months were you up there in that vicinity?

A In July, the latterpart of July and the first of August.

Q Do you know the defendant here, Steve Adams?

A I seen him in Wallace; I did not know the man up there.

Q Did you ever seehim up there?

A I never seen him up there?

Q Do you know Newt Glover?

A Yes, sir.

Q Do you know Alva Mason?

A I know him by sight.

Q Did you attend a meeting on Buzzle creek in that summer?

A yes.

Q About when was that meeting?

A In the latter part of July or first of August, I could not say which.

Q Do you know Mr. Root who last testified here?

A yes.

Q Was he at that meeting?

A Yes, sir.

Q Who, that you remember, were at that meeting?

A Well, it is pretty hard to remember.

Q These that you do remember, Mr. Logan?

A There was a fellow by the name of Abel, Jim Abel, and John Devidio.

Q Was Mr. Newt Glover there?



Logan-D  
D-18

A I dont think he was.

Q Alva Mason there?

A Albert Mason?

Q Or Alva Mason?

A That is a young fellow?

Q No, that is the fellow with the gray hair.

A There are two families that I always did get mixed up; this Mason and another fellow that lives right in there, that used to have charge of the boom at Chatcolet.

MR. MCBEEB: Russell?

A Russell.

MR. KNIGHT: Q Mr. Mason lives out on the river, a gentleman with gray hair.

MR. DARROW: He has a claim on Marble Creek?

A Well, young Russell was there.

MR. KNIGHT: Q Do you know Jack Simpkins?

A Yes sir.

Q Was he there?

A Yes sir.

Q Did you hear Mr. Simpkins make a speech there that day?

A Simpkins was talking a little; I couldnt say that he made a speeoh though.

Q You couldnt hardly say it was a speech though?

A No; they were all talking.

Q How far was that meeting from Simpkins' place?

A Now, I could not tell you how far it was from Simpkins' place, but it was within a mile or a mile and a hale of Theriaut's place. I dont know what number he was located on.

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Logan-D-  
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Q Do you know where Newt Glover's place was?

A No, I dont.

Q Or Ingstrom's place?

A I have been by Ingstrom's place several times, but I could not give the number.

Q How far was it from Ingstrom's place?

A Well, it is about seven miles, as near as I can judge.

Q Do you know where Alva Mason's place on the river was?

A I dont believe I do.

Q This is the Defendant sitting by the side of the lady?

A Yes, I saw him in Wallace.

Q You did not see him in the Marble Creek country?

A Never seen him in the Marble Creek district, not to know him.

Q Did Simpkins say anything about the jumpers there that day at the meeting?

MR. DARROW: I object to that. I am willing he should say whether anybody did, and all that was said.

Objection sustained.

MR. KNIGHT: It is objectionable, not knowing whether this Defendant was there or not.

MR. DARROW: I dont make it on that ground.

MR. KNIGHT: Take the witness.

CROSS EXAMINATION

BY MR. DARROW:

Q You were a homesteader too, Mr. Logan?



Logan-D  
D-20

A Used to be.

Q You were at that time?

A Yes sir; I was at that time.

Q And the homesteaders of that section met together, the last of July, or first of August, to discuss the question of jumpers and the Northern Pacific scrip?

A That was what purpose was.

Q Met together in the defense of their homes?

A Yes sir.

Q Counseled with each other to know how you were going to defend your homes?

A To generally talk over it, yes sir.

Q You were there and the other homesteaders were there?

A Yes sir.

Q And that was what it was all about?

A Yes sir.

Q Most of them have guns?

A Well, it is a common thing to carry guns; it was at that time, no matter where you were going up there.

Q Had it been before jumpers came in, or before that time?

A Oh yes, they always have carried guns in there because a good many birds, etc.

Q A good many what?

A Birds.

Q You dont need to defend yourself against birds?

A No.

Q Shot guns or rifles, have they?

A Rifles and revolvers; heavy revolvers most of them.

Logan-D

D-21

Q Had a revolver to shoot birds with?

A Yes sir.

Q Anyhow, the most of them did have guns?

A Yes sir.

Q How long did that meeting keep together?

A It didnt last no time hardly.

Q Well, it was there; this was the question discussed?

A Just a body of us met there and we were talking it over.

Q You all happened to get in there by accident, you think?

A Well, we happened to go there.

Q You were going through the woods, and you just happened to go there by accident?

A Some were fishing and some came from Theriaut's down there.

Q Anyhow, it just happened that way?

A Anyhow, we was there.

Q Never had been any notice sent around of the meeting?

A No, there had never been no hand-bills struck or anything of that kind.

Q Most of the settlers in that section were there, were they not, so far as you knew?

A Oh no, oh no.

Q you dont remember anybody now except the names that you have given?

A That is all I could swear to.

Q You dont remember the speeches, excepting as you have told it; you dont remember who spoke?



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A It was every man talking for himself pretty near.

Q It was all about the same subject?

A yes sir.

Q Do you remember hearing Bouley discussed and  
Phillips and Lindsley?

A Mr. Bouley at that time was the main argument.

Q The man was discussed as being a jumper and bring  
ing the other jumpers in.

A Well, at that time we figured Bouley as being  
working for the B. R. Lewis Lumber Company, which I think  
he was, and brought these other fellows in for that pur-  
pose.

Q And that was discussed at that time?

A That was discussed at that time.

Q Was Phillips, Lindsley and Griffith discussed too?

A Not in particular.

Q Their names were mentioned, though?

A I could not say that they were.

Q And Tyler's, do you know.

A I could not say that Tyler's name was mentioned.

Q But this bunch over here in the Marble Creek dis-  
trict was discussed, was it not?

A yes sir.

Q Over where Bouley lived?

A yes, that bunch; yes.

-----RE-DIRECT EXAMINATION

BY MR. KNIGHT:

Q Was anything said about running them out?

A Yes, that talk was made.

Logan-D  
D-23

Q Anything said about how they would do it?  
only

A There was one way to do it.

Q How was that?

A That was to go over and tell them to move.

MR. DARROW: I dont get that.

THE COURT: Please repeat that?

A That was to go over, and the talk was over-ruled;  
it was argued down.

THE COURT: What did you say, there was only one way  
to do it.

MR. KNIGHT: Q You said there was only one way to get  
them to do it, and that was to go over and tell them to  
move?

A Yes sir.

Q And that proposition was argued down?

A Yes sir.

Q Do you know who was arguing for that proposition?

A Well, there was several of them arguing for it.

Q Can you particularize any one?

A Well, the crowd was pretty well bunched and times  
were pretty warm there.

Q How did Jack Simpkins stand?

A Jack Simpkins was for moving them.

Q Did you understand the guns were or were not  
brought there for that?

A Oh no, they were not brought there for that after-  
noon.

Q The gund were only carried ~~for~~ usual proposition?

A As a common custom of the c ountry.

Q But Jack Simpkins was for moving them, was he?



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MR. DARROW: I object to that. What he said I have no objection to.

Objection sustained.

MR. KNIGHT: It is already answered.

WITNESS EXCUSED.

THEREUPON, at 3:35 o'clock P. M., Thursday, November 7, 1907, the Jury was admonished, as required by law, and the officers sworn to take charge of the Jury, and the Jury retired, and the Court took a recess until 3:45 o'clock P. M., Thursday, November 7, 1907.

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Court convened pursuant to the foregoing adjournment, the Defendant being in Court with his counsel, present as before, the Jury was duly polled and all answered to their names and the trial of this cause proceeded as follows:

MR. KNIGHT: At this time, if the Court please, we desire to offer the testimony of Archie Phillips and Mrs. Phillips, two witnesses who were present and examined at the trial that occurred at Wallace. We have the testimony that was taken at that time and also the notes. I have talked with Mr. Darrow about it and I believe that he is willing to admit that the testimony shall be read from the extended notes and not from the original stenographic notes.

MR. DARROW: I said if your witnesses were here.

MR. KNIGHT: Mr. Wing and Mr. Libby are both here.

MR. DARROW: We object to the reading of it and think they have no right to the testimony.

MR. KNIGHT: We offer the testimony at this time of Mrs. Archie Phillips.

THE COURT: You will have to lay the foundation, Mr. Knight.

MR. KNIGHT: Yes.

MR. MCBEE: We object to the introduction of the testimony as incompetent, irrelevant and immaterial.

THE COURT: The objection will be sustained at present.

MR. MCBEE: As secondary evidence. I will make this objection and then they can go on.

MR. KNIGHT: We will call the stenographer first; we have just sent for Mr. Wing.

MR. DARROW: If anybody is going to argue it, I am going to argue it now, and then we can make the record afterwards. If anybody thinks they can read in this state the



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testimony given at a former trial, we might as well argue it now.

MR. KNIGHT: In support of this, I have filed this affidavit.

THE COURT: I shall hear you, but if proper foundation is laid, I would be inclined to admit it.

MR. MCBEE: We want to be heard now to considerable length.

THE COURT: I dont intend to go to undue length, but I want to allow you every reasonable opportunity.

MR. MCBEE: It will take longer than half an hour.

WHEREUPON, the Jury was duly admonished as required by law, officers were sworn to take charge of the Jury and the Jury retired in their charge.

THE COURT: I should like to hear your Affidavit.

WHEREUPON, Mr. Knight read the Affidavit as follows:

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI.

-----  
STATE OF IDAHO, )  
                  PLAINTIFF, )  
                  VS. ) AFFIDAVIT OF HENRY P. KNIGHT.  
STEVE ADAMS, )  
                  DEFENDANT. )  
-----

State of Idaho )  
                  ) SS.  
County of Kootenai )

Henry P. Knight being first duly sworn deposes and says: That he is now, and ever since prior to the trial of the above named defendant, which occurred at Wallace, in Shoshone County, Idaho, during the months of February and March, 1907, has been one of the attorneys of record for the State in said criminal action; that, at the said trial, in Wallace, Idaho, Archie Phillips and his wife, Nellie R. Phillips, were called, sworn and examined as witnesses in the above entitled case on the part of the State; that they, and each of them, were fully cross examined at length by counsel for the defendant in said trial; that the said defendant is represented, in the trial now in progress at Rathdrum, Kootenai County, Idaho, by the same counsel who represented the said defendant in the trial at Wallace, Idaho; that the testimony given by the said witnesses and each of them, on said trial, was material, relevant and of great importance to the State; that, without the testimony of said witnesses, the State cannot safely proceed with the trial of this action, and cannot, by any other witnesses,



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develope the facts testified to by the said witnesses, and said facts are material, relevant and important; that affiant has reason to believe and does believe and therefore alleges the fact to be that the testimony and all of the testimony of said witnesses, and each of them, given at said trial at Wallace, Idaho, was and is true.

Affiant further states that the said Archie Phillips and Nellie R. Phillips have left the State of Idaho and the jurisdiction of this Court without the consent of any of the attorneys for the State in this action, and that they are not now, and neither of them is, within the said State of Idaho, and that their personal attendance, or the personal attendance of either of said witnesses, cannot be procured at this trial by any means within the power of the State of Idaho or any person or persons connected with the prosecution in this case.

That, at the time of said trial at Wallace, in the County of Shoshone, State of Idaho, the said witnesses were residents of the State of Idaho and their attendance at said trial was procured by subpoenae; that since the said trial, and before the setting of the trial of this action in this court, the said witnesses and each of them had left the State of Idaho, and had taken up their residence at Number ~~2222~~ South Grand Street, in the City of Spokane, State of Washington; that on or about the 21st day of October, 1907, this affiant received a letter from the said witness, Archie Phillips, dated at Spokane, Washington, October 20th, 1907, but enclosed in an envelope postmarked at

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Spokane, Washington, October 19, 1907, in which the said witness, Archie Phillips, stated in substance as follows:

That he believed his life would be in danger by again appearing as a witness in the trial of this action; that his wife's health had already been greatly impaired and that she had become a nervous wreck from worrying on account of threats made to him on account of his connection as a witness in this case, and that if he should be taken off like Harvey Brown of Oregon, the State of Idaho would not take care of his family, and that he considered his duty to his family first, and that he would not attend the trial of this action at Rathdrum, but that he would start for British Columbia on the day upon which he wrote the said letter. Affiant further says that said witness, in said letter, stated that a box of dynamite, with fuse and caps, had been found back of his house about one week before the date of said letter and that that fact, together with the death of Harvey Brown, was in fact the straw that broke the camel's back, and induced him to make up his mind not to attend the trial of this action at Rathdrum; that soon after receiving <sup>the</sup> said letter, this affiant went to the City of Spokane, and to the residence of said Archie Phillips, and found the family of said Archie Phillips, consisting of a son about twelve years old, a daughter about eight years old and an infant about ten months old, in the custody of an elderly lady at said residence, Number 1824 South Grand Street; that affiant was informed by said elderly lady that she did not know where either Mr. or Mrs. Phillips then were, but that she believed Mrs. Phillips was in Portland, Oregon, and that she might be reached by a letter directed to General Delivery; that thereupon this



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affiant made a second trip to said residence and found the same conditions but could get no further information concerning either Mr. or Mrs. Phillips at that time; that thereupon this affiant wrote a letter to the said Mrs. Phillips at Portladd, Oregon, addressed to General Delivery, requesting from the said Mrs. Phillips her attendance at this trial, and information concerning the whereabouts of her husband, and assuring her that the prosecution would use every effort to see that no injury might befall either of them if they would attend the trial of this action; that thereafter affiant received a letter from said Mrs. Phillips stating that she could get in communication with her husband, from Portland, where she then was, within two days, and that she would communicate any information which affiant might wish to convey to him from there but that she was unwilling to return as a witness in said case and did not want her husband to return because she was afraid for his safety; that affiant thereupon replied to the said Mrs. Phillips again requesting her for information as to the exact whereabouts of her husband and that affiant has received no further reply from her; that affiant has reason to believe, however, from the said letter, and from information received from agents late last evening, that the said Archie Phillips is now in Victoria, British Columbia, and that he certainly is not within jurisdiction of this court.

Affiant further states that every reasonable effort, which could be suggested, has been used by the State to procure the attendance of said Archie Phillips and said Nellie R. Phillips at the trial of this action, but said efforts have

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a ll been unsuccessful and that it is absolutely impossible to procure the attendance of either of said witnesses at the present trial or at any future trial of this action, as from the premises stated affiant has reason to believe and does believe.

HENRY P. KNIGHT

Subscribed and sworn to before me this 7th day of  
November, 1907.

T. L. QUARLES, CLERK.

(SEAL)

By JAS. A. FOSTER, DEPUTY.



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MR. KNIGHT: Now, if your Honor please, we have not set out these letters at length, but I have them for the Court's inspection, if the Court cares to see them. The substance is stated in my Affidavit and I at this time tender myself for cross examination upon that, particularly as to the receipt of the letters or any other matter contained within the Affidavit.

THE COURT: The Court will allow cross examination.

MR. DARROW: Will you let me see those letters.

(The letters referred to in the Affidavit were produced by Mr. Knight and handed to Mr. Darrow)

THE COURT: Do you desire to cross examine; Mr. Knight may be sworn.

MR. DARROW: On no, we claim it is entirely incompetent anyway.

MR. KNIGHT: I notice that I had the number of the residence wrong; it is "2418" instead of "1824".

THE COURT: Change it in your Affidavit, if you desire.

(The Affidavit was changed by the reporter, in accordance with Mr. Knight's correction)

MR. DARROW: Well, I would like to have the letters read. If you are going to file your Affidavit to make newspaper talk, we will have the letters read.

MR. KNIGHT: We are as well satisfied with newspaper talk as you are.

THE COURT: Read the letters. The record shows at the request of the Defendant.

MR. DARROW: Yes, on cross examination.

MR. KNIGHT: Shall I be sworn?

G-9

MR. DARROW: No, I dont care about that, but I want to ask you what letters you have got that you refer to in your Affidavit and have you read them.

MR. KNIGHT: All right, I am ready.

THE COURT: Well, let Mr. knight be sworn to preserve the record.

HENRY P. KNIGHT, Was sworn and stated as follows:

THE WITNESS: (Reads as follows)



S 2418 Grand St., Spokane,

Oct. 20, 07.

Henry P. Knight, Esq.,

Wallace, Ida.

Dear Mr. Knight:

Enclosed please find a copy of a letter from Senator Heyburn to C. J. Shoemaker at Rathdrum. I think this is the limit. I had an application in for an appointment as estimator on the C D A Indian Reservation and I thought that after the way I had stayed with the State of Idaho in the prosecution of these "Dynamiter cases, that I could expect this appointment. I sent Senator Heyburn a bunch of the best references and endorsements that any man could get as to my ability as an estimator honesty, etc. Now Mr. Knight, on account of the Adams case, I lost my position last spring. I went to Wallace and stayed there with my wife 21 days. I lost 20 days work at \$5.00 per day and paid a woman \$2.00 per day for 20 days to keep house for us while we were away. I got enough witness fees to pay our room and board, or was out \$140 and lost my job over it. Now, according to Heyburn's letter, I have lost my chance of a job on the reservation because of my evidence in the Adams case. I think Senator Heyburn's back-bone is pretty weak when he is afraid of appointing me. I suppose he thinks it will weaken his chances for re-election with the Federation, when he comes up again. However, Senator Heyburn and the State of Idaho and the job too can go to hell as far as I am concerned. I have been going around with my life in my hand

2.

for the last two years. My wife is a nervous wreck and worrying all the time about it and now on top of that, the state turns me down. I have received threatening letters several times and a week ago last Sunday I found a sack with 10 lbs of dynamite a box of caps and a roll of fuse hid behind my house. Now as I have nothing to gain and everything to loose by staying here, I am going to look for pastures new. My wife has gone back East on a trip and I leave to-day for British Columbia. Have got a job cruising up there and I am going to look for a place where I can make a decent living and try and forget that I ever lived in Idaho. I am sorry to go away on your account and on account of my friends up there, but I have thought the thing over night and day, and I have made up my mind my duty to my family comes first. If I should get done up like Harvey Brown (that was the straw that broke the camel's back) the State of Idaho would not take care of my family.

Wishing you success, I remain,

Very truly yours,

Archie Phillips.



Q There was an enclosure with that, Mr. Knight?

A Yes; with this was enclosed a statement marked  
"Copy of Heyburn's letter. United States Senate,  
"Committee on Manufacture, Wallace, Idaho, Sept. 13, 1907.  
"C. J. Shoemaker, Esq., Coeur d'Alene City, Ida.  
"Dear Mr. Shoemaker: Your letter of September 11 is received  
I note what you say with reference to Archie Phillips.  
"There is a judgment in the court here that he jumped the  
"claim over which the killing of Bouley took place on  
"Marble Creek. It would not do to appoint him as it would  
"cause a row. I have instructed that his application be  
"withdrawn. Sincerely yours." (Marked)  
(Signed by Heyburn".

THE WITNESS: This was enclosed in an envelope marked  
"Mr. Henry P. Knight, Wallace, Idaho" Postmarked  
"Spokane, Wash. Oct. 19, 11 A. M. 1907"  
Postmarked on the otherside "Wallace, Idaho, Oct. 21  
2:30 P. M. 1907"

Q That was written October 19th, Mr. Knight, evidently  
by being postmarked the 19th?

A It evidently must have been.

Q Did you ever investigate that dynamite story  
about a ten pound bag of dynamite?

A I never did; I was looking for Mr. Phillips and not  
for dynamite.

Q You have been down to Spokane a number of times since?

A Yes.

Q You have been in consultations down there with  
Mr. Thiele, haven't you, who is the head of the Pinkerton De  
partment?

A I have had one conversation with Mr. Thiele.

Knight-X  
D-2

Q Did you inform him about a ten pound bag of dynamite floating around the back yard there?

A No, I informed him of a letter which I received that stated there was some dynamite there.

Q You had some conversation with Mr. McParland too, did you not?

A I did not. I met Mr. McParland today; I have had no conversation with him.

Q Have had no conversation with him down at Spokane?

A I have not; I have not seen him until today.

Q You were down there last Sunday, were you not?

A I don't think I was there last Sunday, I am not sure about that.

Q That is not very long ago; you can remember about that, can't you?

A I can't remember.

Q Not three days ago?

A I don't think I was there three days ago; I am quite sure I was not.

Q Didn't you leave for Spokane on the Saturday afternoon train?

A I possibly did, Mr. Darrow; I am not sure about that.

Q Didn't you see these detectives down there?

A I did not; I did not see a detective there last Sunday at all.

Q You have never done anything to bring to the attention of the authorities or anybody else that story about the ten pound bag of dynamite in the back yard of Mr. Phillips?

A The only thing I have done is my conversation with Mr. Thiele and a conversation with Mr. Hassen in regard to



Knight-K  
D-3

locating Mr. Phillips.

Q That was not in regard to finding a ten pound bag of dynamite in the back yard?

A I made no effort on that proposition.

Q Mr. Thiele did not say he knew who put it there, I suppose?

A He did not.

Q Did he say anything about it at all?

A I think not; I don't remember anything he said.

Q You never saw any notice of this dynamite story in any newspaper then, did you?

A No, I did not.

Q Never heard of it anywhere else excepting in that letter?

A I think that I did. I called at the house next door to this one and had some considerable conversation with a lady who resides next door, and, if I am not mistaken, she told me something about a box of dynamite.

Q What did she tell you?

A I don't remember her conversation, excepting as I remember it, she stated there had been a box found under the window.

Q Will you swear she said so?

A I would not be positive as to that.

Q A box containing dynamite?

A Containing dynamite.

Q Under the Phillips window?

A Yes, sir.

Q That says a bag out in the back yard, doesn't it?

A Yes; this says a bag.

Q So their stories didn't exactly jibe?

Knight-X

D-4

A I don't think they did; I am not dead sure about that. I made no investigation as to the dynamite at all.

Q Did she say anything about who killed our witness, Harvey Brown?

A Not a word.

Q Phillips didn't, so far as you know, except what is there?

A The only thing that I know is what is here.

MR. DARROW: That is all.

THE WITNESS: I have another letter from Mrs. Phillips.

MR. DARROW: I don't care about that.

MR. HANSON: We will ask to have it read.

MR. DARROW: Might as well read it all.

THE WITNESS: This letter is enclosed in an envelope postmarked "Portland, Ore., Oct. 29, 5:30 P.M. 1907. " Addressed to Henry P. Knight, Rathdrum, Ida. It reads as follows: "Portland, Ore. Dear Mr. Knight: Your letter "just recd. I do not want Archie to come back as a witness "against Adams. I was to blame for his leaving. "After the way Brown went I do not consider either of us "safe in mixing in it any more. I can get word to Archie in two days from here. Write me particulars as to what you wish to do. Truly, Mrs. Archie Phillips Gen. Del. 10--29-07"

THE WITNESS: Any farther examination, Mr. Darrow?

MR. DARROW: No.

Witness excused.



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THE COURT: I will hear you upon your objection.

MR. MCBEE: We object upon the ground they are irrelevant, incompetent and immaterial; that they are not properly identified; and for the further reason there is no provision, either of the constitution of the State of Idaho, or of the statutes of the state or otherwise for the introduction in evidence in a criminal action of an absent witness's testimony, which was given at a former trial, in the same cause.

MR. KNIGHT: To make our record complete, we would like to have Mr. Wing sworn.

THE COURT: Call Mr. Wing.

MR. MCBEE: So far as the identification is concerned, I presume it may be identified, but we will argue the competency.

AUGUSTUS M. WING,

Called as a witness on behalf of  
the Plaintiff, and being first  
duly sworn, testified as follows:

MR. KNIGHT: The examination of the witness should be in the presence of the Jury. I think we might argue this proposition without the presence of the Jury.

MR. GYDE: In relation to the notes, the question might arise here, in case this evidence is admissible at all, and the stenographer is upon the stand, shall it be taken from the original notes or the printed Transcript. Now, we can present those original notes, but it will be one day before we can get them. We have been waiting to get them now for a matter of a week, caused by the moving from the old court House to the new Court House at Wallace.

THE COURT: I will hear you afterwards, Mr. Gyde, but

Archives  
University of Colorado  
at Boulder Libraries

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I should like to hear Defendant's objection now.

MR. GYDE: The only question would be, if it is insisted upon, the original notes, we should send word to bring them here at once; we have located them now.

MR. MCBEE: If the Court will pardon the suggestion, we can argue the competency now and as to whether or not under the statute the testimony is admissible.

THE COURT: But Mr. Gyde's suggestion was whether we had better send for the notes immediately. I think you had better send for them.

MR. MCBEE: I don't think we would like to waive any of our rights.

MR. GYDE: We will send for them, but they can't get here before tomorrow night.

THE COURT: That is all right.

MR. MCBEE: I would be inclined to, if they will, identify the testimony, and I will, with the permission of Court and counsel, be prepared at this time to argue as to whether or not, having been properly identified, they are admissible.

THE COURT: I will hear your argument now, the same as if the question had been propounded to the Jury, and it can be repeated in the presence of the Jury.

MR. MCBEE: Argued in support of his motion and handed the Court, at the close thereof, a brief containing the authorities in support of his position.

MR. DARROW also argued in support of the motion.

MR. GYDE on behalf of Plaintiff, argued against the motion.

THEREUPON, the Jury was duly discharged.

Thereupon, Adjourned to Friday, November 8, at 10:00 o'clock A. M.



IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF  
KOOTENAI.

STATE OF IDAHO,

PLAINTIFF,

VS.

STEVE ADAMS,

DEFENDANT.

NO. \_\_\_\_\_

FRIDAY MORNING, NOVEMBER 3, A. D., 1907.

MORNING SESSION.

At this time, the Defendant being in Court with his counsel, present as before, the record of Thursday's Proceedings was read and approved, and the following Proceedings were had herein, to-wit:

THE COURT: Call the Jury.

THEREUPON, the Jury came into Court in charge of the officers, and being duly polled, all answered to their names and the trial of this cause proceeded as follows:

AUGUSTUS M. WING,

Resumed the stand for further  
Direct Examination by Mr. Knight.

Q State your name, residence and occupation?

A Augustus M. Wing; Spokane; Shorthand Writer.

MR. DARROW: Has the Court decided this matter?

Wing-D  
A-2

THE COURT: I am ready to decide it; I shall overrule the objection.

Q Did you attend the trial of the Adams case at Wallace?

A I did, sir.

Q You were one of the reporters there?

A I was, sir; Assistant Reporter to the Official Reporter.

Q Who was the Official Reporter?

A Mr. Libby, C. A. Libby or A. C.

Q At that trial, did you assist in the taking of the testimony of Archie Phillips?

A I did, sir.

Q Did you, after taking that testimony, transcribe it?

A I did, sir.

Q Have you a copy of that testimony?

A I have not.

Q I hand you---(handing witness a Transcript) I will ask you whether or not you can distinguish your copy of that testimony?

A I can distinguish the copy that I made.

Q Look at that; is that the copy that you made?

A I dont know, sir; the first page is.

Q The first page is?

A Yes sir, I have not examined it.

Q Now, at that time---

A (Interrupting) I havnt examined it.

MR. KNIGHT: I will state that the stenographic notes will be here to-day, and there might be some question as to just how this testimony should be introduced. I have had



Wing-D  
A-3

some conversation with Mr. Darrow about it, but I dont know what he would say about the proposition.

MR. DARROW: We have got to save our record.

MR. KNIGHT: If they want to save a record on the proposition, I think that we will excuse this witness and go ahead with other testimony that we have here until his notes are brought; they will be delivered here this evening, and not delay the Court in any way. We have witnesses that will occupy the attention of the Court to-day.

MR. DARROW: You can go ahead with this just as though you were going to ask him about his original notes. Let the record show he is reading from his original notes.

MR. KNIGHT: Some of the cases hold that a Transcript is the same thing.

Q I will ask you, Mr. Wing, to examine that testimony and designate the pages that you transcribed.

MR. DARROW: Now, why not take the other way and save a lot of trouble.

THE WITNESS: The Volume I hold in my hand is Volume Twenty-two, Proceedings of February 18th, 1907----

Q Volume Twenty-two or Volume Two?

A Volume Two, Proceedings of February 18th, 1907.

I can testify pretty accurately that this is the outside cover that I put on; the staples are the staples I put on; the title page is my work; the figures here are my figures, the first lead pencil figures are changed from "108" to "107". I can testify almost positively that that is my work, or if it was taken apart, that it is a very close imitation of my work.

Wing-D  
A-4

I go down to Archie Phillips, and I can testify pretty accurately that it is my way of beginning the testimony of a witness, and I don't think there is another reporter in the state beginning it the same way; and the first page, 188, 189, 190, '91, '92, '93, I will say that these all resemble my work. Now, I don't know whether anything has been put in these lines or taken out or anything of the kind; I would have to go over them word by word and compare with my notes, but on casual observation, it looks like my work; 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, they all have the appearance of my work; I can tell by the interlineations and the paper and everything; 222, 223, 224, 225, 226, 227, 228, 229, 230, and there are ear-marks about a reporter's work that he can generally tell by a very rapid glance---231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, and that is the end of this Volume Two.

Q That is the end of Volume Two. Then, from the beginning---

THE WITNESS: (Interrupting) I notice that at the conclusion, at page 248, is the way I generally write a conclusion in my Transcript, the remarks of the Court and so forth.

Q At the time you made that Transcript, was it a correct Transcript of your stenographic notes?

A It was, that is, omitting any oversight or mistake I might have made in my reading. Of course, I am not infallible, I am endowed with all the shortcomings and misgivings that human flesh is heir to, and, of course, I might have overlooked a word.



Wing-D  
A-5

Q Does it, substantially, correctly represent the words spoken by Archie Phillips at that trial?

A May I answer and then qualify my answer?

Q Certainly.

A It does; that is, I made an attempt to do the best I could; there was nothing left out intentionally; I did my best to record the words spoken by Mr. Phillips.

Q How much experience have you had as a stenographer, Mr. Wing?

A Twenty-eight years, sir; Official Reporter in Minneapolis twenty-one years consecutively with the exception of a year and a half in Chicago.

Q In the Courts of Minneapolis?

A Yes sir; Official Reporter.

Q At the time you made that Transcript, did you furnish a copy to the attorneys for the Defendant, or do you know?

A Some evenings I delivered it personally to Mr. Richardson, some evenings personally to Judge Hawley; some evenings they would call; but it is my impression that they all got a copy; I couldn't say positively this particular Volume, but that was the understanding, Mr. Knight, sometimes Mr. Libby would deliver it; we made three copies with the understanding that---

MR. DARROW: Go ahead and read it, we are only objecting to the competency.

MR. KNIGHT: I hand you Volume Three, Proceedings of February, 19, 1907, and ask you whether you identify that in the same way?

Wing-D  
A-6

A Yes sir, from the looks of the cover, the general appearance of it, and the fact that the Proceedings of the next day, from the general appearance, I should say that it is my work; but, of course, with the qualification that I have not gone through every line of it, and if anything has been inserted, I cant tell at a casual glance; the general appearance of this work is that it is my work and that it was made at the time it purports to have been made.

Q Do you notice any variations or any changes, Mr. Wing, in that Volume? I will ask you to look it through. Take your time and examine it, Mr. Wing.

A I will say this, Mr. Knight, that when I arrived yesterday morning, I went into your office simply as I would have went into Mr. Darrow's office or any of the attorneys that I know, to greet them, and I saw all of this testimony lying on the table and I happened to find the Index, I happened to see Archie Phillips' name and it happened to be the cross examination of Mr. Richardson. I read over about five pages of it; I didnt notice any changes or anything and it was the same as when I did the work; I noticed no change in it and I dont notice any change in it now. I notice a natural erasure here where we would put in a wrong word or something of that kind; and the numbers seem to be all right and the same amount of ink on each number; there dont seem to be any change; in my opinion, I dont think there is.

MR. KNIGHT: I will offer in evidence now that part of Volume Two containing the testimony of Archie Phillips, and that part of Volume Three containing the testimony of



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Archie Phillips recalled, Mrs. Nellie R. Phillips, and Archie Phillips recalled again.

MR. MCBEE: I want to ask Mr. Wing a question or two.

THE COURT: Proceed.

BY MR. MCBEE:

Q Under what circumstances did you come here to testify?

A Mr. Knight sent me a wire and asked me if I would come.

Q Have you had any conversation with any one else?

A Sir?

Q Have you had any conversation with any one else in regard to your coming?

A No sir, no one else.

Q You know "Mr. Teal" who was a witness in the other case?

A Mr. who?

Q "Mr. Teal".

A The detective?

Q The detective, Pinkerton detective.

A Thiele. Yes sir, I met him in Seattle; that was the first I knew what they wanted me for. Mr. Knight telegraphed me "What are your terms to attend trial and testify from your notes?"

Q You saw Mr. Thiele, the Pinkerton detective in Seattle?

A Yes sir, I did.

Q When?

A Tuesday, about half past one o'clock or twenty minutes to two.

Wing-D  
A-8

Q Tuesday of this week?

A This week, yes sir.

Q Talked some with him about it, did you?

A I did.

Q Talk with any one else?

A I did not. I will qualify my answer that in speaking to me in regard to that---Now, I want to qualify my answer, when you asked me if I talked with Mr. Thiele about it. I didnt talk with Mr. Thiele any more than to ask him what he was doing there. I told him Mr. Knight had sent for me and he said he knew what they wanted me for. I asked him what and he said they couldnt get Phillips and he said that they wanted to introduce Phillips evidence and wanted me to introduce my notes. That is all the conversation I had---oh, I had some more conversation; I could tell you all if you want it, tell you all of it.

Q I didnt ask you about any of it; I asked you what was said. I think that is all, your Honor. The testimony offered will be objected to as incompetent, there being no provision of the statutes of Idaho or the constitution of Idaho, permitting the testimony of a witness taken at a former trial, to be read at the second trial of the same case, especially in a criminal action, and it not being shown that the witness is dead or insane; and that the admisson of such testimony would be a violation of the rights guaranteed to Defendants in criminal actions, both by the statutes of the State of Idaho and the constitution of the State, the constitution of the



Wing-D  
A-9

United States and by the common law; and furthermore, that the State has not shown due diligence or any diligence, in procuring or attempting to procure the witnesses, Archie Phillips and Nellie R. Phillips, or to procure the depositions of said witnesses or either of them, depositions to be read at this trial.

THE COURT: The objection will be overruled. I think sufficient foundation has been laid and that under the current of modern authorities that when a witness is beyond the jurisdiction and due diligence has been used to obtain such a witness, and that his attendance cannot be procured, that the testimony of the former trial, where the opportunity has been had for full and free cross examination, renders the testimony competent.

Defendant excepts and exception allowed.

MR. DARROW: The Defendant would prefer to read its own cross examination.

THE COURT: I think it is very proper for the Defendant's counsel to read the cross examination; there is a good deal sometimes in the elocution.

MR. KNIGHT: I read from the testimony of Archie Phillips, Volume Two, beginning at page 188---

MR. HEITMAN: Hold on a minute, Mr. Knight. If your Honor, please, Mr. Knight, I suppose that it will be understood that the objections we made before, to save us the trouble of objecting over again, can be considered as having been made to this evidence.

THE COURT: Certainly.

MR. KNIGHT: We will stipulate that.

Wing-D  
A-10

MR. HEITMAN: We would like to have that put in the record.

THE COURT: It is so ordered.

MR. MCBEE: And that the rulings of the Court in this trial are the same as the former trial.

THE COURT: The rulings will be the same and all exceptions taken to the evidence, in favor of the Defendant, will be perpetuated in this trial.



Archie Phillips Depn.  
E1

MR. KNIGHT: (Reading)

"ARCHIE PHILLIPS, Called as a witness on the part of the  
" prosecution, and after being duly  
" sworn, testified as follows:

DIRECT EXAMINATION.

"BY MR. HANSON:

" Q State your name, residence and occupation.

" A Archie Phillips, residence, Coeur D'Alene, occupation  
"cruiser.

" Q How long have you been engaged in your present occupation

" A About fifteen years.

" Q By whom are you employed at the present time?

" A The Coeur D'Alene Lumber Company of Coeur D'Alene.

" Q How long have you been working for them?

" A Since a year ago last August.

" Q Did you ever live in what is known as the Marble Creek  
"district, in Shoshone County, Idaho?

" A Yes, sir.

" Q When?

" A From May, 1904, until August, 1904.

" Q Where were you located there?

" A On Section 7, Township 44, Range 3, E.

THE COURT: "Archie Phillips"; it is marked;  
"Archie Phillips" on the map.

MR. KNIGHT: The position is marked there on the map.  
The rest of the examination is by myself. (Reading) :

" Q I show you State's Exhibit No. 16 for identification and  
I ask you to examine it and state whatv it is, if you know."

MR. KNIGHT: Give me Exhibit No 16 of the original trial

Archie Phillips Depn.  
b2

THE COURT: This is it, is it not? (Referring to map on the wall).

MR. KNIGHT: I don't believe this was marked.

THE CLERK: Here it is. (Producing map and hands it to Mr. Knight).

MR. KNIGHT: I hold in my hand State's Exhibit 16, introduced at the first trial.

MR. WOURMS: Let me see it. (Mr. Knight hands Mr. Wourms map).

THE COURT: They afterwards made this map. (Referring to map on wall).

MR. KNIGHT: Mr. Nordquist made this map. (On the wall), from that map (State's Exhibit 16). I will explain to the jury what it is. This is practically a counterpart of the othermap, on a smaller scale. It is proper to explain, perhaps, that the othermap was made by a surveyor and this was made by---

THE COURT: A cruiser.

MR. KNIGHT: A cruiser.

MR. WOURMS: We object to any explanations, except as they are given in the record. This is the testimony of Mr. Phillips, not of Mr. Knight.

THE COURT: It is the explanation of counsel; it is not the evidence of Mr. Phillips. The jury are so instructed. I think you had better proceed, and the jury may look at that at their leisure.

MR. KNIGHT: The last question was (Reading):  
"I show you State's Exhibit No. 16 for Identification,  
"and I ask you to examine it and state what it is, if you  
"know."

MR. KNIGHT: I think this had better be marked on



this trial.

The same was marked by the reporter  
PLAINTIFF'S EXHIBIT NO. 15.

MR. KNIGHT: (Resuming reading):

"A Yes sir.

"Q What is it?

"A It is a map of 44, 1, 44, 2 and 44, 3, East.

"Q Who made that map, if you know?

"A I did.

"Q Are you familiar with these two townships?

"A Yes sir.

"Q These two sections?

"A Yes sir.

"Q And referring to this map, Mr. Phillips, I will ask you  
"if you know where Fred Tyler located his claim, where he  
"lived?"

"A Yes sir; he lived on the N.W. One Quarter of Section 18,  
44, 2.

"Q Is it marked upon the map here?

"A Yes sir; it is marked No. 3 on the map. (Referring to  
"map).

"Q Did you know Jack Simpkins at that time?

"A Yes sir.

"Q Do you know where Mr. Jack Simpkins lived?

"A Yes sir.

"Q Is his cabin marked upon the map here?

"A It is.

"Q How is it marked?

"A Marked No. 2.

"Q And ~~what~~ was your place of residence marked upon the  
"map, is it?

"A It is.

"Q How is it marked?

Archie Phillips Depn.  
b4

"A Marked No. 6.

"Mr. Darrow: Is there any key to that map, Mr. Knight?

"Mr. Knight: Yes, sir, there is a key to that right on the  
"map.

"Q How far is it from your residence, the place where you  
"were residing at that time, to the cabin of Mr. Tyler?

"A About half a mile.

"Q By what means or by what roads was communication kept up  
"between you?

"A There was a trail that ran from my place down to Mr.  
"Tyler's cabin.

"Q Is that trail marked upon the map?

"A Yes, sir.

"Q Is this it? (Referring to map) Running from 6 to 3?

"A Yes sir.

"Q In red dots?

"A Yes, sir.

"Q How far did you reside from Mr. Simpkin's cabin?

"A About a mile.

"Q By what means did you communicate with Mr. Simpkins?

"A By the same trail, past Mr. Tyler's cabin.

"Q That is, in order to go from your cabin to Mr. Simpkin's  
cabin, you had to pass by Mr. Tyler's cabin, is that cor-  
"rect?

"A Yes, sir.

"Q What is this line here, marked "Eagle Creek" (Referring  
"to map)

"A That is a creek that heads in 41-2, and runs down and  
"empties into the Marble Creek, on 1-44-3.

"Q Mr. Phillips, this map correctly represents the contour  
"of the country, does it, the rivers marked here and the



Archie Phillips Depn.  
b5

"trails on it here and so forth?

"A Yes, sir. "

MR. KNIGHT: At that time the map was offered in evidence and marked EXHIBIT 18. (Resuming reading):

"Q Now, Mr. Phillips, where did you reside during the summer and fall of 1904?

"A I resided on Section 7, 44, 3.

"Q At the place where your cabin is marked on this map, No. 6, is that correct?

"A Yes sir.

"Q Who, if any one, resided there with you?

"A My wife and three children.

"Q When did you go in there?

"A I went in there first, in March, 1904.

"Q When did you build your cabin?

"A I commenced it in March and finished in in June, 1904.

"Q Do you know the defendant, Steve Adams?

"A Yes sir.

"Q How long have you known him?

"A Since July, 1904.

"Q Where did you see him in July, 1904?

"A I saw him on the trail between my cabin and Mr. Simpkins's cabin.

"Q Did you know Fred Tyler in his life time?

"A I did.

"Q How long had you known Fred Tyler?

"A I met him first in March, 1904.

"Q Do you know when Fred came in there?

"A He went in there with me on my second trip; we left Santa on May 31 and we got in there on the claim on June 1st.

"Q Do I understand he went in there with you?

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"A Yes sir.

"Q How long did he remain in there at that time, if you know?

"A He remained there until he disappeared in August.

"Q Returning to the defendant, can you fix about the date in July when you first saw him?

"A Not exactly; it was shortly after the 4th-- a few days after the 4th of July.

"A On the trail between"--

MR. KNIGHT: There evidently is a question made, where there is an answer. (Reading resumed)

"Q On the trail between your cabin and Simpkins's cabin?

"A Yes sir.

"Q Was that also between your cabin and Tyler's cabin?

"A Yes sir.

"Q Who was with you, if any one?

"A I was alone, the first time I saw them.

"Q You say "them", who was with Adams?

"A Simpkins.

"Q Any one else?

"A No sir.

"Q What were they doing?

"A They were going up the trail towards Mason's cabin.

"Q Is Mason's cabin marked on this map?

"A Yes, sir.

"Q How is Mr. Mason's cabin marked on this map?

"A No. 4."

MR. KNIGHT: You will observe "No. 4" on the map. At that time a juror asked "What is No. 10 and 11 on this map" I repeat it: (Reading resumed)

"Q What are Nos. 10 and 11 on this map, if you know, Mr. Phillips?

"A No. 10 and 11 are two cabins that are on there; I was



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"not quite certain who owned them, and I put a question mark opposite No. 1 ; I was not sure who owned that cabin; No. 11 and 12, I was not quite certain, so I did not name them

"Q How about No. 10?

"A No. 10 is Ray Wells' cabin.

"Q Did you ever have any conversation with Mr. Simpkins and Mr. Adams-- did you have any conversation with them when you first met them there?"

"A No sir.

"Q Did you know who Steve Adams was at that time?

"A No; I did not.

"Q What time of day was it you saw them, if you remember?

"A It was in the forenoon.

" Mr. Darrow: Was this the first time you saw them?

"Mr. Knight: He says, Yes, it was.

"Q You had no conversation with them at all when you met them on the trail?

"A No sir.

"Q Did you speak to them?

"A Yes sir.

"Q When did you next see them?

"A Why, I don't recollect; I saw them right along after that every few days for a month or six weeks.

"Q Did you learn the defendant's name?

"A No sir; I did not.

"Q Was he known to you in any way by any different name?

"The only name we knew him by was 'Reddy.'

"Q Reddy?

"A Yes sir.

"Q Was Mr. Tyler in there at that time?

"A Yes, sir.

"Q Did you know Jack Simpkins at that time?

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"A Not the first time I saw him, no.

"Q Did you learn who Jack Simpkins was?

"A Yes sir.

"Q When did you first learn that?

"A I think it was the next day after the first time I saw them.

"Q And how often would you see them after that, you just met them on the trail, something of that kind-- where would you see them?

"Mr. Richardson: Oh, if your Honor please, I object to this method of examining the witness. Let the witness testify.

"Q How often did you meet them?

"A Why, I could not say after that, but I met them a number of times.

"Q What were you doing in there at that time?

"A I was living on my claim.

"Q What kind of claim did you have?

"A A homestead.

"Q Did you see Mr. Tyler at any time in the presence of Mr. Adams?

"A No sir.

"Q Did you ever have any conversation there at that time with the defendant, Mr. Adams?

"A No sir.

"Q How far, did I understand you to say Mr. Tyler's cabin was from Mr. Simpkins's cabin?

"A About half a mile.

"Did you meet Mr. Taylor frequently during the months of July and August of that year?

"A Every few days.



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"Q Do you know whether or not there was any one living  
"with him?

"A No, there was not.

"Q When did you last see Fred Tyler, if you remember, about  
"when?

"A It was about the 10th of August.

"Q What year?

"A 1904.

"Q Where was that?

"A At my house.

"Q At your house; you mean at No. 6 cabin, as it is marked  
"on this map, States Exhibit 16?

"A Yes, sir.

"Q And about what time of day did you see him?

"A It was at supper time.

"Q What was he doing there?

"A He stoppd on his way back from Marble creek; he stopped  
at my house and had supper with us.

"Q Any one with him?

"A No sir; he was alone.

"Q How was he dressed at that time?

"A He had on a pair of overalls, a suit of underclothes, he  
"did not have on an overshirt.

"Q What is that?

"A He had no overshirt on; he had on a black hat and a  
"handkerchief tied around his neck.

"Q What kind of handkerchief, if you know?

"A I don't know; he always wore one.

"Q What else, if anything, did he hve with him?

"A He had on a pair of shoes and he had a sack he carried his  
fish in.

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"Q Did he have some fish with him?

"A Yes sir; he had about fifteen pounds of fish.

"Q And what time in the evening did he come to your house, if you remember about the time?

"A It was just about supper time.

"Q How long did he remain?

"A About an hour; until after we had supper.

"Q Do you remember what kind of overalls he had on?

"A He had on blue overalls.

"Q Anything else? Any distinctive mark about the overalls that you noticed in any way?

"A No sir.

"Q Simply a pair of blue overalls?

"A Yes sir.

"Q You say he wore an undershirt?

"A Yes sir.

"Q Do you know what kind of undershirt, the color of it or anything like that?

"A It was a light wool undershirt, light color.

"Q And what kind of a sack was this you say he had on?

"A It was just a common gunny sack.

"Q How was it arranged?

"A Why, there were two holes cut through the top of it that he had his arms through and he packed it on his back.

"Q He had it on his back?

"A Yes sir.

"Q Do you remember what kind of shoes he had on?

"A They were a pair of hand made shoes, cruiser's shoes.

"Q High topped or low topped, if you remember?

"A Medium.

"Q Do you remember the color of those shoes?



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"A The color at that time was a kind of abrown, from  
"wading in the water when he was fishing; when they were  
"new they were a black shoe.

"Q His hat, what kind of a hat did he have, a black hat?

"A A black hat.

"Q And what else could you say about the hat?

"A It was a soft felthat and he used to wear it with the  
"crown dented in around the top.

"Q Was it an old hat or a newhat, if you remember?

"A I don't remember, but I think it was an old hat.

"Q Now, how did he wear this handkerchief-- you say he had  
"a handkerchief?

"A Yes sir; he just had it tied with a knot around his neck.

"Q I believe you said you did not remember the color of the  
"handkerchief?

"A No sir; I do not.

"Q What time did he leave yourplace, Mr. Phillips?

"A I think aftersupper about 7 o'clock.

"Q And which way did he go?

"A He went downthe trail towardshis own cabin.

"Q Any body go along with him?

"A No sir.

"Q Did he have a dog?

"A No sir.

"Q How old is your oldest child, Mr. Phillips--how old was  
"it at that time?

"A Eight years old.

"Q A boy or girl?

"A A boy.

"Q Was he there?

"A Yessir; he was there.

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"Q Now, do you know what Mr. Tyler had in that sack,?"

"A Why, yes, sir, he had some fish in it when he came to my place.

"Q Did he have anything else?"

"A Yes, sir; he had a box that he carried his fish bait in.

"Q What kind of a box was that?"

"A Tobacco box.

"Q What kind of a tobacco box?"

"A It was a kind of a curved tin box that had plug out, I think, in it.

"Q Now, I show you State's Exhibit No. 12 and I ask you if that resembles that box.

MR. HEITMAN: That has not been introduced in evidence yet.

MR. KNIGHT: Yes, it has.

MR. HANSON: It was introduced at the last trial.

MR. HEITMAN: I don't think it has been; I understood your Honor to hold that it had not been properly identified.

THE COURT: I reserved my decision. It has not been admitted in evidence; it has been marked for identification. I think that and the bottle said to contain horse radish.

MR. KNIGHT: This is marked "Second trial, Plaintiff's Exhibit No. 9" and on the other side it is "State's Exhibit 12, the first marking in that case. This is marked for identification properly to show the jury, because it has No. 12 at this time marked on it, and at this time I will offer this box in evidence, under the testimony of Mr. Yeager, Mr. Thomas and Mr. Phillips.

MR. HEITMAN: Defendant objects to the introduction of No. 9 in evidence on second trial and No. 12 in the



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original trial.

THE COURT: No. 9 in this trial for identification.

MR. HEITMAN: We object to State's Exhibit No. 9 for the reason that it has not been identified, and is therefore incompetent, irrelevant and immaterial.

Objection overruled.

Defendant excepts and exception allowed.

MR. KNIGHT: State's Exhibit on first trial: (Reading resumed):

"Q Now I show you State's Exhibit No. 12 and I ask you if that resembles that box?"

"A Yes, sir; one just like it.

"Q What did you say he was using it for?"

"A He carried grubs in it for fishing bait.

"Q What kind of fish did he have in his sack?"

"A Trout.

"Q Did you ever do any fishing yourself?"

"A Yes, sir.

"Q Is it quite customary to have that kind of bait in that country?"

MR. HEITMAN: That was withdrawn, Mr. Knight.

MR. KNIGHT: Do you want these objections read into the record at this time?

MR. HEITMAN: That question was withdrawn.

MR. KNIGHT: Yes, that was withdrawn. Do you want this part of the record in, Mr. Heitman, or not?

MR. HEITMAN: Anything that you withdrew I don't want in the record.

MR. KNIGHT: All right.

THE COURT: Note all objections and exceptions as you read.

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MR. KNIGHT: That is what I wanted to do.

THE COURT: Those exceptions are printed in this record.

MR. KNIGHT: This record reads: (Reading)

"Mr. Richardson: we don't think that is material  
"or competent, and we shall object to it.

"The Court: I don't think it is material myself.

"Mr. Knight: I will withdraw the question. "

MR. HEITMAN: I don't think it is ~~material~~ worth while  
to encumber the record with anything that is withdrawn.

THE COURT: I told Mr. Knight to read all objections  
and exceptions which are in the record which are allowed.

MR. KNIGHT: This was allowed, and I wanted to put it  
into this record.

MR. HEITMAN: You withdrew it, so there could not be  
any point raised.

MR. KNIGHT: I only want to have the record state both  
sides, that is all. (Reading)

"Q Did he have anything else in the sack that you know of?"

"A No, that was all, when he came there.

"Q When he came to your house?"

"A When he came to your house?"

"A Yes sir.

"Q How were the fish?"

"A Just thrown in there loose. "

MR. KNIGHT: That part of the record I think should  
go in. (Reading resumed.)

"Mr. Richardson: We object to that; we object to  
"him doing anything more than asking him---

"The Court: It is immaterial how the fish were there."  
that the answer should

MR. HEITMAN: It strikes me  
not have gone in, I see it is there.



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MR. KNIGHT: It is not ruled out by the Court.

(Reading resumed) :

"A Well, he had a piece of cedar bark in the bottom of  
"the sack and some fern leaves in there, and the fish was  
"on top of the fern leaves, and then there was fern leaves  
"again on top of the fish.

"Q And when he went away from there, do you know whether or  
"not he had anything else in the sack?"

"A Yes, sir; he had.

"Q What was it?"

"A He had a bottle of horse-radish that he took from home.

"Q From your place?"

"A Yes, sir.

"Q How did he come to get the horse-radish?"

"A We had it on the table for supper, while we were eating  
"supper, and he asked my wife for it and she gave it to him.

"Q How did he come to ask for the horse-radish?"

"A He stayed there and he had supper with us, and the horse-  
"radish was setting on the table there, and he knew I had  
"several bottles of it and he asked me if he could take a  
"bottle, ~~the~~ if he could take the bottle on the table,  
"and my wife gave it to him.

"Q You remember how much horse-radish was in that bottle?"

"A I think it was a little over half full.

"Q What kind of a bottle was that in?"

"A It was a glass bottle that came from the store.

"Q And the bottle set on the supper table?"

"A Yes, sir.

"Q Now, can't you describe that bottle more fully, as  
"to its size, and so forth?"

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"A It was a bottle about six inches long, about two  
" inches in diameter, with a glass cover on it and a  
" clasp on it.

"Q What kind of a clasp?

Mr. Darrow: He said a clasp.

"A It was an iron clasp.

"Q I present to you State's exhibit No. 11 and ask you to  
state how that compares with the bottle of horse-radish that  
"you gave him? "

MR. KNIGHT: I have bottle marked "Second trial,  
Plaintiff's Exhibit 8 for Identification", and "State's  
Exhibit 11; original trial, and I offer this now in evidence.

MR. HEITMAN: Defendant objects to that for the reason  
that it has not been identified, and is therefore incom-  
petent, irrelevant and immaterial.

Objection overruled.

Defendant excepts and exception allowed.

MR. KNIGHT: (Reading)

"A That is similar to the one he took away with him."

THE COURT: Now, make your objection; the same objectio  
I suppose, that it is not sufficiently identified, and the  
objection will be overruled, and the bottle will be admitted  
in evidence.

Defendant excepts and exception allowed.

MR. KNIGHT: (Reading)

"Q And as to the clasp that is on it, that same kind of  
clasp on it?

"A Yes, sir.

"Q What was the top of the bottle, do you remember?

"A It was a glass top.



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"Q A glass top?

"A Yes, sir.

"Q Do you know where you bought that horse-radish?

"A I am not certain whether I got it at Santa or whether

"I got it in Coeur d'Alene, I think I got it in Santa.

"Q You say it was about 7 o'clock when Mr. Tyler left your  
"cabin?

"A Yes, sir.

"Q He left there alone?

"A Yes, sir.

"Q Did he say where he was going?

"A He said he was going home.

"Q That is, to his cabin?

"A Yes, sir.

"Q And he went alone?

"A Yes, sir.

"Q He carried a fish basket, as I understand you,  
"with him?

"Mr. Richardson: Oh, you had better let the witness  
"testify on that subject.

"Mr. Knight: I think he has already testified as to that.

"Mr. Richardson: Then, if he has, it would be an improper  
"question anyway.

"The Court: The objection is overruled.

"Mr. Richardson: Exception."

Mr. Knight exhibits the bottle just received in  
evidence, to the jury.

MR. KNIGHT: (Resuming reading)

"Q Do you remember what kind of a day that was, whether it  
"was bright or cloudy?

"A It was a kind of a cloudy day that day.

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"Q It was a kind of a cloudy day, you think?

"A Yes, sir.

"Q Raining?

"A It had rained in the forenoon, and the sun came out for  
"awhile, and then it clouded up again in the evening.

"Q Was it raining at the time he left, if you know?

"A No, sir.

"Q When did you see Fred Tyler again?

"A That was the last time I saw him.

"Q Now, I will ask you whether or not you made any effort  
"after that time to find Fred Tyler?

"A Yes, sir.

"Q When?

"A The next day; the next afternoon.

"Q What did you do?

"A I went down to his cabin and found he was not at home.

"A Any one with you?

"A No one, I was alone that time.

"Q How did you come to go down there, Mr. Phillips?

"A Mr. Tyler had promised us at supper time the night before  
"that he would bring some butter up to us the next day and  
"he did not come up with it and I went down after it.

"Q Did you get the butter?

"A Yes, sir.

"Q Where?

"A I got it out of a little box he kept in the spring.

"Q Did you make any further or other efforts to locate  
"Mr. Tyler?

"A Yes, sir; about two or three days after that Mr. Griffith  
"and I went down together, went to his cabin and found he  
"was not at home.



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"Q You remember just what day that was?"

"A No, I do not.

"Q Who was Mr. Griffith?"

"A Mr. Griffith was a man that had a homestead adjoining mine  
"on Section 7.

"Q Did Mr. Griffith have a cabin there?"

"A Yes, sir.

"Q You know where Mr. Griffith is at this time?"

"A I do not.

"Q What did you and Mr. Griffith do?"

"A We looked around his cabin; we searched around through  
"the woods there for a short distance.

"Q How did you come to search around through the woods?"

"A Mr. Tyler had had threats made to him while he was there

"and the next morning after the night that he had supper

"with us at my place, I heard some shots between five and six

"o'clock in the morning, and when we could not find him at home

"we made up our minds that something had happened to him,

"so we commenced looking for him.

"Q And how many shots did you hear fired?"

"A Four.

"Q From what direction did they come?—did the sound come?"

"A They came from southwest of my cabin. "

MR. KNIGHT: The jury can perhaps see this map here  
in better order. (Illustrating on map)

MR. WOURMS: This now is the testimony of Mr. Phillips,  
and we would like to have it read in just as it occurred.

THE COURT: Go right ahead.

MR. KNIGHT: I want to give the jury a chance to look  
at that map.

MR. HEITMAN: That map is in evidence.

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MR. WOURMS: Mr. Knight is not in evidence.

MR. KNIGHT: I presume the jury have a right to examine the map if they want to.

THE COURT: They have a right to examine both maps; they are both in evidence.

MR. WOURMS: We have no objection to the jury examining the map, but we object to having any comment made on this map by Mr. Knight, unless he is sworn and testified.

MR. KNIGHT: I am not commenting on the map at all.

THE COURT: You can confine yourself to the record there, Mr. Knight.

MR. KNIGHT: (Reading resumed)

"Q Where were you when you heard the shots?"

"A I was in my summer kitchen, right outside my door.

"Q Any one with you?"

"A The door was open and my wife was inside.

"Q Anything said about those shots at that time?"

MR. HEITMAN: The balance of that page is ruled out.

MR. KNIGHT: There is no ruling by the Court.

MR. HEITMAN: Go on to the next page; there the objection is sustained.

MR. KNIGHT: Yes, that is correct.

THE COURT: Don't read that.

MR. HEITMAN: The other objection, immediately following it, is sustained; down about the middle of the page is the next.

MR. KNIGHT: I will wait until we get to it.

MR. HEITMAN: I thought I would help you a little.

MR. KNIGHT: It is extremely kind; it is impossible to confine myself to the record while counsel is talking.

(Reading resumed)



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"Q Mr. Phillips, was there anything that caused you, in  
your mind, at the time you heard those shots, to connect "---

MR. HEITMAN: That was ruled out.

MR. WOURMS: That was one of the questions ruled out.

MR. HEITMAN: Right below that the Court sustained the  
objection. You want to read a little more carefully, Mr.  
Knight; that is the reason we have to help you.

MR. KNIGHT: I am perfectly willing for this whole record  
to go in. I thought it was stipulated that everything should  
go in.

MR. HEITMAN: No stipulation about it; anything  
ruled out don't go in.

MR. KNIGHT: I thought it was stipulated that  
everything should be read into the record, with the same  
ruling all the way through.

THE COURT: All exceptions are to be noted into the  
record for the benefit of the defendant.

MR. KNIGHT: That is what I want to do.

MR. WOURMS: I don't know of any stipulation that a  
matter that is ruled out is to become a part of the record  
at this time.

THE COURT: There is nothing before the Court.

MR. KNIGHT: Counsel seem to be excited.

(Reading resumed)

"Q In what condition did you find the cabin of Fred Tyler when  
you first went there on the afternoon of the next day?

"A I found it"---

MR. HEITMAN: I thought, if your Honor please, that  
was all stricken out.

MR. KNIGHT: I don't think that was stricken out.

MR. HEITMAN: Read down and see.

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THE COURT: Find out, Mr. Knight.

MR. HEITMAN: And the answer just below that.

MR. KNIGHT: No, the answer just below that was stricken out; that answer was not stricken out.

THE COURT: Go ahead.

MR. KNIGHT: (reading resumed)

"Q In what condition did you find the cabin of Fred Tyler when you went there the afternoon of the next day?"

MR. HEITMAN: That was stricken out.

MR. KNIGHT: I differ with you; that was not stricken.

(Reading resumed)

"A I found it as it always was."

MR. HEITMAN: The next question was stricken.

MR. KNIGHT: The next question was stricken out.

MR. HEITMAN: I think it was all stricken out below.

Will you read the record and see if it was not. The Court required the witness to state what he saw there.

MR. KNIGHT: I presume if the question was objected to it would be stricken out.

MR. WOURMS: It is the same question repeated. That was as to the last question and answer of course.

MR. HEITMAN: They are both the same. This is the question and answer that was stricken out. (Exhibiting the same to the Court).

THE COURT: (Examining the record) "In what condition did you find the cabin of Fred Tyler when you first went there on the afternoon of the next day?"

MR. KNIGHT: That was not stricken out; all of the rest was.

THE COURT: I think all of that was stricken out down to there. (Indicating)



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MR. KNIGHT: From this question up here. (Indicating on record)

THE COURT: Yes, sir. "Q In what condition did you find the cabin of Fred Tyler when you first went there on the afternoon of the next day? A I found it as it always was."

MR. KNIGHT: From there down to here was stricken out.

THE COURT: "Q Seemed to indicate that it had been abandoned." That was objected to. "Q What did you see? A I found it just as he always left it. Mr. Richardson: We object to that and move to strike it out." "Motion granted." "A I found it as it always was", that is stricken out, because that gives no information to the jury.

MR. KNIGHT: I consent that that be stricken out; no question about that. (Reading resumed).

"Q What did you find in the cabin?

"A I found the bed was made, and the clothes on it, and some dishes on the table that he had been using---dishes standing around, some bread cooked, and the usual quantity of groceries there that he always had.

"Q Had you frequently been to his cabin before?

"A Quite often.

"Q Now, when you and Mr. Griffith went there two or

"three days after that, what condition did you find things in

"A The same as on my first visit.

"Q Did you make any effort, any further effort, to locate Mr. Tyler?

"A Yes, sir; we sent Mr. Bouley out to Santa to find out if he had gone home.

"Q When did you send Bouley to Santa?

"A On the 17th of August.

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"Q About how long was that after you had last seen Fred Tyler?"

"A About a week.

"Q Who sent him up?"

"A Mr. Griffith and I.

"Q Did you make any further effort to locate Fred Tyler?"

"A The day when Mr. Boulay went out Mr. Griffith and I went as far as Simpkins' cabin with him and we searched around Simpkins's cabin in the woods.

"Q Did you find any trace of Fred?"

"A No, sir.

"Q Did you go into Simpkins's cabin?"

"A No, sir; it was locked up.

"Q It was locked?"

"A Yes, sir.

"Q Did you meet any persons around there?"

"A No, sir; we did not."

MR. HEITMAN: Hold on there a minute, Mr. Knight, if you please, let us examine the record. I think that was ruled out.

MR. WOURMS: That is all stricken out; on page 206 the Court makes the ruling.

MR. KNIGHT: No, on page 206 he does not strike it out.

MR. HEITMAN: On page 205 the Court says "It will be excluded".

MR. KNIGHT: What does he say will be excluded?

MR. HEITMAN: The Court says: "He can tell what he knows, if he knows anything; if he does not know anything at all, it will be excluded." It is objected to as hearsay, something that Tyler told him, and on page 206 the Court granted the motion to strike it out.

MR. KNIGHT: He does not strike out the answer to the



question.

MR. HEITMAN: Show it to the Court.

MR. KNIGHT: I will show it to the Court. (Exhibiting same to the Court)

MR. HEITMAN: He did not give any answer on page 205; it is the answer on page 204 that is stricken out; that is stricken out; at the top of page 206 it is stricken out, the motion to strike out is granted, at the top of the page.

THE COURT: I think that is all eliminated, the answer on 204.

MR. KNIGHT: Down to the Court's ruling?

THE COURT: No, here (indicating).

MR. HEITMAN: Down to nearly the middle of page 206. You asked a question and then you changed it under objection.

MR. KNIGHT: There is no ruling by the Court on that.

MR. HEITMAN: No, but you changed the question under the objection of Mr. Darrow.

MR. KNIGHT: That is all right.

THE COURT: That will be stricken out, to what the Court says "the motion will be granted", on the second line of page 206; the following is not stricken out on page 206.

MR. HEITMAN: The first question on page 206 was objected to by Mr. Darrow and then Mr. Knight changed the question.

MR. KNIGHT: The jury will understand that.

THE COURT: Let me see your record. (Examining record) This is all allowed.

MR. HEITMAN: But you see he changed that question, if your Honor please. Then a question was asked and Darrow objected to it and then he changed it.

THE COURT: That is about the middle of the page; that is where you should commence.

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MR. KNIGHT: (Resuming reading)

"Q I will change that and ask him if he ever heard anything  
"said by any one in there concerning Mr. Tyler that caused him  
"to make this investigation?

"A I saw something done, but there was nothing said.

"Q What did you see done and by whom?

"A By Simpkins and Adams.

"Q What did you see done?

"A I went down to Mr. Tyler's cabin to go fishing with him  
"in Eagle Creek, and as I came down the trail from my cabin  
"to Tyler's cabin, I saw Simpkins and Adams coming down  
"the opposite trail from towards Simpkins' cabin. I turn-  
"ed off the trail and went into Mr. Tyler's cabin and I  
"told him I saw his friend coming down the trail. We went  
"outside and sat on a log in front of the cabin. While we  
"were sitting there Simpkins passed in front of the cabin  
" and went up the creek, and Adams stayed down below, and  
"while we were sitting there there were ten shots fired over  
"our heads.

"Q Do you know by whom they were fired?

"Mr. Darrow: Well, did you see by whom they were fired?

"The Witness: No, I did not see who fired the shot.

"Q In what direction did they come from, the sounds?

"A Four of them came from up the creek and six of them  
"came from below.

"Q And you say that Mr. Simpkins was up the creek?

AA Yes sir.

"Q And Mr. Adams was below?

"A Yes sir.

"Q In what direction were those shots fired?

"A Right over our heads,---right over the cabin.



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"Q How did you distinguish that?

"A We heard the bullets whiz as they went over.

"Q Did you know whether Mr. Simpkins and Mr. Adams were  
"armed at that time or not?

"A Mr. Adams had a rifle, I did not see Mr. Simpkins have  
"anything.

"Q Do you know what kind of a rifle it was?

"A No sir.

"Q How far was Mr. Adams from you?

"Q About one hundred yards.

"Q You say he stopped, as I understand it, between Mr.  
"Simpkins cabin and Mr. Tyler's cabin?

"A He stopped right on Eagle Creek, where the trail crosses  
"the creek.

"Q How far is that from Tyler's cabin?

"A About one hundred yards.

"Q Did you see Adams any more?

"A No sir.

"Q Did you see Simpkins any more?

"A No sir.

"Q What did you and Tyler do then?

"A We got up and went into the cabin.

"Q How long did you remain there?

"A About five minutes.

"Q What did you do then?

"A Mr. Tyler suggested that we go up to my cabin, and we  
"left there and went up and he stayed at my place all night.

"Q Were you armed?

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"A No, sir.

"Q When was that?

"A That was about a week before Mr. Tyher disappeared.

"Q Now, did you distinguish any difference between the shots  
"that came from up the creek and the shots that came from  
"below the creek?

"A Yes sir, the shots that came from above the creek sounded  
"like a revolver shot and the shots that came from below  
"sounded like a rifle shot.

"Q And what is the difference between the sound of a rifle  
"and a revolver shot?

"A A rifle shot is much heavier than a revolver shot.

"Q When did you see Adams again?

"A Not until I saw him here in court at the preliminary ex-  
"amination.

"Q Did Mr. Bouley return from Santa, where you sent him to  
enquire about Fred?

"A Yes, sir, he came back on the 19th.

"Q Did you see him when he came back?

"A Yes, sir, he came to my house.

"Q Did you get any information from him in regard to Fred?

"A Yes, sir, he told us he had not gone home, and no one  
"had seen him out at Santa.

"Q Did you make any further investigation in regard to Fred?

"A We were starting---we intended to start out that morning,  
"we were getting ready.

"Q On the 19th?

"A On the morning of the 20th; he came in on the 19th.



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"Q Who came in?

"A Mr. Bouley, and the next morning Bouley was coming out to Santa to work, and Mr. Griffith and I were going out in that direction and we heard these shots and when Mr. Griffith was cleaning his gun, after Bouley had started for Santa, we heard the shots that killed Bouley.

"Mr. Darrow: Did you say you were at your house?

"The Witness: I was at Mr. Griffith's house when we heard the shots that killed Mr. Bouley.

"Mr. Darrow: How far was that from the house where you were?

"The Witness: About a hundred and fifty yards.

"Q Returning to the shots that you heard on the morning after you last saw Fred Tyler, from what direction did that sound come?

"A Southwest of my cabin and west of Mr. Tyler's cabin.

"Q What direction would that be from Simpkins' cabin.

"A That would be a little north of west from Simpkins cabin.

"Q Did you ever find Fred Tyler after that?

"A No sir.

"Q Did you go out after him the next morning, when you say you were preparing to go out?

"A No sir, we went down to investigate the shooting of Bouley.

"Q What did you do then?

"A We found out he was dead, and the man that was with him was shot through the arm, and I took my wife and family and brought them out the same day.

"Q Do you know where Mr. Griffith went?

"A He came out that same day.

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"Q Did you know that Bouley was dead?

"A Yes sir.

"Q Did you see his body?

"A I did not see it until I came back with the sheriff,  
"two days after.

"Q How did you come to come back with the sheriff?

"A I came to Santa and notified the sheriff that Bouley  
"was killed, and that Tyler was missing, and I asked him to  
"come out there.

"Q ---"

MR. KNIGHT: Hold on; that is ruled out.

MR. HERITMAN: All right.

"Q Did you return with the sheriff?

"A I did.

"Q When was that?

"A On the 22nd of August.

"Q Did you find Mr. Bouley dead?

"A We did.

"Q Where was it?

"A About thirty feet from Simpkins' cabin on the trail.

"Q Who was with you when you found the body?

A" Jack Elliott, deputy sheriff, Sheriff Hanley, Dr. Keys,  
"Billy Haynes from Santa, Jake Simpson, Mr. Tyler's brother-  
"in-law, a man by the name of Lansdale that came in to look  
"after the horses, and a man by the name of Theriault, and  
"a man by the name of Lindsley.

"Q Did you examine Bouley's body?

"A Yes sir.



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"Q What was the condition of it?

"A He had been shot; there were five bullet holes through  
"him.

"Q Did you ever make any further investigation after that  
"as to the death of Fred Tyler, or as to the disappearance  
"of Fred Tyler?

"A The next morning, after we got in, that would be the  
"morning of the 23rd, I made an Affidavit for the coroner  
"as to all the circumstances in connection with the matter;  
" and on the morning of the 19th I reported it to Jake  
"Elliott---"

MR. HEITMAN: Evidently Jack Elliott.

"---Deputy Sheriff, that Fred Tyler was missing?

"Q Did you ever locate Fred Tyler?

"A No sir.

"Q Do you know anything about the discovery of the skeleton  
"there during the year of 1905?

"A I read of it in the paper, yes sir.

"Q ~~Where~~ <sup>there</sup> Were you at the time?

"A No sir.

"Q Where did you go after the killing of Bouley?

"A I went to Coeur d' Alene.

"Q Did you return to your homestead?

"A No sir, not until a year ago last spring.

"Q That was after the finding of the remains?

"A No sir, that was before the remains were found; I made  
"one trip in there.

"Q Were you in there at the time of the finding of the re-  
"mains?

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"A No, sir.

"Q How far is Fred Tyler's cabin from the head of navigation,  
"approximately---the head of navigation on the St. Joe  
"River?

"A About twenty miles.

"Q Where did you meet the Deputy Sheriff that went in there  
"with you at that time?

"A You mean on the 19th?

"Q Yes.

"A He came in there to serve an injunction on Bouley,  
"Jessup and Lindsley.

"Mr. Darrow: This is the 19th of August you are talking  
"about?

"The Witness: Yes, sir.

"When Mr. Bouley left your cabin on the---I mean Mr. Tyler,  
"when he left your cabin on the evening before his dis-  
"appearance, as to whether or not he was armed, if you  
"know.

"No, sir, he was not armed."

"CROSS EXAMINATION

"By Mr. Richardson:

MR. HEITMAN: (Reading as follows)

"Q Your business is that of a timber cruiser?

"A Yes, sir.

"Q How long have you been a timber cruiser?

"A Fifteen years.

"Q How old a man are you?



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"A Thirty-eight.

"Q How long have you been in the Coeur D'Alene country  
"before you took up this homestead?

"A I came here in February, 1904.

"Q February, 1904?

"A Yes, sir.

"Q Did you come here for the purpose of taking up a homestead?

"A Yes, sir.

"Q Where had you first gotten the idea that you would take  
"up a homestead here?

"A When I was in Minnesota.

"Q How did you happen to get that idea?

"A Oh, I heard there was good timber claims out here left  
"yet.

"Q Were you out of a job then?

"A no, sir.

"Q For whom were you working in Minnesota?

"A I was Deputy Sheriff and Game Warden at the time I left.

"Q From whom did you learn there was good timber claims to  
"be had out here?

"A From Pete McGalpin and Billy Flynn.

"Q Who were they?

"A Timber cruisers out here.

"Q You had worked together with them in Minnesota?

"A Yes, sir.

"Q And the duty of a timber cruiser is to measure the amount  
"of timber there is on any given piece of land?

"A Estimate it?

"Q Well, you measure it, too?

"A Once in a while.

"Q How long had you and Pete McGalpin and Billy Flynn worked  
"together?

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"A About nine years.

"Q Did they proceed you out here?

"A Yes, sir.

"Q How long had they been out here?

"A They had come out here the year before.

"Q The year before you came?

"A Yes, sir.

"Q Was there anybody else out here that came from the same  
"place you came from in Minnesota?

"A Yes, sir, a number of people.

"Q Name some of them?

"A John J. Skuse, Spokane.

"Q Can you name any more of them?

"A B. R. Lewis.

"Q Who is he?

"A President of the Lewis Lumber Company.

"Q What relation did Mr. Skuse sustain to the Lewis  
"Lumber Company?

"A I think he was their counsel.

"Q What relation did you sustain to the Lewis Lumber Company?

"Not any.

"Q Did you at any time ever work for the Lewis Lumber Com-  
"pany?

"A No, sir.

"Q Did you ever have any relations with any company in  
"which B. R. Lewis was interested or a stockholder in?

" No, sir.

"Q You knew Mr. Lewis back in Minnesota?

"A Yes sir.



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"Q What was your relations with him back there?

"A I had met him in the woods cruising back there.

"Q You had met him in Minnesota as a cruiser?

"A Yes, sir.

"Q He was a cruiser like yourself?

"A Yes, sir.

"Q Had he written to you about coming out here?

"A Yes, sir, he wrote me several letters.

"Q About coming out here?

"A Yes, sir.

"Q How long had he been out here?

"A About three years.

"Q And was it because of the solicitation of the Lewis letters, the letters that Mr. Lewis had written you, that you came out to this country?

"A Well, it was partially on account of that, and partially on account of the good accounts that he gave of the country since he came out here.

"Q When you first came out here, did you see Mr. Lewis?

"A Yes, sir, I saw him in Spokane.

"Q And before you ever came up into this part of the country at all you had a talk with Mr. Lewis, did you not?

"A yes, sir.

"Q Was Mr. Lewis going to give you a job, any kind of a job?

"A Yes, sir, he had given me work.

"Q At that time?

"A No, not until I came down out of the woods.

"Q When, in August of 1904?

"A No, sir, I went to work for the Coeur D'Alene Lumber Co.

"in August, and I worked for them six weeks, and then Mr.

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"Lewis gave me a job after that.

"Q But before you went up into this country, and went back,  
"did you have an understanding with Mr. Lewis that he was to  
"give you a job?

"A No, sir, nothing was said about it.

"Q Was there anything said about what disposition you would  
"make of any homestead you might settle upon, by you and  
"Lewis?

"A No, sir, I did not know anything about that.

"Q Was there any arrangement made between you and any one  
"with respect to your taking up that homestead and they fi-  
"nancing it through?"

MR. KNIGHT: Leave that out; objection is overruled  
there.

MR. HEITMAN: Do I understand, if your honor please,  
that where an objection is overruled, it is not to be read into  
to the record?

MR. KNIGHT: It would not be any part of this record;  
if I make an objection and the objection is overruled, it  
does not become any part of the record, it does not effect  
the testimony in any way; it is exactly in the same position.

MR. HEITMAN: Well, suppose he wants to save an  
exception?

MR. KNIGHT: We dont save any exceptions.

THE COURT: The record will show the exceptions  
in this trial the same as the record you are reading from.

MR. KNIGHT: Your Honor ruled that we could not  
read the questions to which objections were sustained.  
Now, the same ruling will apply where we make objections



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and they are overruled.

THE COURT: Yes.

MR. HBITMANN: I didnt understand that that was the rule, and the Defendant will object to that rule.

THE COURT: Exception will be allowed.

"A Nothing, only I agreed to give Mr. Bouley \$100.00 for it.

"Q Who was Bouley?

" He was a Frenchman that lived up there for a long time and he knew that part of the country thoroughly.

"Q He was in the business of locating people, was he not?

"A Yes sir.

"Q And you knew by talking with Bouley that at least some people up in that part of the country had some claim upon the best timber claims up there?

"A I did not.

"Q Did you get any money from anybody to buy supplies with to tide you over the summer?

"A Not when I first went in there I didnt.

"Q How soon after did you make any such arrangement?

"A About three or four weeks after I went in there.

"Q Was that arrangement made with Mr. Bouley?

"A No, sir.

"Q Who was it made with?

"A With Clarence Chambers.

"Q And what relation did Mr. Bouley sustain to Clarence Chambers?

"A I dont know.

"Q What relation did Clarence Chambers sustain to the B. R. Lewis lumber company?

" A Not any, that I know of.

"Q Are you certain about that?

"A Yes, sir.

"Q Was Chambers in the lumber business himself?

"A Yes, sir.

"Q In his own name?

"A He was logging for Pat Gibbs.

"Q So you made an arrangement by which you were to get  
"money from Chambers to tide you along through the summer  
on this homestead and to assist you in"  
proving "up on it?"

MR. KNIGHT: No.

MR. HEBITMAN: "Improving up" it is; I guess it  
must mean "proving up on it".

"A No, sir.

"Q Well, what was the arrangement, then?

"A I made arrangements for supplies.

"Q And you made an arrangement in such a way that Clarence  
"Chambers was to take your claim as security, any way?

"A No, sir, when we made the arrangement Mr. Chambers agreed  
"to grub-stake me during that summer, if I would look up all  
"the vacant forties in that town that was not settled on and  
"he would give me half, he wanted them so he could scrip  
"them, and he would give me my grub stake and I was to  
"have a half interest in what I found.

"Q That is, he had some Government paper that he intended  
"to place on the vacant lands?

"A Yes sir.

"Q And you were to find out where it was and have a half  
"interest in it for doing so?

"A Yes, sir, and he was to grub-stake me.



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"Q Did you ever know how any of this scrip was purchased for  
"buying this vacant land with?

" No, sir.

"Q Did you not know that Mr. Chambers made all of his  
"drafts on the B. R. Lewis Lumber Company, and they were all  
"paid by that company in Spokane?

"A No, at the time I started in with him he used to do  
"business with the Exchange National Bank of Coeur D'Alene.

"Q You knew, did you not, that the drafts were drawn  
through the Exchange National Bank on the B. R. Lewis Lumber  
"Company, did you not?

"A I did not know that.

"Q Did you not know that as a fact?

"A No, sir.

"Q Did you ever hear of it?

"A No, sir.

"Q Well, in any event, when you took up this homestead,  
"you were advised that Bouley was settling people upon  
"good claims up in that country, did you not?

"A No, sir, I met Mr. Bouley personally and he told me  
"about it himself.

"Q Where did you meet Mr. Bouley?

"A At Santa.

"Q What were you doing over at Santa?

"A I had met Mr. Chamberlain---

MR. HEITMAN: I guess that is "Mr. Chambers".

MR. KNIGHT: Possibly.

"A (continuing)in Coeur D'Alene and he had some claims  
"that he was going to locate.

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"Q Was that the first time you had ever met Mr. Chambers?

"A Yes, sir.

"Q What did he say to you about being one of the locators?

"A He said that these several claims that he was going to locate that they were in an unsurveyed township.

"Q So really the first idea you got about locating was through Chambers?

"A This was not in that place, it was in another place.

"Q I know, but in locating a claim in this country, the first information that you got in reference to locating a claim was from Clarence Chambers?

"A Yes, sir.

"Q Did you know Bouley?

"A No, sir.

"Q Did any one give you a letter to Mr. Bouley?

"A No, sir."

MR. HEITMAN: Well, the next question and answer I believe an objection was made and sustained.

MR. KNIGHT: You preserved an exception there.

MR. HEITMAN: Yes.

"Q Did you have a letter to Clarence Chambers?

"A No, sir.

Mr. Knight: Objected to as incompetent, irrelevant and immaterial.

"The Court: The objection is sustained.

"Mr. Richardson: Exception.

"The Court: An exception is allowed.

"Q This was in March, that you first met this man Tyler?

"A Yes, sir.

"Q That was the time you went to Santa?



"A Yes, sir.

"Q And that was the time you first met Bouley?

"A I had met Mr. Tyler the first time when I went to Santa,  
"and I started to go out to these first claims to run the  
"lines for him and we got stuck over there and I came back  
"and I met Bouley on my return.

"Q Was Mr. Tyler going out on these claims with you?

"A No, sir.

"Q How did you hapen to meet him?

"A He was at the hotel at Santa.

"Q Was he at that time talking about locating on any of  
"these claims?

"A No, sir.

"Q He was simply stopping at the hotel?

"A No, sir, at home.

"Q But you met him and talked with him at the hotel?

"A Yes, sir.

"Q And di you talk with him about these timber claims?

"A No, sir.

"Q Or about any other timber claims?

"A No, sir.

"Q How did you remember the fact that you met Mr. Tyler at  
"that time?

"A Because I got acquainted with him at that time and he  
"told me he was waiting to go out on the log drive.

"Q Well, there is no particular reason why you should re-  
"member that fact?

"A I remember he went out with a partner of mine.

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"Q How far out from Santa did you meet this man Bouley?

"A I didnt meet him out af Santa; I met him after he came in  
"---after I came back, I mean.

"Q Oh, you went out and got stuck and you came back and met  
"Bouley?

"A Yes, sir.

"Q Was that the first time you had talked with him about  
"settling up in that country?

"A Yes, sir.

"Q The first talk you had with him about it?

"A Yes, sir.

"Q Where was your family at that time?

"A In Duluth.

"Q You hadnt brought them out yet at that time?

"A No, sir, not yet.

"Q How did you come to go to Santa?

"A I went up with Mr. Chambers from Coeur D'Alene.

"Q And how did you come to go to Coeur D'Alene?

"A Why, I came there from Duluth---from Duluth to Spokane,  
"and then over to Coeur D'Alene.

"Q Were you employed by Mr. Chambers when you went with  
"him from Coeur D'Alene to Santa, were you under his pay?

"A No, sir, I was not, he agreed if I would go up there and  
"survey out six claims he had that he would give me my pick  
"of the claims---my pick of his claims.

"Q Where was these claims, in what direction and what dis-  
"tance from the claim you ultimately took up?

"A I never found out; we never got there.

"Q How long did you remain in Santa on the second occas-  
"ion of your being there?



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"A About three weeks altogether, including the time I went  
"out with Mr. Bouley.

"Q What were you do ng those three weeks?

"A I met Mr. Bouley and we went out on the claim in  
"Marble Creek.

"Q You went out in March?

" A Yes, sir.

"Q Was Mr. Bouley organizing any considerable number of  
"people to go in there and take up claims at that time, if so  
"how many? "

MR. KNIGHT: Preserve all that, Mr. Heitman.

"Mr. Knight; I object to that as immaterial.

"The Court: I dont see how that is material.

"Mr. Richardson: I want to show what--

"Mr. Knight: I object to his stating what he wants to show  
"in the presence of the Jury.

"Mr. Richardson: Well, then how am I to tell---I want to  
"show the manner in which they went in there, and the pur-  
"pose for which they went in there.

"The Court: I dont see that it is proper cross examination.

"The objection is sustained.

Mr. Richardson: Allow us an exception.

"The Court: An exception is allowed.

"Q The first time you went into this country, then, was in  
"March?

"A Yes, sir.

"Q Who went in with you?

"A Mr. Bouley.

"Q Any one else?

"A No, sir.

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"Q Did you get acquainted with any one else while you were in there?

"A No, sir, there was no one in there.

"Q How long did you stay in that country at that time?

"A Three days.

"Q Did you go to the claim upon which you afterwards located?

"A Yes, sir.

"Q Did you go to the claim upon which Mr. Bouley was afterwards located?

"A Yes, sir.

"Q So at that time you saw sections seven and eighteen of "Township" 54-----

MR. KNIGHTL Forty-four.

MR. HIBITMAN: (Continues) "Forty-four, north of "range 3, East?

"A No, I only saw a part of section seven at that time.

"Q You found a cabin on that section did you not?

"A Not at that time, no sir.

"Q You didnt find any cabins in that country at all?

"A Not on the quarter section I took.

"Q Did you examine the entire quarter section?

"A I did.

"Q Did you examine it for the purpose of seeing whether "there was a cabin on it or not?

"A Yes, sir.

"Q You afterwards found there was a cabin on it?

"A No, sir, there ~~was~~ never was, only mine.

"Q There never was a cabin on that quarter section but "yours?

"A No, sir.

"Q Well, there was a cabin on the forty that was right next



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"to your quarter section?

"A There were two cabins on the other quarter sections.

"Q There were two cabins on the other quarter sections?

"Yes, sir.

"Q You took the S. W. quarter?

"A No, the south east quarter.

"Q you took the south east quarter of section seven, did you not?

A Yes, sir.

"Q When did you locate upon that quarter?

"Mr. Knight: We object to that as not being proper cross examination.

"The Court: The objection is sustained.

"Mr. Richardson: Note the exception.

"The Court; An exception is allowed.

"Q Where was Mr. Mason's cabin, if you know?

"A On the north east quarter of section seven.

"Q You say you did not go to the north west quarter of section eighteen at all?

"A No, sir.

"Q Well when you went out there, whete did you go?

"A Didnt go anywheres, I came back to Santa.

"Q How long did you remain in Santa at that time?

"A I waited there about five days for my partner to come back off the drive.

"Q Who was your partner?

"A Jack Desmond.

"Q Well, when did he become your partner?

"A Why, in Duluth.

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"Q Oh, he had come out here with you?

"A Yes, sir.

"Q When did you go back on your claim?

"A The first of June.

"Q And how long did you remain in there at that time?

"A Until the 20th of August.

"Q You were not out at all during that time?

"A No, sir.

"Q From the first of June until the 20th of August, is  
"that right?

"A Yes, sir.

"Q Now, were there any other immediate neighbors there, ad-  
"joining your claim, and if so, who were they?

"A There was nobody there; on my first trip; when I went  
"back, the first of June, Mr. Bouley had located Mr. Linds-  
"ley.

"Q Where was Lindsley located?

"A Mr. Lindsley was located on the north east quarter of 7,  
"and Mr. Bouley had the north west quarter of seven, and  
"Mr. Griffith took the south west of seven and Mr. Tyler  
"had taken the north west quarter of,"----

MR. HEITMAN: Of eighteen, I suppose.

THE COURT: Of eighteen.

MR. MCKNIGHT: Of eighteen.

MR. HEITMAN: (Continues) "Northwest quarter of  
"eighteen.

"Q Now, the first four people that you names, built their  
"cabins right close to the section corner---the quarter



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"section corner, didnt they?

"A No, sir.

"Q Wern't all four of your cabins immediately around the  
"quarter section corner, or very near it?

"A No, sir.

"Q One was in the northwest quarter of the section, one in  
"the north east quarter of the section, one in the south  
"west quarter of the section, and one in the south east  
"quarter?

"A Yes, sir.

"Q And how far apart were your cabins?

"A From twenty to thirty rods.

"Q From twenty to thirty rods apart right around the quar-  
"ter section there?

"A Yes, sir.

"Q How far were they from Mason's cabin?

"A About fifty yards.

"Q When did you first discover that Mason's cabin was in  
"there?

"A On my second visit in there.

"Q Before your cabin was built?

"A No, sir, afterward.

"Q And how far was it from your cabin?

"A About fifty rods away, I should have said.

"Q What was there between your cabin and his cabin?

"A Heay timber.

"Q Did you and Griffith, and Tyler, and Bouley, and Lindsley  
"all go in together?

"A No, sir.

"Q How did you go in with respect to time, that is you and  
"the four gentlemen I have mentioned?

"A I dont know when Mr. Griffith and Mr. Lindsley went in,  
"they were in there when I got there the first time; Mr.  
"Tyler went in with me.

"Q Bouley went in with you also?

"A No, sir, Mr. Bouley was already in there; he had lo-  
"cated another man on my claim while I was gone.

"Q You and Tuler went in together?

"A Yes, sir.

"Q And you say that Bouley had located another man on your  
"claim while you were gone?

"A Yes, sir.

"Q Who was he?

"A He was a sone of this man Griffith---young Griffith,  
"they called him.

"Q Now, this was about the first of June?

"A Yes, sir.

"Q How soon was it after the first of June, was it that  
"you learned that the north west quarter of eighteen-forty-  
"four---eighteen--three was claimed by anybody else?

"A About six weeks after.

"Q That was along some time in the fore part of July?

"A Yes, sir.

"Q And had you visited the north west quarter of 18 in the  
"meantime?

"A Yes, sir.

"Q How many times?



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"A I had been across it several times to go to Marble Creek fishing.

"Q There was a trail across it?

"A Yes, sir.

"Q Was that an old trail?

"A Yes, sir.

"Q An old trail was cut out and built by somebody else?

"A It was a trail that went through from the head of navigation to the clear water country.

"Q You say you were not acquainted with Jack Simpkins at that time?

"A No, sir, I saw I saw him shortly after the 4th of July; I found out the next day who he was.

"Q But you were acquainted with Mr. Mason?

"A Well, I had met Mr. Mason and Mr. Russell before that.

"Q When had you met Mr. Mason and Mr. Russell?

"A Why, they came to my cabin along in July and ordered me off the place---at least Mr. Russell did.

"Q Were you acquainted with Mr. Glover?

"A No, sir, I never saw him.

"Q Were you acquainted with Mr. Price.

"A No, sir.

"Q Did Mr. Price live anywhere in that country?

"A He lived about seven miles from there on the Mica Meadows.

"Q Now, have you mentioned all the men and all the women that were living in that vicinity at that time.

"A Yes, sir, I have mentioned all the men and women that were living in that vicinity at that time.

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"Q Very soon after you get there, you found out that there  
"were people who were claiming, whether rightly or wrongly  
"the land that was in that section of the country, did you  
"not?

"A I found out that James A. Russell owned five claims  
"there, and he came and ordered me off."

MR. KNIGHT: Ordered "me off"---

MR. HEITMAN: No, "ordered us off" is all right.

"Q And you found out that there were other people around  
"there besides James A Russell who claimed that they owned  
"those claims in there?

"A No, sir, no one else mentioned it to me.

"Q You knew, did you not, that there were quite a few  
"people who claimed to be settlers there?

"A Yes, sir.

"Q And they referred to the people who came in there and  
"built cabins like you people did, as jumpers?

"A They never told me so.

"Q I know, but you understood that to be the fact?

"A I never heard so.

"Q Did you ever hear that you people who came in there and  
"were building those cabins there, were called "Jumpers"?

"A I heard it shortly before Mr. Tyler disappeared.

"Q When did you first know that there was any interference  
"by you people who Bouley had located in there, with those  
"who claimed to be settlers?

"A When Mr. Russell came to me and ordered me off.

"Q Were you in the habit of going armed at that time?

"A No, sir.

"Q Did Mr. Bouley go armed?

"A Only when he went to Santa.



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"Q Did Mr. Tyler go armed?

"A No, sir, I dont think he ever carried a gun while he  
"was in there.

"Q Did the two Griffiths go armed.

"A Always.

"Q Did Lindsley go armed?

"A Yes, sir.

"Q All the time he was in there?

"A Yes, sir.

"Q As a matter of fact, now, you people, when you got in  
"there, organized a commissary?

" No, sir.

"Q Didnt you have a building where you kept your supplies?

"A No, sir.

"Q You did not?

"A No, sir.

"Q Where did you get your supplies from?

"A part of them from Bloom's store and a part from Mica  
"Meadows.

"Q How did you get them when they were brought in there?

"Mr. Knight: Objected to as not proper cross examination.

" Mr. Richardson: I want to show just what they did in  
"there, that they were all in there together, their method  
"of doing business and all about it, and it also goes to  
"the credibility of the witness.

"The Court: The objection will be sustained.

" Mr. Richardson: The Court will allow us an exception?

"The Court: An exception will be allowed.

"Q You say the first time you saw Simpkins was in the fore

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"part of the month of July?"

"A Yes, sir.

"Q How far was that from your cabin?"

"A About a quarter of a mile.

"Q And who was with him?"

"A Mr. Adams.

"Q Steve Adams, the Defendant here?"

"A Yes, sir.

"Q How do you know it was Mr. Adams?"

"A Because I recognized him when I saw him.

"Q You did not know him as Adams then?"

"A No, it was "Reddy" at that time.

"Q "Reddy" at that time?"

"A Yes, sir.

"Q Where had you heard him called "Reddy"?"

"A Mr. Tyler called him "Reddy".

"Q Then, or theretofore?"

"A No, sir, the next day after I saw him.

"Q You did not know what the man's name was, or whether he  
"had a nick name or not, at that time?"

"A No, sir.

"Q They were walking along the trail, were they?"

"A Yes, sir.

"Q And you met them?"

"A Yes, sir.

"Q Was this a trail that existed there before Tyler had  
"come in there?"

"A Yes, sir.



"Q And they were going from the direction of Simpkins' cabin up past Tyler's cabin?

"A They were going to Mason's cabin.

"Q Now, you say you met them at that time and simply "spoke to them, in the trail?

"A Yes, sir.

"Q There were no threats made toward you at that time?

"A No, sir.

"Q You had no trouble, no difficulty between them and any "one else, so far as you knew?

"A No, sir.

"Q And certainly none with yourself, at that time, as between those two men and yourself?

"A No, sir, not at that time or any time.

"Q And you had a talk with Mr. Tyler about it the next day?

"A Yes, sir.

"Q And Mr. Tyler informed you that one of these men's "names was "Reddy"?

"A He told me one was Simpkins and the other was his "partnebr, " Reddy".

"Q Is that all that was said at that time between you and "Tyler?

"A He said he expected there would be something doing "pretty soon.

"Q And you knew from that there was some trouble?

"A With regard to Mr. Tyler, yes, sir.

WHEREUPON, the Jury was duly admonished by the Court, as required by law, and the officers were duly admonished as required by law, to take charge of the Jury, and the Court took a recess until Two o'clock P. M., Friday, November 8, 1907.

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FRIDAY AFTERNOON, NOVEMBER 8, A. D., 1907.

AFTERNOON SESSION.

At this time, the Defendant, being in Court with his counsel, present as before, the following Proceedings were had herein, to-wit:

THE COURT: Call the Jury?

THEREUPON, the Jury came into Court in charge of the officers, and being duly polled, all answered to their names and the trial of this cause proceeded as follows:

MR. HEITMAN: (Reading) "But you had learned there was trouble in there before that?"

"A No, sir, that was about the first intimation I had about it at that time.

"Q When did you first hear the word "Jumpers" used in connection with the situation in there?

"A When I had the conversation with Mr. Russell.

"Q And when was that, in regard to the time of your meeting Simpkins and Boule?

"E That was a few days before Simpkins and Boule came in.

"Q So you knew then, that you people were regarded by those other people in there as "Jumpers"?

"A Yes sir.

"Q And you knew that you people, yourself, Griffith, Tyler and Lindsley, that that term applied to yourselves?

"A Yes, sir.

"Q And to Tyler also?

"A Yes, sir.

"Q You say after that you saw Adams, or "Reddy" as you called him then, quite frequently?



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"A yes sir.

"Q And how long was he in there? From the first time you saw him until the last time you saw him?

"A I should judge about six weeks.

"Q The first time you saw him was in July---along about  
part  
"the first of July?

"A Yes, sir, along about that time.

"Q It was after the 4th of July, was it not?

"A Yes, sir, I think it was eight the fifth or sixth of  
"July?

"Q Yes, wither the fifth or sixth of July, and the last  
"time you saw him in there was the first week in August,  
"wasn't it?

"A Yes sir.

"Q Do you know what part of that first week in August it  
"was?

"A I do not.

"Q It might have been the first day of August for all you  
"can testify to the contrary?

"A No, it was not over a week before Tyler disappeared.

"Q Well, it was something like a week before Tyler dis-  
"appeared that you last saw Adams in there?

"A Yes, sir.

"Q How are sure of that?

"A Pretty sure.

"Q And you know that Tyler disappeared about the tenth day  
"of August?

"A Yes, sir.

"Q So it was somewhere from the first day to the third or  
"fourth day of August that you last saw Adams in there?

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"A Yes, sir.

"Q Whom you then knew by the name of "Reddy"?

"A Yes, sir.

"Q Well now, it could not have been later than the fifth  
"or sixth, in any event that you saw him around there?

"A No, I think not.

"Q And your best judgment is that it was not later than the  
"third or fourth of August that you saw him around in that  
"locality?

"A Yes, sir, that is my best judgment now.

"Q Now, how many times did you see him between the fifth  
"of July and the fourth day of August, we will say?

"A I could not tell exactly.

"Q Well, give us your best estimate of the number of  
"times.

"A Well, I should say about fifteen or twenty times.

"Q So that in thirty days--- in not more than thirty days  
"you saw him fifteen or twenty times?

"A Yes, sir.

"Q At least as often as every other day, and sometimes  
"oftener than that, I suppose?

"A Some times I did not see him for two or three days and  
"other times I saw him two or three times on the same day.

"Q Now, you had no difficulty with him?

"A No, sir.

"Q No trouble with him?

"A No, sir.

"Q Never talked with him?

"A No, sir.

"Q No trouble or difficulty with him whatever?



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"A Not at all.

"Q In any shape or form. So far as you were personally  
"concerned?

"A No, sir.

"Q He never molested you?

"A Not in the least.

"Q Or disturbed you?

"A No sir.

"Q Or anybody else around there, so far as you your-  
"self ever knew?

"A No, sir.

"Q Or anybody else?

"A Except Mr. Tyler.

"Q Well, you dont personally know anything about any threats  
"he made to Mr. Tyler, other than that shooting episode?

"A No, sir.

"Q Never heard him say a word against Mr. Tyler in your  
"life, have you?

"A No, sir.

"Q Or you never heard him say a word to Mr. Tyler in your  
"life?

"A No, sir.

"Q So that the fifteen or twenty meetings you had with  
"Mr. Adams, were merely casual meetings which left no effect  
"or impression upon your mind?

"A Well, yes, they did leave an effect upon my mind.

"Q Well, so far as in regard to anything he was doing or  
"saying, ~~and that~~ it left no effect upon your mind?

"A Yes, sir, when they were shooting that day he left a  
"vivid effect, and another time when he and Simpkins was

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"going up the trail they had gunny sacks tied on their feet, and I made up my mind that they were sneaking around doing something they had no business to do.

"Q You saw them going up the trail with gunny sacks on their feet?

"A Yes, sir.

"Q And you did not know what they were doing?

"A No, sir.

"Q You didnt follow them to see what they were doing?

"A No, sir.

"q You didnt follow them up?

"A No, sir.

"Q You didnt talk it over with a ybody?

"A I talkedit over with my wife, she saw it.

"Q What time was that?

"A In July, during the time they were building Mr. ~~Stimpkins~~ Mason's cabin.

"Q Do you know whether or not they had been fishing?

A No sir,

"Q Do you know what they had been doing at that time?

"A They were going up towards Mr. Mason's cabin, to help build his cabin, I suppose.

"Q One day in July?

"A Yes, sir. "Q They were going on the trail?

"A Yes, sir.

"Q Right in the trail?

"A Yes, sir, right across my trail.

"Q And you had seen him before several times?

"A Several times, yes sir.

"Q And in fact many times before?

"A yes, sir.

"Q And that was the only time you had ever seen him with



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"Q And that was the only time you had ever seen him with  
"gunny sacks around his feet?

"A Yes, sir--not Mr. Simpkins, I want to correct that;

"Mr. Simpkins wore gunny sacks right along, but that was the  
"first time I had ever seen the gunny sacks on Adams' feet.

"Q And Simpkins was in the habit of wearing them all the  
"time?

"A Yes, sir, right along.

"Q But that day Adams had them on his feet?

"A Yes, sir.

"Q And you dont know whether he was trying to adopt  
"Simpkins' method or not?

"A No, sir.

"Q You didnt hear him say anything about it?

"A No, sir.

"Q Well, that is all there is about it in any event, in  
"any event?

"A Yes, sir.

"Q You simply saw them going towards Mason's cabin with  
"gunny sacks on their feet---

"A yes, sir.

Q ---and you supposed they were going to help Mason build  
"his cabin?

"A Yes, sir.

"Q And on the trail that they would probably have walked in  
"whether they were barefooted or had gum shoes on or not?

"A Yes, sir.

"Q And when you saw them that day, did they attempt to  
"avoid you or get out of your way in any way?

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"A No, sir.

"Q No, not in the slightest way?

"A No, sir.

"Q It was broad daylight?

"A Yes, sir.

"Q And they were going over to help Mason build his cabin?

"A Yes, sir.

"Q Do you know that they did help Mason?

"A Yes, sir, I saw them working there.

"Q Working there quite a number of days helping to build

"Mr. Mason's cabin?

"A Yes, sir.

"Q How many days was that, about.

"A I dont know; several days in July.

"Q Was there anybody else that they helped around there?

"A No, sir.

"Q Well, that was a customary thing, for one settler to  
"help another build his cabin, in return for like services,  
"for that settler to help him?

"A Yes, sir.

"Q There was not much work to do out there except to hold  
"down your claim?

"A Not until we got in there.

"Q Clearing for a cabin was about all the work you had to  
"do there?

"A No, sir.

"Q Well, you didnt care to cut down very ,uch of the timber?

"A No, sir.

"Q The timber was worth more than the land, after it was



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"cut off?

"A No, sir, it was not.

"Q When we speak about building Mason's cabin, you dont  
"mean there was not a cabin there before that that Mason  
"owned?

"A There was a shack there.

"Q And Mr. Mason was building a new and better cabin on  
"his homestead.

"A Yes, sir.

"Q And Mrs. Mason's homestead covered one of the forties  
"which you claimed?

"A I found out afterwards that it did.

"Q And one of the forties that Bouley owned?

"A Yes, sir.

"Q And one of the forties that Griffith claimed?

"A Yes, sir.

"Q And one of the forties that Lindsley claimed?

"A Yes, sir.

"Q And all of which Mr. Mason afterward enjoined you all  
"from interfering with?

"A Yes, sir.

"Q From claiming this quarter?

"A Yes, sir.

"Q But you claimed this quarter?

"A Yes, sir.

"Q And Lindsley claimed this quarter? (Indicating)

"A Yes, sir.

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"Q And Bouley claimed that quarter? (Indicating)

"A Yes sir.

"Q And Griffith claimed this quarter? (Indicating)

"A Yes, sir.

"Q Now, Mr. Mason claimed the four forties, making one hundred and sixty acres, which formed the four quarters that all of you people were claiming?

"A Yes, sir, the four forties right around the cabins-- in the center of which were the cabins.

"Q So all of the claims of you people conflicted with his claim to the extent of forty acres?

"A Yes, sir.

"Q Making one hundred and sixty acres for him?

"A Yes, sir.

"Q And Mr. Mason has finally proved up on those four forties, hasn't he?

"Mr. Knight: Objected to as incompetent, irrelevant and immaterial.

"The Court: The objection will be sustained.

"Mr. Richardson: Allow us an exception.

"The Court: An exception will be allowed.

"Q Now, the next event that attracted your attention was one day when you say some shots were fired over Tyler's cabin?

"A Yes, sir.

"Q Was Simpkins' cabin further in than Tyler's, towards your house?

"A About a half a mile further.



"Q And the trail led near to Mr. Tyler's cabin?

"A Within about a hundred yards.

"Q Mr. Tyler built his cabin off the trail that Mr.  
"Simpkins built?

"A Mr. Simpkins never built any trail there.

"Q How do you know that?

"A Because he had never been there at the time we got there

"Q How did you know?

"A Because Mr. Simpkins told Mr. Tyler.

"Q That is all you know about it?

"A Yes, sir.

"Q As far as you know, you were not there when the trail  
"was cut?

"A No, sir, the trail was cut when I got there, and Mr.  
Simpkins didnt come in until after that.

"Q I understand, but you dont know of your own knowledge  
"who cut that trail?

"A Yes, sir, I do.

"Q From your own knowledge--and the trail was there before  
"you came?

"A Yes, sir, from my own knowledge, I did.

"Q Well, you know of your own knowledge who cut the trail,  
"notwithstanding the fact that the trail was made before  
"you got there--you know of your own knowledge?

"A Yes, sir, I do.

"Q And the trail was cut before you came there?

"A Yes, sir, but I knew who cut it.

"Q All right. Now, this trail as cut, whoever cut it,

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lead from Mr. Simpkins' cabin down past Tyler's cabin and  
"on past your cabin and so on down to Mica Meadows?

"A Yes, sir, clear on down to Mica Meadows and to  
"BuffaloCreek.

"Q Well, I have described it the way the trail ran?

"A Yes, sir.

"Q Now, Mr. Simpkins and Mr. Adams were coming down from  
"Mr. Simpkins' cabin on that trail?

"A Yes sir.

"Q And when they got near to Mr. Tyler's cabin, Mr. Adams  
"stopped and Mr. Simpkins went on by Mr. Tyler's cabin?

"A No, Mr. Adams stoppe d and Mr. Simpkins left the trail  
"and went down to the creek and walked up the creek past  
"Mr. Adam's cabin.

MR. HEITMAN: That is a mistake.

MR. KNIGHT: Tyler's cabin.

MR. HEITMAN: Adams never had a cabin.

MR. HEITMAN: (Continues to read) "Q Now, we  
" will assume that Mr. Simpkins' cabin was at the west end  
"of this table, and that your cabin was over at the east  
"end of the table, then I suppose Mr. Tyler's cabin was  
"somewheres near the middle of the table, was it not?

"A I dont understand that.

"Q If Mr. Simpkins' cabin was over here at the west end  
"of the table, and your cabin was at the east end of the  
"table, where would Tyler's cabin be?"

MR. HEITMAN: Will your Honor allow me to indicate  
this on the table?

THE COURT: Yes sir.



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MR. HEITMAN: This is the west end.

MR. KNIGHT: Is that west?

MR. HEITMAN: East is out (indicating) say back in that direction. We will assume that this is the west end; we will have to assume it that way, we cant turn the table around. Then we will assume that: "Mr. Simpkins' cabin was over here at the west end of the table and your cabin---" (Phillips cabin) "was at the end of the table, where would Mr. Tyler's cabin be?

"A Mr. Tyler's cabin would be a little to the right of the center of the table" A little to the right of the center of the table.

"Q And one hundred yards off the trail?

"A Yes, sir.

"Q Now, they were coming down from Mr. Simpkins' cabin, were they?

"A Yes, sir.

"Q And how far away from Mr. Tyler's cabin was it that Mr. Adams stopped?

"A About one hundred yards.

"Q And where did you say Mr. Simpkins' ~~cabin~~ went?

"A Up the creek, around the clearing.

"Q He did not keep on the trail?

"A No, sir.

"Q He left the trail and went up the creek?

"A Yes, sir.

"Q Do you know what he went up there for, of your own knowledge?

"A No, sir, not of my own knowledge.

"Q You know what was done by him after he got up there?

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"A No, sir.

"Q You didnt hear any one say what he went up there for?

"A I didnt see any one.

Q Did they have any fishing tackle with them?

"A I didnt see any.

"Q They had something to hunt with?

"A They had ~~some~~ a rifle.

"Q Was it customary to hunt in that country?

"A No, sir, it was not; there was no game in the country to  
"hunt.

"Q There was no game there to hunt?

" No, sir.

"Q Were you seen on that occasion by them, to your knowledge

"A, I think not.

"Q And why do you think not?

"A Because I turned away from the trail as soon as I saw thm  
"and went through the woods.

"Q Where were you when you first saw them?

"A About a hundred and fifty yards up the trail towards  
"my cabin.

"Q So you got off the trail and went up to Tyler's cabin,  
"which was one hundred yards off the trail?

"A Yes, sir.

"Q And you are quite sure that neither of them saw you?

"A I dont think they did.

"Q I say, you are quite sure neither of them saw you?

"A I say, I dont think they did.

"Q Yes, you saw them very distinctly?

"A I heard them talking first, and I stood a while on the  
"trail until they passed through an open spot where I could  
"see them, and I saw who they were, and I turned and went  
"over to Tyler's



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"Q You didnt hear what they said?

"A No, sir.

"Q You simply heard a couple of men talking with one  
"another?

"A yes sir,

"Q And while you were in the house, you say you heard  
"these shots fired?

"A I did not say that.

"Q What did you say?

"A I said we heard the shots fired while we were sitting  
"on a log in front of the cabin--we heard ten shots.

"Q That is, six came from one place and four from the  
"other.

"A Yes, sir.

"Q Now, you had seen where the men were located before you  
"went into the cabin?

"A I saw where Mr. Adams was located, and I saw Mr. Simp-  
"kins go up the creek.

"Q Was Mr. Adams standing still all the time, or did you  
"see him ?

"A He was at the head of the clearing.

"Q But you dont know whether he remained at that place  
"or not, except that you heard the shots fired from there?

"A When Mr. Simpkins passed up the creek I did not see  
"Adams; I had told Mr. Tyler when I came in I saw his friend  
"coming down the trail, and when I walked off the trail I  
"saw Adams standing on the trail with his gun in his hand.

"Q Was Mr. Tyler with you?

"A Yes, sir.

"Q Where were you?

"A In the clearing.

"Q Where did you see Mr. Adams?

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"Q Where did you first meet Mr. Tyler?

"A In his cabin.

"Q You had to go up there to see him?

"A Yes, sir.

"Q You didnt go up there together then?

"A I went up to his cabin and he was in the clearing  
"afterwards, he and I.

"Q But you first saw him in the clearing?

"A No, sir, in the cabin.

"Q And he came out of the cabin into the clearing?

"A Yes, sir, he came out when I told him they were coming.

"Q Did you go to the door of the cabin before Tyler  
"knew you were there?

"A Yes, sir, I went into the cabin.

"Q And you told him you had met his friends, that they  
"were coming up the trail?

"A Yes, sir.

"Q And was it about the time the shooting commenced?

"A No, sir, not until after that.

"Q What did you do then?

"A I walked down to the front of the clearing.

"Q How much clearing did he have?

"A Oh, a piece about as long as this room.

"Q And which part of the clearing was the cabin in?

"A The vaok part.

"Q That is to say, the cabin was in this end of the room  
"and you walked across to the other end of it?

"A yes, sir.

"Q What did you do then when you got there?

"A We looked down towards the cabin.

"Q Down towards the cab in?

"A Yes, sir, there was a cabin down on the creek.



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"Q Was that a cabin that Mr. Tyler~~xxxx~~ had put up there?"

MR. HEITMAN: Well, that was ruled out, if Your Honor please.

MR. KNIGHT: No, that question was not ruled out.

MR. HEITMAN: Well, the answer to it was.

MR. KNIGHT: The next question.

MR. HEITMAN: The answer to that was stricken out.

MR. KNIGHT: It refers especially to the last answer. This says so; Mr. Richardson himself says so.

MR. HEITMAN: There is nothing further than that question.

MR. KNIGHT: But I didnt read this answer.

MR. HEITMAN: But that answer was stricken out.

THE COURT: Dont you want to read that to save your exception.

MR. HEITMAN: It was stricken out on our motion.

MR. KNIGHT: (Reads) "Q Down towards the cabin?"

"A Yes sir, there was a cabin down on the creek."

MR. KNIGHT: Now, the next question---

MR. HEITMAN: Well, that was stricken out.

MR. KNIGHT: Let me see that.

WHEREUPON, after showing the disputed passage to the Court, Mr. Knight and Mr. Heitman respectively addressing him in an under-tone, Mr. Knight continued to read as follows:

"Q Did Mr. Simpkins have a cabin that he was living in "at that time?"

"A Yes sir, Mr. Simpkins was living in Jim Nevin's cabin.

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"Q He was not living in this cabin on the creek?

"A No, sir.

"Q Anybody living in it?

"A No, sir.

"Q Was it used for any purpose whatever?

"A No, sir.

"Q How did you know he was living in Jim Nevin's cabin --

"did you know that of your own knowledge?

"A Yes, sir.

"Q Did you know when that cabin was built?

"A Yes, sir.

"Q Do you know who built it?

"A Yes, sir.

#Q And who paid for it?

"A Yes, sir.

"Q How do you know who built it, of your own knowledge

"or did some one tell you about it?

"A I know it, because Nevins had to build another cabin.

"Q I asked you if you knew it of your own knowledge.

"A Well, I dont know what you mean.

"Q The fact of the matter is, that when you went in there

"you found a cabin on that claim, which you afterwards

"found was claimed by Mr. Simpkins, did you not?

"A Yes, sir, the one on the creek.

"Q And you found out Mr. Simpkins afterwards lived in that

"cabin?

"A No, sir.

"Q Was not the Nevine cabin built before you went in there

"at all?



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"A Yes, sir.

"Q Then you afterwards found there was a cabin on that claim, other than the one where Simpkins lived?

"A There was three of them.

"Q And you found that out from some one, and not from any knowledge of your own?

"A Yes, sir.

"Q Did you see Adams standing by this cabin on the creek?

"A Yes, sir.

"Q What was he doing there?

"A Doing nothing--standing there with his rifle in his hand. "Q And there was a perfectly open space from where you were to the place where you saw Adams?

"A From the front of the clearing, yes, sir.

"Q Nothing between you and Adams at that time?

"A Nothing, not when we were in the front clearing.

"Q And Adams could see you just as well as you could see Adams?

"A Yes, sir.

"Q But you did not see Simpkins at that time?

"A No, sir, Mr. Simpkins had already gone up the creek.

"Q Do you know anything what was done there while you were standing in the sight of Adams?

"A No, sir.

"Q Did Adams see you while he was standing here?

"A I could not say that.

"Q There was nothing to prevent him from seeing you?

"A No, sir.

"Q How long did you see him there?

"A We just went and saw if he was there and went back.

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"Q And where did you go?

"A We went back and sat on the log.

"Q So that really Mr. Adams could not see you from where he was standing perfectly plain?

"A No, sir. Not unless we went to the clearing.

"Q You went back and sat on the log?

"A Yes, sir.

"Q And then the shooting commenced?

"A Yes, sir.

"Q How many shots came from where Adams was?

"A Six.

"Q And four from somewhere back of the cabin, in the direction which Mr. Simpkins went?

"A Yes, sir.

"Q And you done know who was up there, other than Simpkins?

"A Nobody but Simpkins.

"Q Well, you did not know that Simpkins was there only except that you had seen him go up in that direction?

"A Yes, sir, I know he hadnt gone over two hundred yards when the shots were fired.

"Q The shots didnt hurt you any?

"A No, sir.

"Q They didnt come very close to you?

"A Well, rather unpleasantly close.

"Q Did you have any idea some one was trying to kill you?

"A No.

"Q There wasnt anybody knew you were there?

"A Yes, sir, Mr. Simpkins knew we were there.

"Q Simpkins knew you were there?

"A Yes, sir.



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"Q How did he know?

"A Because he saw we were there when he passed the front  
"of the cabin.

"Q So at the time Simpkins passed the front of the cabin,  
"you were out there in the clearing?

"A Yes, sir.

"Q Did you say anything to Simpkins?

"A No, sir.

"Q How far were you from him.

"A The length of this room.

"Q And he went in plain sight of you by Tyler's house?

"A Yes, sir.

"Q He didnt make any attempt to conceal himself?

"A No, sir.

"Q In any shape or form?

"A No, sir.

"Q Neither did Adams?

"A No, sir.

"Q And then you heard these shots fired?

"A Yes, sir.

"Q Now, let me ask you, is it not a fact that on this day  
"when you saw these men that you are now describing, that  
"one of them killed a woodchuck on the trail?

"A No, sir, it is not.

"Q And is it not a fact that this woodchuck was hung up  
"at the cabin by the creek that you have spoken of, and it  
"remained there until, later in the day when they came back  
"and skinned it and took it home?

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"A I saw the woodchuck about ten days after that, after  
"the shooting occurred, laying on the bank of the creek  
"there rotten.

"Q You were not there when he killed the woodchuck?

"A No, sir.

"Q You were not present when the shooting of the wood  
"chuck occurred?

"A No, sir.

"Q But you think after that you saw the woodchuck lying  
"on the bank of the creek there, it had never been skinned  
"or taken away?

"A No, sir.

"Q That is the fact in regard to the matter?

"A Yes, sir.

"Q No woodchuck shot that day?

"A No sir.

"Q And no work done at the cabin in regard to skinning a  
"woodchuck?

"A No, sir.

"Q Now, how long after this was the last time you saw  
"Adams in that section of the country?

"A That was the last time I saw him.

"Q That was not later than the third or fourth day of  
"August?

"A It was about that time.

"Q And you dont know whether Adams went out of the country  
"at that time or remained in the country there?

"A No, sir.

"Q But you never did see him again from that time on



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"until you saw him at the preliminary examination here?"

"A Yes, sir.

"Q And so far as you know, up to that time, his name was "Reddy"?"

"A Yes sir."

MR. HEITMAN: Page 252.

"Q You say, Mr. Phillips, the last time you saw Mr. Tyler "was on the occasion of the evening he took supper at your "house?"

"A Yes, sir.

"Q And when did you fix that date, to be, Mr. Phillips?"

"A About the tenth of August.

"Q It was not later than the tenth of August, you think?"

"A No, sir, it was not later than the tenth of August."

MR. WOURMS: In this connection, I should say that the copy furnished us by Mr. Libby, if he is in Court, was corrected according to his notes .

MR. KNIGHT: We dont want any corrections---

MR. WOURMS: If your Honor please, I am stating that this copy was corrected in accordance with his notes and was furnished us.

THE COURT: Mr. Libby is right here.

MR. HEITMAN: Is that your correction, Mr. Libby?

MR. WOURMS: Do you remember at the time you furnished this copy, that you made this correction?

MR. LIBBY: That is right.

MR. HEITMAN: (Resumes reading) "QIt was not later "than the tenth of August, do you think?"

"A No sir, it was not later than the tenth of August.

"Q You think it was not later than the tenth of August?"

"A Well, it may have been a day or so before, but I should

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"fix it as the tenth of August.

"Q But it could not have been possibly more than a day or  
"so before?

"A No, sir.

"Q You know Bouley's death occurred on the 20th?

"A Yes, sir.

"Q That is, you have reason to believe it did, from the  
"shots you heard?

"A Yes, sir.

"Q And that helps to fix your recollection of the time that  
Adams disappeared.

"A Yes, sir.

"Q Which you think was about two weeks before Bouley was  
"killed?

"A Yes, sir.

"Q Along there somewhere?

"A Yes sir.

"Q And you said that Mr. Tyler disappeared about ten days  
"before Bouley's death?

"A yes, sir.

"Q And then if that is true, that it was on the 10th  
"that you last saw Mr. Tyler, the shots that you heard was  
"about on the morning of the eleventh?

"A I think on the morning of the 10th I heard the shots.

"Q You think you heard the shots which you supposed were  
"the shots that killed Tyler, on the morning of the 10th?

"A Yes, sir.

"Q So then, that would have made the date that he took  
"supper with you at your home on the evening of the ninth?

"A Yes, sir.



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"Q Mr. Tyler lived within a mile of your house?

"A No sir, within half a mile.

"Q And Mr. Simpkins lived within a mile?

"A yes, sir.

"Q When Mr. Tyler came to your house that evening, which  
"direction did he come from?

"A He came from the north---he came from Marble Creek.

"Q And is Marble Creek to the north of your house?

"A No, sir, it is east.

"Q Well, how did he come from the north then,---did he  
"come by way of the valley, from the east, or did he come  
" by the trail from the north?

"A He came from the north.

"Q Then your house was a little bit out of the way, out of  
"his way of travel, wasn't it?

"A No sir, it was right on the trail.

"Q Why, he had to go back north of your house to get back  
"on the trail?

"A No, sir.

"Q Well, explain how that is.

"A Why, Marble Creek is to the east of my cabin, and then  
"there is a trail running from Marble Creek a little bit  
"west and north up to the junction of my trail, and past  
"my trail, on to Mica Meadows, that is, there is a junction  
" south of my house.

"Q I see, he came to the junction of your trail with the  
" Mica Meadows trail and came south to your house?

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"A Yes, sir, he came south on our trail.

"Q And he had supper at your house and then went to his own cabin on his own trail, right south of your cabin?

"A Yes, sir.

"Q The trail from the junction to his cabin ran by your cabin?

"A Yes, sir.

"Q And that is the trail he came on the night he ate supper at your house?

"A Yes, sir.

"Q Now, you say the clothing he had on that night was an undershirt--

"A Yes, sir.

"Q Anything peculiar about this undershirt?

"A No, sir, it was ~~unusual~~ what he always wore.

"Q It was an ordinary undershirt such as are generally sold in all stores?

"A Yes, sir, a common light wool undershirt.

"Q Nothing particularly peculiar about it to attract your attention?

"A No, sir.

"Q Except he did not have any overshirt over it?

"A No, sir, he never wore an overshirt.

"Q He never wore an overshirt?

"A No sir, as far as I know, when he was on his claim.

"Q You had only seen him a few times in the winter time, and of course you don't know what he wore then?

"A The only time I saw him in the winter time was at Santa, and he had on a suit of clothes then.



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"Q This undershirt was one garment, and then there was a  
"handkerchief tied around his neck?

"A Yes, sir.

"Q And you say you do not know what kind of a handkerchief  
"that was?

"A No, sir, I dont remember.

"Q You did not notice its color or any peculiarities about  
"it ?

"A No, sir.

"Q So there was nothing peculiar about eh handkerchief, and  
"nothing peculiar about the undershirt, within themselves?

"A No, sir.

"Q Such garments as are ordinarily sold in any store around  
"throughout the country?

"A Yes, sir.

"Q Nothing at all peculiar about either one of these arti-  
"cles? "A I should say not.

"Q And you say he had on a blue pair of overalls?

"A Yes, sir.

"Q Just an ordinary, common pair of overalls that are sold  
"in all the stores?

"A Yes, sir.

"Q Nothing about them that was peculiar, that would make  
"them any diffeent fromany other pair of overalls?

"A No, sir.

"Q Did you notice his shoes particularly?

"A Yes, sir, I had noticed his shoes before that, because  
" he took my measure before for a pair of the same shoes  
"and sent it away to his brother-in-law to have a pair  
"made just like them for me.

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"Q And that is how you came to notice his shoes?

"A yes, sir.

"Q Do you know whether or not he had more than one pair of shoes?

"A He had one pair of shoes.  
only

"Q How do you know that?

"A Because he came in the country with me, and at the time he came in he only had one pair of shoes.

"Q And that is the only way, how you know he only had one pair of shoes?

"A Yes, sir.

"Q You say he said to you that his brother-in-law made that pair of shoes?

"A Yes, sir.

"Q Other than that fact, there was nothing said about these shoes?

"A No, sir.

"Q They looked like any other cruiser's shoe, ordinary cruiser's shoe that is commonly used by men who are engaged in rough and hard work?

"A No, sir, they were not a common shoe at all.

"Q Well, they were commonly an uncommon shoe then?

"A Why, they were a shoe that any one working in the woods, a cruiser, would notice as being an exceptionally good shoe.

"Q What I mean is, there was nothing about the shoe in themselves, unusually remarkable, that you would distinguish from any other shoes of their class?



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"A No, sir, there was nothing remarkable about them.

"Q Of course, a cruiser's shoe is a distinct shoe from the  
"ordinary shoe?

"A Yes, sir.

"Q But there were a good many cruisers, and a great many  
"other people around the country who used that kind of a  
"shoe?

"A Yes, sir.

"Q And it was a common shoe for that country?

"A Yes, sir, it was.

"Q Now, in addition to the articles you have described,  
"there was a black hat?

"A Yes, sir.

"Q Which he wore?

"A Yes, sir.

"Q Nothing peculiar about that--that was an ordinary  
"black hat?

"A Yes, sir.

"Q And it was worn in the ordinary way that people wear  
"hats in this country?

"A Yes, sir.

"Q Only it was pressed down in the top?

"A Yes, sir.

"Q And really, so far as his dress is concerned, there  
"was nothing at all peculiar about it?

"A I dont know that there was.

"Q Now, there was one other garment attached to him---he  
"had a fish bag with him?

"A Yes, sir.

"Q Which was made out of an ordinary gunny sack?

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"A Yes, sir.

"Q And it was made by simply cutting out a couple of holes at the end--I will illustrate--if this bunch of papers here represented the original gunny sack that layed flat, the sack was made by simply cutting out arm holes here, coming down like this, and going back on the other side? (Indicating).

"A Yes, sir."

MR. HEITMAN: I guess the Jury probably will understand.

"Q So that the gunny sack, when finished in that way, you would simply put your arm through the arm holes that you had made, and the other part would hang over your back?

"A Yes, sir. A part of it would go over your shoulders.

"Q And the other part go on your back?

"A Yes, sir.

"Q There was no straps connected with it in any way?

"A No, sir.

"Q And what would be called the strap, would be a part of the gunny sack itself?

"A yes, sir.

"Q Which would have been left after the other part of the gunny sack was cut out?

"A Yes, sir.

"Q Now, these are all the articles he had on him when he came to your place and dined with you that evening, as far as you could observe?

"A yes, sir.

"Q No fish pole?

"A no, sir.



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"Q If he had any fish line you ~~would~~ didnt know it?

"A He had a fly hook.

"Q He had a fly book?

"A Yes, sir.

"Q Where did he carry it?

"A In his pocket.

"Q Did you see it?

"A No, sir.

"Q Then you dont know whether he had one or not?

"A Well, I am mistaken about the fish pole, he had a  
"fish pole on Marble Creek that he generally hid up there,  
"and he only carried the fly book with him.

"Q As far as the fly book is concerned, you dont know  
"whether he had that that day or not?

"A No, sir, but he generally carried a fly book?

"Q You only know what his custom wasin regard to that?

"A yes, sir.

"Q And what a man would ordinarily do with it?

"A Yes, sir.

"Q That would not be left out in the brush?

"A No sir.

"Q But he had no fish pole that you saw?

"A No, sir.

"Q And the only thing he had that you have not described  
"he had some fish in this gunny sack?

"A yes, sir.

"Q That is all you know of?

"A yes, sir.

"Q You did not examine the gunny sack?

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"A Yes, sir, I stood there when he took the fish out of  
"the gunny sack and layed some of them on the table; when  
"he gave us some fish that night he took out some fern  
"leaves and then he took out some fish, and they he layed  
"the fern leaves back again.

"Q Did he take all the fish out?

"A No, sir, just some of the fish?

"Q You said there was something else in the gunny sack?

"A On the bottom of the gunny sack, he had some bark in  
"there---

"Q How could you see the bark on the bottom of the gunny  
Sack ff he had fish and fern leaves on top of it?

"A Well, the bark came up on the side of the sack.

"Q You say, it came up on the side of the sack?

"A yes, sir.

"Q Then you saw the bark on the side of the sack---

"A yes, sir.

"Q---and you dont know whether there was any in the bottom  
"of the sack or not, do you?

"A Yes, sir, the bark was in one piece, it was layed in  
"the bottom of the sack and it extended up on the side---one  
"piece.

"Q What kind of bark was it?

"A Cedar bark.

"Q How long would it take such bark as that to rot?

"A Oh, perhaps one hundred years.

"Q Perhpas one hundred years?

"A Probably, yes, sir.



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"Q About as durable as anything you know of in the shape  
of wood, is cedar bark?

"A Yes, sir.

"Q And that was in the fish bag that night?

"A Yes, sir.

"Q And you saw it?

"A Yes, sir.

"Q And you saw the fern leaves there as well?

"A Yes, sir.

"Q Now, what time of night was it you say he left your  
house?

"A About seven o'clock.

"Q Did he carry away anything from your house that he had  
not brought there with him?

"A Yes sir.

"Q What was it?

"A A Bottle of horse radish.

"Q What was there about the bottle of horse radish to  
distinguish it in any way from the ordinary horseradish  
of commerce?

"A Well, I had never seen horseradish just like that,  
nor put up in that way before.

"Q You had never seen horseradish like that before?

"A No, sir.

"Q Yet, you had seen enough of it so that you bought a  
dozen bottles of it at the time you did by it?

"A Yes, sir.

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" Q There was enough of it so that you bought a dozen  
"bottles of it?

"A Yes, sir.

"Q Did you exhaust the stock?

"A No, sir, there was some there when they blew up my  
"cabin.

"Q Well, did you exhaust the stock when you purchased it?

"A No sir.

"Q You say your cabin was blown up?

"A Yes, sir.

"Q When?

"A About a week after I left there.

"Q When did you leave there?

"A About the 20th of August.

"Q So that about on the 27th of August your cabin was  
"blown up?

"A Yes, sir.

"Q And the horseradish went with the cabin?

"A Yes, sir, and about three hundred dollars worth of  
"provisions.

"Q You say "they" blew up your cabin; do you know who  
"blew up your cabin?

"A The dynamiters.

"Q When you say "they", you mean the settlers in that  
"country?

"A No, sir.

"Q You dont?

"A No sir.

"Q They were the people opposed to having the so-called  
"jumpers" come in there?



Phillips  
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"A We never had any trouble with the settlers.

"Q Well, you had trouble with people who claimed to be  
"settlers in there?

"A I did not, no.

"Q Well, you had your cabin blown up?

"A Yes, sir.

"Q And lost about three hundred dollars worth of stock?

"A yes, sir.

"Q You dont call that trouble.

"A No, sir, I dont, not with the settlers.

"Q Well, whoever it was, it was people who were claiming  
"a prior right to that territory?

"A No, I think it was people who was hired to come in  
"there to do it.

"Q You think so?

"A Yes, sir.

"Q Do you know it?

"A No, sir, I ~~wish I did~~ dont know it, but I think so.

"Q You dont know who blew up your cabin then?

"A No, sir, I wish I did.

"Q You dont know how many blew up your cabin?

"A No, sir.

"Q But you assume it was more than one, because you say,  
"they" blew up your cabin?

"A Yes, sir, because they never traveled alone.

"Q You refer to them as "Dynamiters"?

"A Yes, sir.

"Q You dont know but what there might have been a dozen  
"of them for all you know?

"A Might be.

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D-62

"Q Now, we will go back to this horseradish bottle:

" This was a bottle of horseradish that sat on your table,  
"and was precisely like eleven other bottles of horseradish  
"that you had in your house?

"A Yes, sir.

"Q How many children did you have.

"A Two.

"Q How many of these bottles of horseradish had you eaten?

"A I think about one up to that time.

"Q What was done with the bottle after you had eaten the  
"horseradish out of it?

"A Mr. Griffith took it to carry his grub in.

"Q Was your children generally allowed to play with  
"bottles?

"A No sir.

"Q Did any other people in there have horseradish also?

"A I dont know.

"Q You dont know whether any other people had bought the  
"same kind of horseradish at the same store?

"A I do not.

"Q So then, there was plenty left at the store so other  
"people could have bought it if they liked?

"A I did not ask them.

"Q You dont claim that this was any uncommon brand of  
"horseradish?

"a No, sir.

"Q It was simply uncommon where you had come from?

"a Yes, sir.



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"Q What was the name of it?

"A I dont remember.

"Q But it was a common brand that was used all over the  
"country, you should judge?

"A Yes, sir.

"Q Do you know where it was made?

"A No, sir, I dont.

"Q It might have been a foreign brand of horseradish for  
"all you know to the contrary?

"A Might have been, and it might have been amde up there.

"Q You say when Mr. Tyler left your house that night that  
"you had never seen him from that time to this.

"A No, sir.

"Q And you say the next morning you heard four shots fired.

"A Yes, sir.

"Q What time in the morning was that?

"A Between five and six ~~xxxxxx~~ o'clock.

"Q You knew there was danger from shooting in that coun-  
"try at that time?

"A There had bee a good deal of shooting every morning  
"up until that time.

"Q Well, you knew there was danger of some people being  
"shot by the other people whonwere in there, didnt you?

"A yes, sir.

"Q And you testified you were alaramed for Mt Tyler's  
"safety?

"A yes, sir.

"Q And yet you heard these four shorts the next morning?

"A Yes, sir.

"Q Did you pay any attention to these four shots at all?

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"A Yes sir.

"Q What attention did you pay to them?

"A I asked my wife if she heard them.

"Q Was there any difference in the character of the four  
shots that you heard at that time?

"A No, sir.

"Q Any difference in the noise?

"A No, sir, about the same.

"Q You could not distinguish one shot from the other?

"A No, sir.

"Q But you know there were four shots fired, you are  
absolutely positive about that?

"A Yes, sir, I am certain I heard four shots fired that  
morning. "Q And you talked with your wife about it, and that  
is what fixed it in your memory?

"A Yes, sir.

"Q What time in the morning were those shots fired.

"A Between five and six o'clock.

"Q How far apart were they fired?

"A Probably the four shots were fired in a half minute.

"Q Give your estimate of the time in which they were  
fired to the jury by using your hands.

"A (Indicating slapping his hands four times together)  
About like that.

"Q The four shots were fired in that way?

"A Yes, sir.

"Q The four came very quickly together?

"A Yes, sir.



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"Q And could you tell whether they all came from one gun,  
"or from different guns?

"A They all sounded like they came from the same gun.

"Q They all sounded ~~like they~~ in rapid succession.

"A Yes, sir.

"Q Did you make any investigation that day as to what was  
"done? "A Yes sir.

"Q Were those all the shots you heard that day?

"A Yes, sir, those were all the shots I heard until I  
"heard the shots that killed Mr. Bouley.

"Q You heard no shots then between the tenth, if it was  
"on the tenth, and the twentieth. Is that correct?

"A No, sir, I heard none.

"Q Did you hear any shots on the ninth?

"A Yes, sir.

"Q Where.

"A Down in the same direction.

"Q Did you hear any on the eighth?

"A I think we heard shots every day until the last shots  
"we heard about the tenth.

"Q Are you sure?

"A Yes, sir, until Mr. Bouley was killed.

"Q So the last shots you heard was the shots when Tyler  
"disappeared, until you heard the shots that killed Bouley?

"A Yes, sir.

"Q Were they all in the same direction, in the direction of  
"Simpkins' cabin, or somewhere else?

"A Yes, sir all in that direction.

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"Q How many other people lived in that immediate vicinity  
"there besides Adams and Simpkins?

"A No one in that direction.

"Q No one in that direction, off to the south?

"A No, sir.

"Q How many up in your direction, say within a mile of  
"your place, I suppose you would call a mile in that immed-  
"iate vicinity.

"A Yes, sir.

"Q Now, give us the names of the people who lived within  
"a mile of you there.

"A There was nobody that lived within a mile south of us.

"Q How many people were there in there who were claiming  
"to be settlers there, in that country, without trying to  
"determine whether they really were settlers or not?

"A There was no one in there on the ninth of tenth?

"Q Where were the Griffiths?

"A They were in there, but I am excepting our crowd.

"Q Excepting your crowd.

"A Yes, sir.

"Q Then you people did have a crowd?

"A Yes, sir.

"Q Who were the crowd?

"A Griffith, Lindaley, Bouley, myself and Tyler.

"Q Griffith, Lindaley, Bouley, yourself and Tyler, were  
"your crowd?

"A Yes, sir.

"Q And did they constitute your entire crowd?

"A Yes, sir.



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"Q The Mason's were not there at that time?

"A No, sir.

"Q When had you last seen the Mason's there?

"A About ten days before Tyler disappeared.

"Q About ten days.

"A Yes, sir.

"Q That would be about the first of August, you think they  
"went away.

"A Yes, sir.

"Q Did you see them go away?

"A No, sir, I did not.

"Q Do you know where they went?

"A I do not.

"Q You simply know they were gone?

"A Yes, sir.

"Q How about Glover--was there any man by the name of  
"glover in there?

"A I did not know Mr. Glover.

"Q You did not know Mr. Glover, and you had never seen  
"him at all?

"A No, sir.

"Q The fact of the matter is, Mr. Glover's claim was not in  
"that vicinity at all?

"a His claim was about a mile and a half from us, and we  
"never went down that trail, had no occasion to go over  
"there?

"Q There was no trail to his claim?

"A Yes, sir, there was a trail there, but we never went down  
"there--had no occasion to go down there.

"Q How about Price?

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"A I never knew Mr. Price.

"Q How about Ray Wells--do you know him?

"A Yes, sir.

"Q Where was he?

"A I dont know.

"Q When did you last see him in there?

"A I last saw him in there some time in July.

"Q What time in July?

"A About the last of July.

"Q Do you know of anybody else that had claims in there?

"A Yes, sir.

"Q Who?

"A Old man Russell.

"Q Where was Mr. Russell?

"A I suppose he was down where he always was, at the  
"sorting gap.

"Q Where?

"A At the sorting gap, sorting logs, at the mouth of the  
"St. Joe River.

"Q Did his family live there?

"A No, sir.

"Q Where did they live?

"A They lived in Harrison.

"Q Did he have a boy there?

"A Once in a while he was there.

"Q When did you last see the boy there?

"A The last time I saw him there he was talking to Jack  
"Simpkins down near Ray Wells' cabin.

"Q When was that?

"A Some time in July.

"Q So, at the time you are talking about you had not seen  
"anybody in there for ten days?

"A No, sir.



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"Q You had not seen Simpkins, Adams, Wells, Russell  
"or Griffith?

"A I had not seen any one in there except Simpkins and  
" Adams for a week before Tyler's disappearance.

"Q Well, you said yesterday you had not seen Simpkins  
"or Adams for a week or ten days before Tyler disappeared.

"A I said the last time I saw them was a week before Mr.  
"Tyler disappeared.

"Q Well, you had not seen any one in there for a week  
"before the disappearance of Mr. Tyler, except your own  
"set?

"A No, sir.

"Q There was no friction between Tyler and your people  
"on any subject?

"A No, sir.

"Q All good friends?

"A Yes sir.

"Q You say you made some search for Mr. Tyler afterwards?

"A Yes, sir.

"Q That afternoon?

"A Why, I went down to his cabin to get some butter that  
"he promised to bring over to us and I found he was not at  
"home.

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"Q Were you around over the trails there for a week or so,  
prior to the disappearance of Mr. Tyler?

"A Some yes, sir.

"Q To what extent?

"A I was out once or twice.

"Q Where?

"A I went up to Mr. Russell's to grind my axe.

"Q Did you find Mr. Russell at home?

"A No, sir.

"Q What otherplace did you go to?

"A I came on down past Mr. Mason's.

"Q Did you find Mr. Mason at home?

"A No, sir.

"Q Those were the only places you were at?

"A No, sir; I was down at Eagle Creek once or twice.

"Q Where is Eagle Creek?

"A It was where Mr. Ray Wells's cabin was on.

"Q Who is Mr. Wells?

"A He is the fellow that had a cabin between Tyler  
and mine.

"Q Was Ray wells one of your crowd, or was he opposed to  
your crowd.

"A I don't know whose crowd he was a member of.

"Q Was he a member of your crowd?

"A He was not.

"Q Your crowd consisted of the five people you have men-  
tioned?

"A Yes, sir.

"Q-including yourself?

"A Yes, sir.

"Q What search, if any, did you make that afternoon when you



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"went to Mr. Tyler's cabin?"

"A I did not make any special search, except only going to the cabin and coming back again.

"Q You stayed right on the trail?"

"A Yes, sir.

"Q Going up there and coming back.

"A yes, sir.

"Q You went into the cabin and found it just as you would expect to find any cabin of a man who had slept there over night?"

"A Why, the cabin was just as it always was.

"Q Some dirty dishes stood around there, showing he had eaten.

"A No, the dishes were clean.

"Q On the table?"

"A Yes, sir.

"Q Was the bed made up?"

"A Yes, sir.

"Q Looked as though it had been slept in?"

"A No, sir; it did not.

"Q That is, if it had been slept in it had been made up again?"

"A Yes, sir.

"Q Everything in order?"

"A Yes, sir.

"Q What time of day did you go there?"

"A I went there in the afternoon.

"Q And you had heard these shots between five and six in the morning?"

"A Yes, sir.

"Q They were sufficiently impressive for you and your wife to talk about them?—you called your wife's attention to them?"

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"A Yes, sir.

"Q And you made no attempt to find out what the shots were until in the afternoon you went to Tyler's cabin?

"A No, sir.

"Q You did not go up to see Tyler, because you heard the shooting that morning?

"A No, sir.

"Q That is not what caused you to visit his cabin that afternoon?

"A No, sir.

"Q But you simply went to get some butter?

"A Yes, sir.

"Q Did you see the rest of your crowd that day?

"A I saw Mr. Griffith when he came back.

"Q Did you tell him about the shooting?

"A I did.

"Q When?

"A After I came back from Tyler's cabin.

"Q What did you tell him?

"A I told Mr. Griffith that I had been down to Mr.

Tyler's cabin and he was not at home, and I told him about hearing the shots that morning and I asked him if he had heard them, and he said he had not heard them.

"Q And he had not?

"A No.

"Q What did you next do?

"A Next thing I did, Mr. Griffith and I went down to the cabin.

"Q Did Mr. Griffith go back that night and come back the next day to your cabin?



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"A No, it was at his cabin that we had this conversation.

"Q That is, after you came from Mr. Tyler's cabin, you  
"passed your own and went down to Griffith's?

"A Yes.

"Q What day was that on?

"A I think it was in the morning.

"Q Did you see any change in the cabin?

"A No, sir.

"Q Did you go off the trail?

"A Yes, sir; we hunted around the cabin at that time.

"Q How far around the cabin?

"A I should judge about a quarter of a mile.

"Q That embraced more than the clearing?

"A Yes, sir.

"Q You didn't see anything there that attracted your  
"attention in any way?

"A No, sir.

"Q Did you know the Pineo brothers?

"A I knew one of them.

"Q They had a cabin in there?

"A I don't know.

"Q You don't know whether they did or not?

"A No, sir.

"Q Did you see either of them within a week or ten  
"days prior to the time of the Tyler disappearance?

"A No, sir.

"Q Did you see Elsie Curtiss there?

"A No, sir.

"Q She had a cabin there?

"A I never heard of her.

"Q Elsie Curts, I think it is.

"A I don't know the lady.

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"Q Did you know Mrs. Hinkle?

"A No, sir.

"Q Did you know she had a claim in there?

"A No, sir.

"Q You didn't know that she or her husband had a claim  
"in there?

"A No, sir.

"Q Did you know a Mrs. Kildee?

"A No, sir.

"Q ~~Was~~ You did not know that she had a claim in there?

"A No, sir.

"Q Well, in any event, if these five people I have named  
"had claims in there at that time, you did not know any-  
"thing about them and they did not belong to your crowd?

"A I never ran across them while I was in there.

"Q Was there anything else that you did between the time of  
the Tyler disappearance and the Bouley killing, which you say  
"occurred on the morning of the 20th, toward looking for Mr.  
"Tyler?

"A Yes, sir.

"Q What was it?

"A The day that Mr. Bouley went out to Santa to find out  
"if Mr. Tyler had gone home--Bouley had come home--

"Q Then you must have seen Bouley before he went out, in or-  
"der to know that. When did you first see Bouley after  
"Tyler's disappearance?

"A I saw him the next day.

"Q Did you send for him or did he send for you?

"A No, sir, he came to my cabin.

"Q Did you tell him about the shots you heard?

"A Yes, sir.



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"Q What did he do the next day, when you told him about  
"the shots?

"A He didn't do nothing, he was talking to Ray Wells  
"at the time.

"Q Where?

"A At his own place.

"Q How far from your place?

"A About forty rods.

"Q Were you all in the same clearing?

"A No, sir.

"Q Did you have four different clearings with trees between?

"A Yes, sir.

"Q But the houses were thirty or forty rods apart?

"A Yes, sir.

"Q So when you told Bouley about it there was nothing  
"done on that day?

"A No, sir.

"Q By Bouley, in any event?

"A No, sir.

"Q How about the next day, anything done then?

"A I don't recollect whether we did anything the next day  
"or not; the day Bouley went to Santa we went down to Mr.  
Simpkins's cabin and searched around there for three hours.

"Q And that is the last search you made for Tyler?

"A Yes, sir.

"Q And not finding Tyler there, Bouley went out to Santa  
"to see where he was?

"A Yes, sir.

"Q And then he went to Santa's place, Boul  
"to see where he was?

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"Q How long was Bouley gone?"

"A About three days.

"Q He got back on the 19th, you think?"

"A Yes, sir.

"Q Then he must have went out on the 17th, and he was gone  
"the 18th and got back the evening of the 19th?"

"A Yes, sir.

"Q And did he stay at your house on the night of the 19th?"

"A No, sir; he stayed at his own cabin.

"Q And you saw him when?"

"A The night of the 19th.

"Q Where?"

"A He left his horse at my barn.

"Q Did you make any further search for Tyler at that time,  
"that evening?"

"A No, sir; it was dark when he got in there.

"Q And the morning of the 20th Bouley came to your  
"place and got his horse?"

"A Yes, sir; he was going to Santa to work?"

"Q He had contracted for work, for a job, while there?"

"A Yes, sir.

"Q And you had some talk with Bouley that morning?"

"A Yes, sir.

"Q Had some talk with Bouley himself, did you not?"

"A Yes, sir.

"Q Mr. Bouley told you that morning if the 'Round head'  
"should get him while he was gone that you could bring him back  
"and "plant him on his claim, didn't you?"

"A Yes, sir; those were the last words he told me.

"Q He had been saddling his horse at your cabin and was



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"giving the children a ride on it around there?"

"A Yes, sir.

"Q And the last thing he said, "If I go away and the 'Round heads' get me, bring me back and plant me on my claim?"

"A When Mr. Bouley came in the night before, he told me he met Engstrom on the trail and Engstrom told him that if he ever came over his claim again he would kill him.

"Q Who was Engstrom?"

"A He was president of the 'Jumpers' Killers Association'.

"Q Then there was an association organized there for the purpose of killing jumpers?"

"A Yes, sir.

"Q How many members did that association have, if you know?"

"A I did not know any of them except Ingstrom.

"Q What kind of a head did Ingstrom have?"

"A An ordinary round head.

"Q Was he called 'Round head'?"

"A Yes, sir.

"Q When Bouley told you about the 'Round head' did you know to whom he referred?"

"A Yes, sir, because he told me of this conversation.

"Q And you had Ingstrom called the 'Round head' before, hadn't you?"

THE COURT : That should be heard.

MR. HEITMAN: (Reading resumed)

"Q You had heard Ingstrom called 'The Round head' before, hadn't you?"

"A I don't remember.

"Q Well, you heard some shooting presently, after Bouley left?"

"A About twenty minutes after he left.

"Q And Ingstrom was subsequently arrested for that shooting, was he not?"

MR. HEITMAN: There don't seem to be any answer to that.  
How is that?

THE COURT: Isn't that Mr. Libby's work that you are reading from now. There were two reporters took it. You had better have it all identified.

MR. KNIGHT: There might not have been any answer to the question. That sometimes happens.

MR. HEITMAN: If there is an answer to that in the record I want to put it in, if your Honor please.

MR. KNIGHT: The record will be here this evening.

THE COURT: Supply any omission by the evidence of the stenographer; the notes will be come-at-able before the case is closed, Mr. Heitman.

MR. HEITMAN: Very well. (Resuming reading)

"Q And Ingstrom was subsequently arrested for that shooting, was he not?

"Q And you found something of Ingstrom's in the place of shooting?

"A I think not.

"Q Didn't anybody?

"A No, sir.

"Q Was there not a coat and a blanket found there?

"A There was.

"Q Which they identified as belonging to Ingstrom?

"A They were not.

"Q In any event, you had reason to believe that Ingstrom, the president of the 'Jumpers Killers Association' was laying for Bouley?

"A That was my first impression.

"Q And you got that impression from Bouley himself, did you not?

"A Yes, sir.



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"Q Now, when Bouley went down the trail on his way out  
"of the country, you say in about twenty minutes you heard some  
"shooting?

"A Yes, sir.

"Q Where did the shooting come from?

"A Towards Simpkins's cabin.

"Q In going out of the country, did he go past Simpkins's  
"cabin?

"A Right past his door.

"Q The trail to the south was the trail to Santa?

"A Yes, sir.

"Q Had that trail been cut there at that time?

"A Yes, sir, I cut it through myself.

"Q How long had it been cut through?

"A We had just finished it about three weeks when this  
"happened.

"Q So, during the time, prior to two weeks, which ended on  
"the 20th of August, you were back and forth past Simpkins's  
"cabin pretty nearly every day while you were cutting this trail  
"through?

"A Yes, sir, while we were cutting this trail.

"Q So that accounts for the reason that you saw Simpkins and  
Adams as often as you did, does it not?

"A Yes, sir.

"Q But you had not seen them for a week prior to the  
disappearance of Mr. Tyler and for two weeks prior to the  
"killing of Mr. Bouley?

"A No, sir.

"Q How many shots were fired twenty minutes after Bouley left  
"that morning?

"A I could not say exactly; there must have been at least

"fifty.

"Q At least fifty shots fired ?

"A Yes, sir.

"Q Did they come from one gun?

"A No, sir, they didn't.

"Q You could tell that?

"A Yes.

"Q How?

"A I could tell it by the difference in the sounds.

"Q How many different sounds do you remember, indicating  
"how many different guns?"

"A Well, I should say there were at least three or four  
"different guns.

"Q Three or four different guns?

"A Yes, sir.

"Q That produced that fusillade of fifty or more shots?"

"A Yes, sir.

"Q What was the customary gun that was used in that  
"country, if there was a customary gun?"

"A I think everybody had a gun of their own.

"Q How many bullets do those guns usually carry that are  
"used in that country?"

"A Oh, they differ.

"Q Well, for guns customarily used in that country?"

"A Oh, from twelve to fifteen shots?

"Q That is, one magazine will contain from twelve to  
"fifteen cartridges?"

"A Yes, sir.

"Q And can those cartridges all be fired at one shot,  
"immediately, one after the other?"

"A You have to pump the gun.

"Q These were not guns but acted automatically.

"A There was one gun in this fusillade that worked auto-

"matically.



"Q How can you tell that?

"A Because they fire so much faster than the others.

"Q Signifying what?

"A That it was an automatic gun.

"Q That it was discharged from its own recoil?

"A Yes, sir.

"Q So that the kicking, when discharged, it will recoil and force the other discharge?

"A Yes, sir; if you hold your hand on the trigger.

"Q How long did this fusillade last?

"A The first volley that was fired, probably lasted five minutes.

"Q How many shots were there in that volley.

"A I should say about fifty.

"Q When was the second volley fired?

"A When I was talking to Mr. Lindsley, I heard the other volley; I met Mr. Lindsley in the trail; he was the man that was shot through the arm.

"Q How many shots fired in that fusillade?

"A There were three shots.

"Q Where did you say you met Lindsley?

"A Half way between my cabin and Tyler's cabin.

"Q Did you go up where the shooting was?

"A I did not.

"Q I didn't understand you.

"A The trail that goes to Simpkins's cabin comes down from Tyler's and passes my cabin; and after the shooting Lindsley was shot through the arm and he ran back towards where we were and then we found he was shot and then we took our guns and started towards the shooting; we met him opposite Tyler's cabin.

"Q Was Mr. Lindsley shot through the arm, as a matter of fact?

"A Yes, sir, he was.

"Q That is, he thought he was

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"Q That is, he thought he was?

"A Well, he was.

"Q Did you see the wound?

"A Yes, sir.

"Q How much of a wound was it?

"A It was a flesh wound; the bullet struck him right in  
"here (indicating in the upper arm)

"Q Had Lindsley went out with Bouley?

"A Yes, he went as far as Bouley went and then he came back.

"Q Did he start from your place?

"A Yes, sir.

"Q Did you know about them starting together?

"A Yes, sir.

"Q Lindsley and Bouley started together from your place?

"A Yes, sir.

"Q But only Lindsley got back?

"A yes, sir.

"Q When you met Lindsley, did you continue on, or what did  
"you do?

"A We stopped and looked at his arm to see how badly he was  
"hurt, and when we were looking at his arm we heard the other  
"three shots.

"Q Where did they come from?

"A The same place.

"Q How many different guns were used in firing those  
"three shots?

"A I think it was all the same gun.

"Q When did you first hear of 'The Jumper's Killers  
"Association'?

"A About a week before Tyler disappeared.

"Q And when did you hear of Mr. Ingstrom's being elected  
"president of that association?

"A



"A George Bloom told me.

"Q Where did you hear the meetings were held?

"A At Price, at Mica Meadows.

"Q You heard that meetings were regularly held and the matter of claim jumping discussed?

"A Yes, sir.

"Q Regular meetings of the 'Jumpers' Killers Association'?

"A Yes, sir.

"Q How many people attended those meetings?

"A I never heard.

"Q There was no matter of concealment about it, so far as you know?

"A No, sir, but they didn't invite us.

"Q You didn't expect an invitation. A Hardly.

"Q And did you go out on the 20th?

"A Yes, sir.

"Q Where did you go?

"A I went to Santa.

"Q And you haven't been back in there since?

"A Yes, sir.

"Q Where did you go back?

"A I went back in June, 1905.

"Q How many of you went out at that time?

"A My wife and two children, and Mrs. Griffith, and Lindsley and myself.

"Q All went, did you? "

MR. HEITMAN: I guess "did" has been left out.

(Reading resumed)

"Q All went, did you?

"A Yes, sir.

"Q And that was all there was of your crowd that was left, was it?

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"A Yes, sir.

"Q And you went out on the 20th day of August, 1904?

"A Yes, sir.

"Q And you never went back until June, 1905?

"A June, 1905, yes, sir.

"Q How long did you stay in there in June, 1905?

"A About twenty minutes.

"Q And have you been back since?

"A No, sir.

"RE-DIRECT EXAMINATION."

THE COURT: Had you not better have Mr. Libby called?

MR. KNIGHT: This was all identified, all of Volume 3.

MR. HEITMAN: While we are on that, you might ask Mr. Libby about that answer that is omitted.

MR. KNIGHT: I am perfectly willing.

THE COURT: You can read all that has been identified.

MR. KNIGHT: This has all been identified and introduced.

MR. HEITMAN: We are reading from our copies.

MR. KNIGHT: (Reading)

"Q You say that Mr. Lindsley came to your place on the same morning that Bouley left your cabin, on the morning of the 20th of August?

"A Yes, sir.

"Q What time did Mr. Lindsley arrive at your cabin?

"A They came together.

"Q About what time in the morning did they leave your cabin?

"A A little before 8 o'clock.

"Q And you say then within about twenty minutes you heard the fusillade of shooting?

"A Yes, sir.



"Q In regard to his trail, you say you cut near  
Simpkins's cabin, I did not exactly understand when you cut that  
trail?

"A It was in the latter part of July that we cut the trail;  
we cut it from this trail that went down past my cabin, and Ray Wells  
and Simpkins's and went on through to Buffalo Creek. We went  
south on that trail about a mile, and then we cut a trail right  
across there, crossing the country to the Theriault trail,  
then we cut from Theriault's trail to Mica Meadows.

"Q Who assisted you in cutting this trail?

"A Mr. Bouley, Mr. Lindsley and Mr. Jessup.

"Q And it was during the time you were cutting those differ-  
ent trails that you met Simpkins and Adams?

"A Yes, sir; we met them several times while we were  
cutting the trails. "

MR. HEITMAN: That is ruled out, Mr. Knight; you  
withdrew it rather.

MR. KNIGHT: (Reading resumed)

"Q Do you know where Mr. Adams lived when he was up there?

"A I never saw him anywheres only at Simpkins's place.

"Q When was it that Mr. Tyler agreed with you, or took  
your measurements to have his brother-in-law make you a pair  
of shoes?

"A Some time during July.

MR. HEITMAN: The next is ruled out.

MR. KNIGHT: (Reading resumed)

"Q Well, what occurred at the time you gave that order?

"A Nothing of any importance occurred, only Mr. Tyler took  
my measure and sent it out to his brother-in-law to have a pair  
of shoes made for me.

"Q What kind of shoes were they to be?

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"A Exactly the same as his own.

"Q Now, had you seen any <sup>other</sup> ~~of the~~ shoes in that district  
"of that pattern?"

"A No, sir; I have not.

"Q Referring to this cabin on Eagle Creek, near Tyler's  
"cabin, how far was that cabin from Mr. Tyler's?"

"A About 100 yards.

"Q When was that built, if you know?"

"A In the spring of 1904.

"Q Prior to the time that Mr. Tyler built his cabin?"

"A Yes, sir.

"Q Do you know who built that cabin?"

"A Yes, sir.

"Q Who?"

"A Ray Wells and his sister.

"Q You say about a week prior to the disappearance of  
"Mr. Tyler that you saw Mr. Simpkins and Mr. Adams coming down the  
trail near Tyler's cabin, and that you said to Tyler: 'There comes  
\*\* your friends, or something of that kind. Why did you refer  
"to them as friends?"

"Mr. Richardson: I object to that, what his motive was."

MR. HEITMAN: That was ruled out.

MR. KNIGHT: There was an exception taken.

MR. HEITMAN: The objection was sustained, though.

MR. KNIGHT: No, the objection was overruled.

MR. HEITMAN: Go on a little further, Mr. Knight.

Go on over to page 286; read on a little further and you will  
see.

MR. KNIGHT: There was no ruling of the Court on  
that. The Court said the objection would be sustained upon any-  
thing Mr. Tyler told him. Then there followed another question.



MR. HEITMAN: Now go on to the next question,  
Mr. Knight.

MR. KNIGHT: All right. Then you will not pre-  
serve your exception in that way.

MR. HEITMAN: Of course we will.

MR. KNIGHT: It is not here. You have not allowed  
it to go into the record.

MR. MILLER: We will not preserve it if the answer  
is not given.

MR. KNIGHT: No answer was given in the transcript in  
the former testimony. It does not make a bit of difference to me  
only if you want it you can have it.

MR. HEITMAN: Then let us put it in.

MR. KNIGHT: Very well; let's put it in.

(Reading resumed).

"Q You say about a week prior to the disappearance of  
"Mr. Tyler, that you saw Mr. Simpkins and Mr. Adams coming  
down the trail near Tyler's cabin, and that you said to Tyler:  
'There comes your friends', or something of that kind. Why did you  
"refer to them as friends?"

"Mr. Richardson: I object to that, what his motive was.

"The Court: The objection is overruled.

"Mr. Richardson: Exception.

"The Court: An exception will be allowed.

"A Mr. Tyler had told me-- "

MR. HEITMAN: Then your Honor sustained the objection  
as to anything Tyler had told him?

THE COURT: Yes, sir.

MR. KNIGHT: There was no further answer.

(Reading resumed)

"Q You say at that time that you turned off from the trail;  
"which way did you turn?"

"A I turned to the right and went to Mr. Tyler's cabin.

"Q How did you come to turn off the trail at that time?

"A I did not want them to see me.

"Q And you say Simpkins went on up the creek at that time?

"A Yes, sir.

"Q You stated also that you knew what he went up there for?

"A Yes, sir. "

MR. MILLER: The next is stricken.

"RE-CROSS-EXAMINATION. "

MR. HEITMAN: (Reading):

By Mr. Richardson:

"Q You cut that trail out to Santa for the purpose of  
avoiding going by Price's at Mica Meadows?

"A No, sir.

"Q Why did you cut it out?

"A Because it shortened the distance two miles, and it  
saved us the trouble of going over Huckleberry Mountain.

"Q It didn't have anything to do with Price's at all?

"A No, sir.

"Q Your crowd was not very well liked at Mica Meadows?

"Mr. Knight: Objected to as incompetent, immaterial  
and irrelevant.

"The Court: The objection will be sustained.

"Mr. Richardson: Exception.

"The Court: An exception will be allowed.

"Q How did these shoes of Tyler's, a pair like the ones which  
you ordered, differ from any other shoe of that same class used  
by cruisers?

"A I never saw any other shoes just like them.

"Q Well, tell us how they differed, if you please?

"A They were a shoe about eighteen inches high; they came  
up to about here (indicating on his lower leg), and they had a



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"very wide welt on the bottom, half an inch wider than any  
"shoe I ever had seen, and they were hand sewed all the way  
"around.

"Q And you never saw a shoe like that before?

"A No, sir.

"Q Is it not a fact you can go down on the streets of this  
"city and see just that kind of shoe here displayed in the  
"windows of the stores?

"A I never saw any like that.

"Q You never did?

"A No, sir, I never.

"Q So that these shoes that you are describing as being the  
"shoes which belonged to Tyler were shoes that came about  
"half way to the knees?

"A Yes, sir.

"Q And had a very wide welt on them? At least half an inch  
"wide?

"A Yes, sir, about that.

"Q You mean by that that the soles extended beyond the  
"sides of the shoe about half an inch?

"A Yes, sir.

"Q And that those shoes were hand sewed shoes?

"A Yes, sir.

"Q How often had you seen them?

"A I saw them every time I saw Tyler.

"Q How closely did you observe them?

"A As closely as I am my own shoes now.

"Q You had them in your hand?

"A No, he had his feet in them.

"Q Well, did he hold them up so you could get a good,  
"close examination of them?

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"A No, sir; I just looked at them as I am looking at my own now

"Q Anything said about them being hand sewed?

"A Yes, sir.

"Q Your attention was particularly called to that?

"A Yes, sir.

"Q And you wanted a pair like this particular pair of shoes,  
"because you thought they were a little better than any you had  
"ever seen?

"A Yes, sir.

"Q Did Tyler say anything about his having been measured for  
"that pair of shoes?

"A No, sir.

"Q Or give you the history of them in any way?

"A No, sir.

"Q Excepting they had been made by his brother-in-law?

"A Yes, sir. "

Thereupon, at 3:43 o'clock P. M. Friday,  
November 8, 1907, the jury was duly admonished by the Court, as  
required by law, and officers were duly sworn to take charge of  
the jury and it retired in their charge, and court took a recess  
until 3:55 o'clock P. M. Friday, November 8, 1907.



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Court convened pursuant to adjournment, all parties being present, including the Defendant, with his Counsel. Thereupon the Jury was duly polled and all responded to their names, and the trial of this cause proceeded as follows:

MR. KNIGHT: Further direct examination of Mr. Phillips, page 314.

MR. WOUIMS: Wasn't this to be read into the record just as it <sup>occurred</sup> ~~appeared~~ at the time of the trial.

MR. KNIGHT: We can only read the testimony of one witness at a time.

MR. WOUIMS: I supposed it was to be introduced in the same order it was introduced in the trial.

MR. KNIGHT: I think the State should be permitted to say how it should be introduced.

MR. WOUIMS: In the other trial Mrs. Phillips testified before Mr. Phillips was recalled, and as I understand it, this testimony is to be conducted in the same order, with the exception that anything that is ruled out shall remain out, and we will ask at this time that the order be followed.

THE COURT: Objection overruled.

Defendant excepts and exception allowed.

MR. KNIGHT: (Reading) "Q Mr. Phillips, did you have some corrections you wished to make in your testimony given this morning?"

MR. WOUIMS: What page is that?

MR. KNIGHT: Page 314.

MR. KNIGHT: (Continues reading) "A Yes sir.

"Q What were they?

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"A I want to make a correction in regard to the shoes.

"Q In what way, Mr. Phillips?

"A The shoes that I ordered at the time that Mr. Tyler took my measure, was a sewed shoe with an eighteen inch top; the shoe that Mr. Tyler was then wearing was a pegged shoe, it was not a sewed shoe; Mr. Tyler told me at that time that a pegged shoe was better for driving, because the pegs would last longer than the stitches."

MR. WOURMS: If your Honor please, there was an objection at that place.

MR. KNIGHT: Yes, objection sustained.

MR. KNIGHT: (Resumes reading) "Mr. Richardson: "I object to that, what Mr. Tyler said at the time.

"The Court: The objection will be sustained."

THE COURT: That answer will be stricken and stricken from the consideration of the Jury.

MR. HEITMAN: I wish you would be a little more careful and not read those in.

MR. KNIGHT: I assure you I am as careful as I can be. If I didn't have such an extremely careful Counsel watching me--I am inclined to depend upon him.

THE COURT: Well, the Jury are instructed that that answer is not to be considered.

MR. KNIGHT: (Continues reading) "Q And is there any other correction you desire to make about the style of shoe that Mr. Tyler wore at that time?

"A The shoe with an eighteen inch top was a sewed shoe, was the shoe I ordered myself; that was not the Tyler shoe.

"Q What was the Tyler shoe?

"A The Tyler shoe was a pegged shoe with a top not quite



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"as high as the one I ordered.

"Mr. Knight: That is all."

"CROSS EXAMINATION"

MR. HEITMAN: (Reading) "Cross Examination. By

"Mr. Richardson.

"Q This morning you said it was an eighteen inch top shoe.

"A That was the one I ordered.

"Q I think you said this morning that the shoe Mr. Tyler

"wore was an eighteen inch top shoe?

"A If I did, I was mistaken.

"Q Well, did you not say that this morning?

"A May be I did; if I did I was mistaken.

"Q You said it had a wide sole?

"A Yes sir.

"Q And that you distinctly observed it was a sewed shoe,--

"that is what you said this morning?

"A I dont think I said that.

"Q You dont think you said it was a sewed shoe that he

"had on?

"A No.

"Q Then what did you come back to correct your testimony

"for?

"A I dont think I said I distinctly observed it was a  
"sewed shoe, but I said it was a shoe with a wide sole.

"Q Yet, you have come back here to correct that very same  
"testimony?

"A Yes sir.

"Q And that is because you had talked with some one during

"the noon hour?

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"A ~~IN~~ I went up and I told Mr. Knight what I wanted to do,  
"yes sir.

"Q Have you talked with anybody else but Mr. Knight about it?

"A No sir.

"Q And the reason of it is because you were told by the man  
"who made the shoes, who has testified on the stand here, that  
"it was a pegged shoe?

"A No sir, I was not informed by any one anything about it.

"Q What time did you go to Mr. Knight's office?

"A Right after lunch.

"Q Where did you have your lunch?

"A I had my lunch at Moore's Restaurant.

"Q Was it because some one told you during the lunch  
"hour that you had described a pair of shoes that Mr. Tyler  
"did not wear at all?

"A No sir, I had no conversation about it whatever.

"Q When did this thing first strike you that you had made  
"a mistake with respect to your testimony?

"A After I got out of the court room.

"Q Was it while your wife was on the stand?

"A I dont know; I was not here.

"Q Were you talking with anybody about your testimony?

"A No sir.

"Q You went off the stand about eleven o'clock this  
"morning/, didnt you?

"A I think so.

"A I went down to the cigar store.

"Q Whose cigar store?

"A The drug store.



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"Q Did you talk with anybody there?

"A No sir.

"Q Where did you go after you left the cigar store?

"A Up to my room in the Ryan.

"Q You talk with any one there?

"A No sir.

"Q You said absolutely nothing to any one with respect to  
"this matter?

"A Not a word.

"Q And yet, while you were eating your lunch, this noon,  
"it occurred to you that you had better come and see Mr.

"Knight about correcting your testimony with respect  
"to those shoes, the style of the shoe he wore?

"A Yes sir.

MR. KNIGHT: Let's see about that.

MR. HEITMAN: Yes, we will see about that. We  
want to save our ~~objection~~ exception; the objection  
was sustained.

MR. KNIGHT: There was no exception at that time.

MR. WOURMS: It is the same thing all the way through

MR. MILLER: We will take one.

MR. KNIGHT: You can't take an exception now.

MR. WOURMS: It is the same argument.

MR. KNIGHT: The same argument, but there was no  
exception in any part of the argument; couple of objections  
but no exception.

MR. HEITMAN: There was an objection--your Honor  
sustained the objection and then there was an argument,  
and there was no exception taken at the time.

THE COURT: Yes.

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MR. MILLER: That probably would be disclosed by the reporter's notes.

MR. KNIGHT: Provided there is anything in the reporter's notes.

MR. HEITMAN: Cant we take an exception now?

MR. KNIGHT: No, you can't take an exception.

The Court--

MR. HEITMAN: I am not asking you; I am asking the Court. You would be a chump if you didn't object.

MR. KNIGHT: The proposition is this: They didnt take an exception at the time; the witness is not here now and the testimony should be read as it appears here now. They certainly are not entitled to an exception. However, we will be satisfied with the ruling of the Court and we will concede the exception.

THE COURT: We will allow you to make your record and try to except.

HEITMAN:  
MR. ~~KNIGHT~~: (Resu,es reading) "Q I meant to ask "you this morning--"

MR. KNIGHT: I object to this going before the Jury because there was no exception taken at the time and the Court sustained an objection to that answer at that time.

MR. HEITMAN: The Court would have allowed an exception. I think if the original notes are presented you will find that an exception was taken. Mr. Richardson would not have allowed that to have passed.

MR. MILLER: It is a rule, in the reading of a deposition, when no objections or exceptions were taken at



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the time of the taking of the deposition, that they can be made at the time the deposition is read, regardless of any stipulations.

THE COURT: They can, as to competency.

MR. MILLER: Anything.

THE COURT: No, I think not.

MR. MILLER: What does this go to, competency or materiality?

THE COURT: This goes to competency, and improper cross examination.

MR. KNIGHT: My objection is to the reading of that into the record before the Jury.

THE COURT: I will allow this to be read. You can have an exception; I don't think it will hurt anything.

MR. KNIGHT: I don't think it will either.

THE COURT: Proceed with the reading and we will let the record stand as it is. Proceed with the reading.

MR. BRITMAN: (Continues reading) "I meant to ask you this morning when you were talking about Mr. Boule, as to whether or not Mr. Bouley was served with any writ or process of injunction that morning when he started away?"  
"Mr. Knight: I object to that as not proper cross examination."

"The Court: I will sustain the objection."

"Mr. Richardson: Will your Honor be kind enough to hear me?"

"The Court: Certainly, if you desire to be heard."

"Mr. Richardson: When this witness was on the stand before, he went very elaborately into what was said by Mr. Bouley

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"on the morning when he started away--and what he said;  
"and it is one of the circumstances which may or may not  
"have occurred-- I am not certain about it-- nobody seems  
"to be certain about it, but I want to find out, there being  
"some information coming to us from that source as to what  
"happened at that time, and I simply want to find out what  
"did occur at that time.

"The Court: I still sustain the objection."

MR. HEITMAN: Now the Defendant objects.

MR. KNIGHT: To that former ruling of the Court?

MR. HEITMAN: Yes, to that former ruling of the  
Court.

MR. HEITMAN: I suppose the Court allows the  
exception?

MR. KNIGHT: Can't help itself.

THE COURT: Yes.

MR. HEITMAN: (Continues reading)

"Q Did you ever see a sign posted up in that country having  
"a notice with reference to the 'jumpers'?"

"A Yes sir.

" Q Where was that?

"A It was posted on the trail.

"Q What trail?

"A Our new trail.

"Q The Santa trail?

"A Yes sir.

"Q The one which you had cut?

"A Yes sir.

"Q Whereabouts on that Santa trail was that notice posted?"



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"A About half a mile beyond Simpkin's cabin.

"Q When did you first see it?

"A On one of the days we were down there looking for  
"Tyler.

"Q That was after Tyler's disappearance?

"A Yes sir.

"Q And before you left your homestead on the 20th?

"A Yes sir.

"Q Did you preserve that notice?

"A Yes sir.

"Q That it down?

"A Yes sir.

"Q Have you got it now?

"A I have not.

"Q What became of it?

"A I delivered it to Sheriff Manley.

"Q Of Shoshone County?

"A Yes sir.

"Q Have you ever seen it since?

"A No sir, I have never.

"Q What was on that notice?

"A I dont recollect.

"Q You dont recollect what it contained?

"A No sir.

"Q You testified at the preliminary examination of Fred  
"Ingstrom, did you not?

"A I think I did, but I am not positive.

"Q Let's see if I can <sup>not</sup> refresh your recollection with regard  
"to that: I call your attention to what purports to be  
"your testimony taken upon the preliminary hearing of

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"Fred Ingstrom, and I would ask you to read at the top of  
"page 12 and any other part of it you desire to read, and  
"then I will ask you a question.

"(The witness reads the testimony handed him by the  
"Counsel.)

"Mr. Knight: We would like to examine that before you  
"question him.

"Mr. Richardson: Very well, you may do so

"A (After referring to the testimony shown him) Yes sir, I  
"recollect that now.

"Q Now that your recollection has been refreshed, what was  
"on that sign or notice that you saw posted on the trail--  
"you can have this, if you like to use exact language.

"A I I dont know how I can use the exact language without  
"that. It said: 'To the notorious Jumpers of Marble Creek.'

"Q You are telling what the notice said?

"A Yes sir, and it said something about being 'At the end of  
"our rope and we would see all kinds of trouble.'

"Q And it was indicted, 'To the notorious Jumpers of Marble  
"Creek'?

"A Yes sir.

"Q Was there anything besides words upon it?

"A I believe there was a skull and cross bones upon it,  
"but I am not certain.

"Q Did you give that notice to Sheriff Mailey?

"A Yes sir.

"Mr. Richardson: That is all. //



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MR. KNIGHT: (Reading)

RE-DIRECT EXAMINATION

"By Mr. Knight:

"Q Mr. Phillips, I did not understand what date it was  
"you saw that notice posted--can you fix a date?

"A The date that we saw it?

"Q Yes sir.

"A It was on the 22d of August.

"Q Was there a date upon the notice, do you remember?

"A Yes sir.

"Q What was the date upon the notice?

"A August 10th.

"Q ~~What~~ And the year?

"A 1904."

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MR. KNIGHT: I now proceed with the reading of the testimony of Mrs. Nellie R. Phillips. (Reading)

"Q By Mr. Knight: State your name please?

"A Mrs. Nellie R. Phillips.

"Q Where do you reside, Mrs. Phillips?

"A About three miles and a half from Coeur d'Alene on the lake.

"Q What is your occupation?

"A Housekeeper, I guess.

"Q Are you a relative of Mr. Archie Phillips?

"A Yes, sir.

"Q What relationship do you bear to him?

"A I am his wife.

"Q How long have you been married?

"A Why, thirteen years.

"Q Where did you reside during the summer of 1904?

"A In the Marble Creek district.

"Q Shoshone County?

"A Yes, sir.

"Q What family have you?

"A Have four children, two boys and two girls.

"Q What family did you have at the time you resided on Marble Creek?

"A Three, two boys and a girl.

"Q What was the ages of the children at that time?

"A My oldest was nine years old.

"Q Boy or girl?

"A Boy.

"Q What was his name?

"A Percy. The next one was eight, and the next one five.

"Q Was the child that was eight years old girl or boy?



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"A Boy.

"Q The next was a girl?

"A Girl.

"Q When did you go into the Marble Creek country, Mrs.

"Phillips?

"A In June.

"Q How long did you remain there?

"A About two months and a half.

"Q Do you know when you came away from there?

"A We came away from there on the 20th of August.

"Q Did you know Fred Tyler in his life time?

"A I did.

"Q When did you first get acquainted with Fred Tyler?

"A Why the first day I went in there, the 11th of June.

"Q Where was he then?

"A He was at Lindsley's cabin.

"Q Did you see him frequently after that time?

"A Quite frequently.

"Q Did he live near there?

"A Why he lived near there.

"Q About how far from your place?

"A Oh probably half a mile.

"Q Frequently at your place?

"A Yes.

"Q Did you know Steve Adams?

"A Why not personally, no.

"Q Referring to the defendant, the gentleman sitting here

"(indicating) I will ask you whether or not you have ever  
seen him before?

"A I have.

"Q When?

"A When I was living on the claim.

1904?

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"Q During the summer of 1904?

"A Yes, sir.

"Q Do you remember what he was called by, or known as?

"By what name?

"A Yes, have heard him called "Reddy".

"Q When did you first see "Reddy"?

"A I think about the middle of July.

"Q Where was he?

"A On the trail.

"Q Any one else with him?

"A M r. Simpkins was with him.

"Q Jack Simpkins?

"A Yes, sir.

"Q What were they doing?

"A They were walking up the trail.

"Q Did you see him after that time?

"A Yes, sir.

"Q How often?

"A Oh possibly three or four times.

"Q Where did you see him at the different times

"you saw him?

"A Always on the trail.

"Q Was he alone at any time you saw him?

"A No sir.

"Q Who was with him?

"A Simpkins was always with him when I saw him.

"Q When did you last see Fred Tyler?

"A The night before he was missing.

"Q Do you remember what date that was, Mrs. Phillips?

"A It was about the 10th of August.

"Q About what time of that day did you see him?

"A In the evening.



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"Q Where?

"A At our house.

"Q When did he come there?

"A About 5 or half past in the evening.

"Q Where did he come from if you know?

"A He came from fishing.

"Q Where had he been fishing?

"A In Marble Creek.

"Q How was he dressed when he came there?

"A He had overalls on and boots---

"Q What color were the overalls if you know?

"A They were blue.

"Q Blue overalls?

"A Yes, sir.

"Q How else was he dressed?

"A An undershirt; had no overshirt on.

"Q What kind of undershirt did he wear?

"A Why some light wool.

"Q What other clothing did he have on?

"A He had a handkerchief tied on his neck, that I remember of.

"Q What kind of a handkerchief was it?

"A It was a blue handkerchief, quite dark.

"Q Tied around his neck you say?

"A Yes.

"Q Do you know how he had usually been dressed when you saw him?

"A He was usually dressed that way when I had seen him.

"Q What kind of a hat do you say he had?

"A Why he had a black hat, soft hat.

"Q Black, soft hat---what else did he have with him

"if anything?

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"A He had a sack of fish.

"Q What kind of fish if you know?

"A Trout.

"Q How was he carrying these fish?

"A He had them in a gunny sack, with holes to slip over  
his shoulders.

"Q Carried the gunny sack over his shoulders, did he?

"A Yes, he carried the gunny sack over his shoulders.

"Q How long did he remain at your place?

"A Why until aftersupper, about seven or half past.

"Q Did he take supper with you?

"A Yes.

"Q What did you have for supper?

"A Why we had beans and fish.

"Q Did you have any bread?

"A Why I guess we had some bread.

"Q Where did you get the fish you had for supper?

"A Mr. Tyler gave them to us when he came.

"Q Fish he had caught that day, was it?

"A Yes.

"Q Did you have any relish for supper?

"A Why yes we had.

"Q What?

"A We had some horse-radish.

"Q Horse-radish on the fish, did you?

"A Why---

"Q Ate horse-radish on the fish?

"A I suppose we ate horse-radish, I don't know whether on  
the fish or alone.

"Q You say Mr. Tyler remained there about two hours?

"A Yes.



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"Q While he was there did you see him take those fish out  
" f the sack he gave you?

"A Yes.

"Q What was in that sack, if you know?

"A Why, the fish, with some ferns and leaves, that is, grass.

"Q Anything else you saw?

"A Why, yes, he had his bait box.

"Q What kind of a bait box did he have?

"A Why, it was a tobacco box, he always used as a ba it box.

"Q What kind of a tobacco box?

"A Why, it was a curved out--- "

Mr. Heitman: And that was ruled out by the Court.

MR. KNIGHT: Well, not the answer to that question  
wasn't.

Mr. Knight(continues reading:)

"Q I hand you State's Exhibit No.12, and ask you  
whether you identify that as being the same box."

(Mr. Knight exhibits to the jury Defendant's Exhibit 9.)

"A It is just exactly the same kind of a box.

"Q It was just exactly that kind of a box?

"A Yes, sir."

MR. HEITMAN: Hold on a minute; I don't think that ought  
to be read to the jury.

THE COURT:" Objection overruled.

Mr. Knight(continues reading. )

"Q How many fish did he leave with you?

"A Why, about four or five pounds.

"Q Do you know about how many fish he had that do?

"A He might have had fifteen pounds.

"Q Do you remember what kind of a day it was?

"A Why, yes, I remember.

"Q What kind of a day was it?

Mrs. Phillips  
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"A It was a kind of a cloudy day and sunny day too; it was  
"cloudy in the morning, came off nice towards noon.

"Q How do you recollect the kind of a day it was?

"A Why he remarked when he came with the fish that he had  
"better luck fishing on a day of that kind than otherwise.

"Q Do you remember what kind of shoes Mr. Tyler had on  
"that day?

"A No, I didn't notice particularly. They were cruiser's  
"shoes, ~~ixthink~~black.

"Q He left there about seven o'clock, somewhere along  
"that time?

"A Yes, sir; about seven, might have been a little later.

"Q What did he carry away with him, if anything,  
different from what he brought there?

"A Nothing but the horse-radish that I remember about.

"Q Horse-radish?

"A I gave him that bottle of horse-radish.

"Q What bottle?

"A The bottle that was on the table.

"Q How much horse-radish was there in that bottle?

"A Might have been half full or a little more.

"Q What kind of a bottle?

"A It was a glassbottle. The glass was cut around the bottom  
with a glass top on it with a clamp.

"Q You mean the glass top was held on by a clamp?

"A Yes, sir.

"Q You say it was cut around the bottom. Do you mean  
"regular cut glass?

"A It was an imitation of cut glass; don't know as it  
"was really cut glass.

"Q I will show you State's Exhibit No. 11, and ask you whether  
"you recognize that?



Mrs. Phillips  
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"A I do.

"Q Was it that kind of a bottle?

"A Yes, sir.

"Q Was this part the cut you refer to?

"A Yes, this is the cut I referred to. I didn't know  
whether it was out or in.

"Q Did you ever see that bottle after that time until now?

"A No, sir; I never did.

"Q This is the first time you have seen it since?

"A Yes, sir.

"Q Do you know how he carried that bottle away?

"A Why, yes; he put it in the sack with the fish.

"Q Did you see him put it in ~~the sack~~ there?

"A Yes, sir.

"Q Did you ever see Fred Tyler after that time?

"A No, I did not.

"Q What kind of a looking fellow was Fred Tyler?

"A Why he was a medium size man. Why, he might have been  
blonde, light brown hair.

"Q What color were his eyes?

"A They were light.

"Q How large a man was he?

"A Well, I don't know. I'm not much of a judge of weight.

"He was a medium size man. "

MR. KNIGHT: Since that ruling of the Court, the  
Court has ruled differently; subsequently it was admitted  
in evidence.

MR. KNIGHT: (Continues reading)

"Q You had seen Fred Tyler quite frequently during that  
summer, hadn't you?

"A Yes. "

Mrs. Phillips  
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MR. HEITMAN: We want to save that exception.

MR. KNIGHT: (Continues reading)

" (Counsel gets photograph, State's Exhibit "A" but does  
"not at this time show it to the witness)

"Q You had seen Fred Tyler quite frequently during that  
"summer, hadn't you?

"A Yes.

"Mr. Darrow: That has already been identified.

"Mr. Knight: Does that exclude its competency, the fact  
"that it has been identified?

"Mr. Darrow: Not at all, it doesnot help it either.  
"I object to further identification because it has been  
"identified.

"Mr. Knight: I would ask counsel to wait until there  
"is some proposition before the Court.

"The Court: He has asked nothing yet, Mr. Darrow.

"Mr. Darrow: Well, it is pretty evident.

"Q I hand you photograph marked State's Exhibit "A" for iden  
"tification and ask you whether you recognize that?

"Mr. Darrow: I was right in my surmise. I object to  
"this by-play.

"Mr. Knight: I think counsel is exceeding the limits of  
"propriety in calling this by-play.

"Mr. Darrow: I think counsel is exceeding the limits of  
"propriety by producing that photograph, after it has been o  
"nce identified and excluded; nothing has happened since  
"to make it competent.

"The Court: I overrule the objection.

"Defendant excepts. Allowed.

"Q Do you recognize that photograph, Mrs. Phillips?

"A I do.

"Q Who is that



Mrs. Phillips  
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"Q Who is that?

"Mr. Darrow: Well, now, wait a minute, I object.

"It is incompetent. What is there in this case to make  
"that photograph competent, is it to identify him by the skull  
"photograph is not in colors, does not show the color of the  
"hair; does not identify any clothing worn by the deceased s  
"since he came to this country; if it shows that he had wavy  
"hair or curly hair, the photograph of any curly-haired man  
"would do as well; it is incompetent and irrelevant.

"Overruled. Defendant excepts. Allowed.

"Q You say you recognize that?

"A I do.

"Q Who is it?

"A Fred Tyler.

"Q Did he look like that when you last saw him?

"A Yes, he did.

"Mr. Darrow: Did he look like his photograph.

"I object.

"The Court: Objection overruled.

"Mr. Darrow: I will not take an exception to that,  
"your Honor.

Said photograph, State's Exhibit "A" was received  
"in evidence and shown to the jury.

"Q You say you never saw Fred Tyler after he left that  
"evening?

"A No, sir.

"Q How long did you remain in that district, Mrs. Phillips?

"A Until the 20th of August.

"Q Was there anything that occurred the next morning after he  
"departed from your place that in any way excited your attene  
"tion?

Mrs. Phillips  
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"A Why, yes, we heard some shots in the morning that---

"Q About what time?

"A Why, it was between five and six.

"Q How long did you remain there?

"A Until the 20th of August.

"Q How did you come to go out at that time?

"A Why, Bouley was killed that morning, and we thought

"it was time to go out.

"Q You left on the 20th of August, did you?

"A Yes, sir.

"Q Went to Santa on that day?

"A We got as far as we could on that day.

"Q At any rate you never saw Fred Tyler again?

"A No, sir.

" CROSS-EXAMINATION "

MR. HEITMAN: (Reading):

"By Mr. Richardson: "Q At the time you saw  
"Simpkins and Adams they were both walking on the trail,

"were they not?

"A Yes.

"Q The trail was made to walk on?

"A It was, I expect.

"Q That was the regular place to walk?

"A Yes, sir.

"Q It was difficult to make any progress walking in this  
"country unless you did have a trail?

"A Yes.

"Q They were going along the trail minding their own  
"business?

"A Yes, sir.



"Q They didn't interfere with you in any way?

"A No, not in the least.

"Q Nor say anything to you?

"A No, sir.

"Q Not giving you any remarks in any way?

"A No, sir.

"Q You saw them two or three times on the trail

"during July 1904?

"A Yes, sir.

"Q You say three times would be the limit you saw them during  
" that month?

"A I didn't say it was the limit. I said three or four times

"Q Would that four times be the limit you saw them during the  
"month?

"A Yes, I suppose it would.

"Q You might have seen them four times, and it was possi-  
"ble you saw them but two?

"A No, it is not possible, for I saw them four times.

"Q Well, did you see them four times?

"A Yes, sir.

"Q You state the first time you saw them was on the  
"trail?

"A Yes, sir.

"Q Where the second time?

"A They were always on the trail.

"Q Whereabouts on the trail were they?

"A Whereabouts?

"Q Yes. Were they always in the same place?

"A Not always, no.

"Q Mr. Simpkins lived in a cabin about a mile from your  
"house and the trail went past out to Santa.

Mrs. Phillips  
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"A Yes, sir.

"Q Sometimes he came down past your place, didn't he?

"A Yes, sir.

"Q When he did so, you were generally home?

"A Yes, sir.

"Q Or in the vicinity of your home?

"A Yes, sir.

"Q And he was going along by your house?

"A Yes, sir.

"Q Minding his own business?

"A Yes, sir.

"Q And Mr. Adams answers to the man you call 'Reddy'?

"A Yes, sir.

"Q Where did you learn this man was called 'Reddy'? Did you hear your husband call him that?

"A Yes, sir.

"Q Did you hear anybody else call him that?

"A Some neighbors.

"Q Neighbors, consisting of four, and some of them were families, and some not families?

"A No, sir.

"Q Bouley was not a family?

"A No, sir.

"Q Tyler was not a family?

"A No, sir.

"Q Griffith didn't have any family in there, did he?

"A Yes, sir.

"Q Father, son and mother?

"A Yes, sir.

"Q Father, son and mother, that made the family?

"A Yes, sir.



Mrs. Phillips  
F 13

"Q How about Lindsley, did he have a family there?

"A No, sir.

"Q So, as a matter of fact, there were but two families  
"in there, of course your own family and the Griffiths;  
"is that right?

"A Yes, sir.

"Q How far apart were those four times you say you saw  
"them on the trail?

"A Why, I should think between the middle of July and  
"possibly the 8th of August.

"Q Between the 8th of August. Did you keep any track of  
"the dates, Mrs. Phillips?

"A No, sir; I did not.

"Q You don't know whether it was 8th of August or the 10th,  
"or the 4th, or the 3d of August?

"A I know Tyler was missing the 10th of August, or  
"somewheres about that date.

"Q And you do know you hadn't seen Adams or Simpkins there  
"for some considerable time before Tyler came to your house?

"A I hadn't seen them for about a week.

"Q So that if you last saw Tyler on the 9th of August, he  
"was missing after that supper?

"A Yes, sir.

"Q And if the disappearance occurred on the morning of the  
"10th, then you last saw him on the evening of the 9th?

"A Yes, sir.

"Q And if the disappearance occurred on the morning of the  
"11th, then you last saw him on the 10th, after that  
"supper?

"A Yes, sir.

"Q So that you personally hadn't seen either Simpkins or Adams  
"presuming that to be the date Tyler disappeared, later

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"than the 3rd or 4th of August, had you?"

"Q Well, I am not sure; It might have been somewhere  
"then.

"Q As a matter of fact, they may have gone out of  
"that country for all you know as early as the latter part  
"of July or the 1st day of August?"

"A Well, I don't think it was the latter part of July  
or the 1st day of August.

"Q Well, there was not anything that made one day any  
"particularly different from another as far as Adams  
"and Simpkins were concerned, to you, I mean; you didn't  
"pay any attention to their comings and goings?"

"A Why, no.

"Q You simply remember that when Tyler disappeared, you  
"hadn't seen Simpkins or Adams for either ~~nixthan~~ a few  
"days or it must have been about a week before that,  
"since you last saw them; now up to the time Tyler  
"disappeared there was nothing whatever that impressed that  
"fact upon your mind, was there?"

"A Why, no, not that I know of.

"Q Neither Simpkins nor Adams were of any concern to you?"

"A No, sir; not at all.

"Q Nor any of their employments?"

"A No, sir.

"Q And as far as Tyler is concerned it is true too,  
"that it didn't make any difference between one day and  
"another?"

"A Yes, sir.

"Q Dates were not a matter of much importance up there at  
"that time?"

"A No, sir.



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"A No, sir.

"Q But afterwards you made a note of the time that Tyler  
"disappeared?

"A Yes, sir.

"Q Was there any difference in the way which you saw these  
"people on the trail in the four days you say you saw them?  
"Were they always doing the same thing, simply walking  
"on the trail?

"A Why, yes.

"Q It was the custom for people to go around in that  
"country?

"A Some people did and some didn't.

"Q Was there any particular distinction about that?  
armed  
Sometimes some people went armed, and at other times the  
"same people did not?

"A No, I never saw the same people unarmed; always saw  
"them armed.

"Q You never saw the same people unarmed; always saw them  
"armed? Same people you saw unarmed, you always saw them  
"unarmed, did you?

"A As a usual thing, yes, sir.

"Q Was there anything peculiar about those boots Mr. Tyler  
"had on the night he came to your house?

"A No, nothing that I know of, only they had been worn  
"quite a bit.

"Q Did you notice that they were cruiser's boots, in com-  
"tradistinction to any other boots?

"A I noticed that they were cruiser's boots.

"Q It is pretty necessary to wear cruiser's boots  
"there, is it not?

"A I guess so.

"Q The kind of boots worn in this court room would not

"last long there?"

"A No, sir.

"Q All the men wear cruiser's boots?"

"A I don't know about that.

"Q You didn't pay enough attention to that so that you  
"can answer?"

"A I never took any notice of them whatever.

"Q Now you say he had a handkerchief around his neck,

"what was the color of that handkerchief?"

"A It was a blue handkerchief with dots.----

"Q Was it a blue handkerchief with white dots or a white  
"handkerchief with blue dots?"

"A It was a blue handkerchief with white polka dots.

"Q Was it not usual to wear a handkerchief on the neck there?"

"A No I guess not. My Tyler was the only one that wore one.

"Q That you know he was the only one that wore one about his  
"neck you don't mean to say?"

"A No, si r.

"Q That it was uncommon to be used for that purpose?"

"A Yes, sir.

"Q Your husband was a timber man?"

"A Yes, sir.

"Q You were familiar with the way timbermen dress?"

"A yes, sir.

"Q They were a familiar sight to you for many years?"

"A Yes, sir.

"Q Is it not a fact that a large proportion of them wear  
"handkerchiefs knotted about their neck?"

"A I don't know.

"Q I say a large proportion of them.

"Mr. Knight: Object to that as immaterial.

"The Court: The objection is overruled. It is



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"testing the recollection of the witness.

"A I never paid any particular attention to any other  
"cruiser but Mr. Phillips, and he didn't wear any hand-  
"kerchief around his neck.

"Q So he was the only other cruiser you ever paid any  
"particular attention to?

"A Yes, sir.

"Q And because Mr. Phillips didn't you took notice of the  
"fact that Tyler did wear one around his neck?

"A I didn't know Tyler was a cruiser.

"Q Although he had on cruiser's boots?

"A Although he had on cruiser's boots.

"Q Did you ever notice other men around in the timber,  
"or any men out of the timber, or men working on timber,  
"lumber jacks, I think they call them?

"A That's what they call them, yes, sir.

"Q Now, do lumber jacks wear handkerchiefs about  
"their necks?

"A Sometimes, probably, I don't know.

"Q Now this undershirt that he had on, was there anything  
"peculiar about it?

"A No, not that I know of.

"Q It was an ordinary undershirt?

"A Yes, sir.

"Q You had seen lumbermen in many places before  
"without their ~~undershirts~~ outside shirt on in the  
"summer time?

"A Yes, sir.

"Q Who went without their outside shirt on in the  
"summer time?

"A Yes, sir.

"Q So there was nothing about that to attract your

Mrs Phillips  
F 18

"attention. The hat was a common ordinary hat?

"A Looked to be.

"Q And you would not know the difference between that hat

"and half of the hats in this room?

"A Why, no, I presume not.

"Q I am speaking of course of men's hats. I suppose you

"would of course notice the ladies' hats.

"A It was an ordinary black hat.

"Q You could not tell how high the crown was?

"A No, sir.

"Q Nor how high the brim was? "

MR. KNIGHT: How "wide" the brim was.



Mrs. Phillips  
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MR. HEITMAN: (Reading resumes):

"A I do know he had the crown run in around the top.

"Q That's the way most men wear their hats, Is it not?

"A I dont Know.

"Q You noticed this. How does this particular cruiser  
"you were interested in wear his hat?

"A He does not wear any hat.

"Q This gunny sack had no leather straps so you could hold  
"it over the shoulder?

" A No sir.

"Q You are quite positive about that?

"A Yes sir, I am quite sure of it.

"Q The gunny sack was cut out so that he could wear it  
"over his shoulder?

"A Yes sir.

"Q It was a gunny sack laid down on the ground and cut  
"Out was it? It was all gunny sack?

"A I dont know whether it was laid down on the ground  
"or not, but it was cut out.

"Q Well, laid on the table then and cut out?

"A Yes sir.

"Q There was no outside strap on this gunny sack?

"A I didnt see it.

"Q Tyler didnt have anything of that kind there?

"A I didnt see it.

"Q This horseradish bottle, I suppose this is similar to  
"horseradish you had had since you were married?

"A I suppose so.

"Q No different from ordinary horseradish?

Mrs Phillips

G-2

"A Not particularly. I had had different, though.

"Q In a different kind of bottle?

"A Yes sir.

"Q What kind of horseradish was this?

"A Well, this was the prepared.

"Q Prepared horseradish, ground up?

"A Yes sir.

"Q Ready to eat?

"A Yes sir.

"Q You had got a dozen bottles of that, hadn't you?

"A Yes sir.

"Q Had them in your house at that time?

"A Yes.

"Q How many bottles had you eaten?

"A I do not know.

"Q Were those bottles labeled; they had a label on them?

"A I expect they had at one time.

"Q Did this one have a label on it at the time you had supper?

"A I don't remember.

"Q Did this one have a label on it?

"A I don't remember that.

"Q You do remember the shape of the bottle?

"A Yes sir.

"Q Have you read your husband's testimony taken at the preliminary examination?

"A No sir.

"Q At any time?

"A No.

"Q Have you talked with him about this bottle?

"A Yes sir, I talked with him about the bottle.



Mrs Phillips

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"Q Several times, I suppose?

"A Yes sir, several times.

"Q You remember it was the kind of bottle you had upon  
"that occasion?

"A Yes sir.

"Q Did you have any independent recollection in regard to  
"this horseradish bottle prior to the time this alleged  
"discovery was made, the alleged bones of Tyler?

"A Yes sir.

"Q You had talked about it several times, had you?

"A Yes sir.

"Q Why had you talked about this horseradish bottle prior  
"to the time Tyler's bones were said to have been dis-  
"covered?

"A Why had we?

"Q Yes.

"A I dont know as we had talked about it prior to that  
"time.

"Q I thought you said you had talked about it prior to  
"the time Tyler's bones were discovered.

"Mr. Knight: Object to that.

"The Court: I think she said they talked about it.

"A Well, I made a mistake.

"Q Now, the giving Mr. Tyler a bottle of horseradish that  
"night was nothing in particular, was it, to you?

"A No sir, not particular.

"Q There was nothing about giving him a bottle of horse-  
"radish that would impress you particular?

"A No, only I thought it was funny for him to ask for a  
"bottle of horseradish.

Mrs. Phillips  
G-4

"Q Now, you neighbors there in the woods very often  
"furnish one another with such things?

"A Yes sir.

"Q If Tyler had a little better butter than yourselves  
"and you wanted some of it, you didnt think anything of  
"going up to his house and getting it?

"A No sir.

"Q Or if you had sugar and he wanted a little sugar, he  
"would come after it?

"A Yes sir.

"Q And this was true of all the people if they belonged  
"in your ang?

"A Whether they did or not.

"Q That is customary with people who live away from the  
"stores?

"A Yes.

"Q So there was nothing remarkable about his asking for  
"a bottle of horseradish?

"A No, nothing more than what I said.

"Q So you didnt talk about that any until after those bombs  
"were discovered?

"A Well, not after that evening.

"Q When you didnt see Tyler, when he didnt show up after  
"that, you didnt remember the bottle of horseradish?

"A Why, I probably remembered it.

"Q You dont remember whether you did remember it or not?

"A No.

"Q Where did you buy this bottle of horseradish?

"A I dont know.



Mrs. Phillips  
G-5

"Q You say Tyler came there that night with about fifteen  
pounds of fish he brought in?

"A Yes sir.

"Q How many fish did he have, how many in number?

"A I didnt count them.

"Q How did you estimate the number of pounds; what did  
you base it on?

"A Upon the number he gave us.

"Q He gave you about how many?

"A About four pounds.

"Q Did you weigh those four pounds?

"A No.

"Q Then you guess at the whole thing, dont you?

"A Way, yes.

"Q Can't you guess at the number of fish just as well;

I want to see how the fish run, up in that country.

"A I couldnt make a guess.

"Q You can guess the number of pounds; have you any idea  
of the number of fish?

"A No sir, I think not.

"Q Have you any remembrance as to how many of those fish  
you took for supper that night?

"A No .

"Q Did you ever weigh any fish?

"A Oh, I have, yes.

"Q Bought them at the store where they were weighed?

"A Yes sir.

"Q That is, you supposed you were getting weight?

"A Yes.

"Q But never weighed them after you got home to see  
whether you did have it or not?

Mrs. Phillips  
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"Q So really you haven't got much idea about the weight of  
"the fish he had?

"A I have my own judgement.

"Q Did you talk with anybody about the number of pounds  
"of fish?

"A No.

"Q Did you ever hear Mr. Phillips say he had about fifteen  
"pounds of fish?

"A Yes.

"Q You took his judgment of the weight of the fish?

"A I think he has good judgment.

"Q You took his judgment, whether he had or not?

"A I think he has good judgment, yes sir.

"Q He judged first, and then you very quickly afterwards?  
"Did you ever have any of these bottles of horseradish any  
"other place where you lived?

"A Not exactly like that?

"Q Very much like that?

"A Not very much like it.

"Q Very much different from that?

"A Quite a bit, yet.

"Q How different?

"A The horseradish we had before that was in the powder  
"form, that is, in dry form.

"Q This was a wet form, was it?

"A Yes.

"Q Was it in the same kind of a bottle, or about the same kind  
"of a bottle?

"A No, it was not in that same bottle; it was a tall,  
"straight bottle.



Mrs. Phillips  
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"Q Had you ever eaten horseradish prepared before?

"A Yes sir.

"Q Had you ever eaten any horseradish that was out of a  
"bottle like this?

"A Why, yes.

"Q Not an uncommon bottle for horseradish to be in, I  
"suppose?

"A No, sir, it was not, I suppose.

"Q You say Mr. Tyler had light brown hair?

"A Yes sir.

"Q Almost a blonde, as you say?

"A I didnt say almost a blonde.

"Q You did say he was inclined to be a blonde?

"A Yes sir.

"Q Now, I can not illustrate hair by my own or by the  
"reporters, but how about these Jurors, this Juror that  
"sits here, was it lighter than that?

"A Yes sir.

"Q Lighter than the hair of the Juror that sits in chair  
"number six?

"A Y s.

"Q And lighter than any hair of any Juror on this panel?

"A I think so.

"Q How is it?

"A I think it was lighter.

"Q So light that you would say he was almost a blond?

"A Yes.

"Q Very well. How many times had you seen Mr. Tyler?

"A I didnt keep track of him.

"Q He went in with you, didnt he?

Mrs. Phillips  
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"A No, he didnt go in with me.

"Q I mean with your crowd, of course. Didnt he go in at  
"the time you went in?

"A No sir, he did not.

"Q Was he in there when you went in?

"A Yes.

"Q Mr. Tyler was a single man, and used to get you to  
"bake a loaf of bread for him once in a while?

"A I dont remember that.

"Q Didnt he come down to your house for bread?

"A Yes.

"Q You had occasion to see him prett frequently?

"A Yes.

"Q He was a good friend of Mr. Phillips?

"A Yes sir.

"Q He would stop and talk with him when he went by?

"A Yes sir.

"Q So you could not be deceived in his personal appearance?

"A No sir.

"Q His eyes were blue, and hair was so brown that it  
"was almost blonde?

"A Yes.

-----RE-DIRECT EXAMINATION

MR. KNIGHT: (Reading)

"By Mr. Knight: Q You dont mean to say that the hair of  
"Mr. Tyler was lighter than that of the second Juror on the  
"back row?

"A I dont think it was.

"Q At any rate, if you did say so, you didnt mean it?

"A No.



Mrs. Phillips  
G-9

"Q Now, in your memory, would Mr. Tyler's hair compare  
with that of Mr. Phillips'?"

"A I think about the same color.

"Q You think about the same color?"

"A They were about the same complexion.

"Q You had seen them together frequently?"

"A Yes sir.

"Q You think their complexions were about the same?"

"A Yes sir.

"Q What color do you call your hair?"

"A I call my hair dark brown.

"Q What color would you call mine?"

"A I would say yours was dark brown.

"Q What color would you characterize that of Counsel?"

"A Why--

"Mr. Richardson: That is the advantage of not having  
"any."

MR. HULTMAN: She was not recalled, I believe.

MR. KNIGHT: No. That completes the testimony of  
these witnesses. We will want to examine further  
tomorrow morning Mr. Wing and Mr. Libby upon this proposition  
and we presume your Honor is ready to adjourn for to-day.

WHEREUPON the Jury was duly admonished by the Court,  
as required by law, and officers were duly sworn to take  
charge of the Jury, and it retired in their charge, and Court  
adjourned until Saturday November 9, 1907 at 10:00 o'clock  
A. M.





Libby-D  
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DIRECT EXAMINATION

BY MR. KNIGHT:

Q Mr. Libby, you were the official stenographer of this Court at the former trial of the Adams' case, were you?

A Yes, sir.

Q Have you examined the testimony of Mrs. Nellie R. Phillips during the night?

A Yes, sir.

Q Are there any changes in that to be made to conform absolutely to your official notes?

A Yes, sir; some minor changes. On page 301 the question appears in the Transcript "between the 8th of August".

MR. HEITMAN: That was the way it was read to the Jury; that is the way it was in my copy.

THE WITNESS: Now, the question reads, as to the last part of that answer, "Possibly the 8th of August", according to my notes.

MR. HEITMAN: I said it was read that way to the Jury.

THE WITNESS: The answer reads "Why, I should think between the middle of July and possibly the 8th of August".

MR. HEITMAN: Q Then the question does use the word "between"?

A yes, sir; that word "possibly" should be "between", in the question.

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MR. HEITMAN: Q "Possibly" in the question.

A Yes, sir; instead of "between". Now, on page 303 the question was, "Was there any particular distinction about that? Sometimes some people went on"---now, that should be armed.

MR. HEITMAN: I read it that way.

MR. KNIGHT: Mr. Heitman read it that way.

THE WITNESS: On page 313, there is one word to be added; that was left out, I presume. The question in the Transcript reads "Q His eyes were blue, and hair was so brown that it was almost blonde." The word "light" should be put in there.

MR. MCBEE: Read the whole sentence.

A (Reading) "His eyes were blue and his hair was so light brown that it was almost blonde? A Yes."

MR. HEITMAN: Q That referred to Fred Tyler?

A Yes, that is Mr. Richardson's question. The word "light" was left out in transcribing.

MR. KNIGHT: Q Is that the question or answer?

A In the question.

MR. DARROW: Q What is the answer?

A "Yes."

MR. KNIGHT: Q With those corrections, is it correct?

A With those corrections that is a true transcript of my notes of Mrs. Phillips' testimony.

WITNESS EXCUSED.



MR. KNIGHT: Call Mr. C. H. Williams.

MR. MILLER: At this time the Defendant desires to make a motion to strike out.

MR. KNIGHT: Before that motion is made, I wish to call Mr. Wing, if you wish to make a motion of this kind.

MR. MILLER: It does not go to anything Mr. Wing has testified to. We move to strike out the testimony of Archie Phillips and Nellie R. Phillips, on the ground that no proper showing has been made for the admissibility of the testimony; and for the further reason that the testimony is not admissible. This does not go to any question as to identity.

THE COURT: As not admissible?

MR. MILLER: This does not go to any question as to proper identification.

THE COURT: Motion denied.

Defendant excepts. Exception allowed.

C. H. WILLIAMS,

A witness called on behalf of Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KNIGHT:

Q State your name and residence?

A C. H. Williams; Cataldo, Idaho.

Q What is your occupation?

A I am a farmer at the present time.

Q How long have you been farming, Mr. Williams?

A About nine months.

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A-5

Q Prior to that time, what was your occupation?

A For six years I was in the employ of the Sheriff of Shoshone County.

Q Terminating when?

A 7th of November, I think.

Q What year?

A Last year.

Q During the summer of 1905, did you make a trip into the Marble Creek country, in connection with your office?

A Yes, sir.

Q How did you come to go into there, Mr. Williams?

A The coroner requested my going in.

Q Who was the coroner?

A Dr. Keys, D. E. Keys, of Mullan.

Q What did he request you to go in for?

A He wished that I should go in and examine the remains of a skeleton that had been found and bring it out.

Q Do you remember about that date?

A It was the last days of July or the first of August.

Q 1905?

A 1905.

Q Who went with you in there, if any one?

A The Doctor went as far as the head of navigation, on the St. Joe, and Mr. Theriaut, Frank Theriaut went with horses with me from there in part way; I met Mr. Thomas and Mr. Yeager at the junction of the Santa trail, the one which we went in from St. Joe.

Q Did you meet Mr. Simpson there?

A Met Mr. Simpson on the trail somewhere; I dismember now just where we found him first.



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A-6

Q What did you find when you got in there?

A Found the remains of a skeleton.

Q What was the condition of the skeleton?

A Well, it was badly decomposed; practically bones, practically dry; the under part of the body had a little decomposed flesh.

Q What was the condition of the hands?

A The hands were---they were intact yet, I believe; almost so; some of the fingers might have been loose; one arm in particular, one arm was dislocated from the body. The skull was detached from the body also.

Q Were the hands yet covered with any part of the skin?

A The skin was on the hands, yes, sir.

Q The skin was on a part of the hands?

A Yes, sir.

Q And as to the forehead or face, what was the condition of that?

A There was a little skin on one side of the under jaw, showing a beard, or showing apparently a week or two's growth of beard; some hair on the back of the head, in a matted condition and clotted like.

Q Where was the body lying when you arrived there, Mr. Williams?

A Lying on some logs; the logs lying side by side, and another log across them; the body was lying over, with the hips on the log, lying across.

Q Did you examine the skeleton of the body at that time?

A Yes, sir, very closely.

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A-7

Q Was it dressed or undressed; what was its condition?

A It was dressed.

Q How?

A A pair of overalls and underwear on.

Q What kind of underwear?

A A kind of a yellowish cast, I believe.

Q Yellow?

A It appeared to be, yes; faded somewhat.

Q Faded some, you say?

A Yes, sir.

Q I hand you State's Exhibit 9, First Trial, and 16 in the Second Trial and ask you whether or not that is it? (Underwear marked PLAINTIFF'S EXHIBIT NO.16 for identification.)

A That is very similar.

Q And that is what you mean by yellow, is it?

A Yes, sir.

Q What else did you find there?

A Found a small sack.

Q Where was that sack lying?

A I think it was laying on the legs, right side of the remains, as though it was over the remains.

Q As though it had been over the remains. What kind of a sack was it?

A It was made out of a grain sack, I think, gunny sack.

Q How was it made?

A It was made in the shape of a haversack, as we used to call it, a haversack.

Q Did you examine the contents of that sack?

A Yes, sir.



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A-8

Q What did you find in it?

A Found some dry fern leaves and some cedar bark and a little tin box, a curved, cut tobacco box, I believe, with some fishing tackle in it, and found a small bottle and pipe.

Q What kind of a pipe?

A Cob pipe.

Q I hand you Exhibit No. 9, Second Trial, and ask you what that is, if you know?

A That is the shape of the box.

Q The tobacco box that you found?

A Yes, sir.

Q I hand you Plaintiff's Exhibit No. 8, Second Trial, and ask you what that is, if you know?

A That is very similar to that bottle, which was about half full of some white substance when we picked it up.

Q Do you know what the white substance was?

A We concluded just there it was---

MR. DARROW: No.

THE COURT: No matter; state whether you know.

MR. KNIGHT: The question is whether you know?

A I do not.

Q It was a white substance, was it? And did you examine the skull and bone that you found there?

A Yes, sir.

Q What was the condition of the skull as you found it?

A Well, the under-jaw was very badly fractured; there seemed to be a bullet hole or fracture behind the ear, and matted and clotted hair behind the ear, pretty well

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B-9

back.

Q Did you examine the clotted hair?

A I pulled the hair down and examined the skull behind it.

Q Can you state what it was clotted with?

A Some dark substance.

Q In your opinion, what was the dark substance?

A Blood.

Q Blood?

A Yes, sir.

Q I hand you State's Exhibit 17, Second Trial, and ask you what that is, if you know?

A A human skull.

Q Can you show the Jury from this skull what the condition of the skull that you found there was, as to marks of violence and things of that kind.

MR. MILLER: We object to the reference to marks of violence.

THE COURT: Objection sustained. He can examine that skull if he desires.

MR. KNIGHT: Q Examine that skull, Mr. Williams, and ascertain whether or not the fractures resemble those that you found and the condition of the skull?

MR. DARROW: Is Dr. Keys here?

MR. KNIGHT: Yes, sir.

MR. DARROW: You are going to put him on, I suppose.

MR. KNIGHT: Yes, sir.

MR. KNIGHT: Q Now, describe to the Jury how the under-jaw was broken, Mr. Williams, of the skull that you found?



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A It was broken in front, center; broken on the side, about half way around.

Q Which side, do you remember?

A I dont remember just now.

Q You dont remember which side it was?

A No; it was broken again at the turn of the jaw back; it was broken in three places.

Q It was broken in three places, was it?

A Yes, sir.

Q And what kind of a fracture do you say there was behind the ear?

A A puncture there, a round---

Q (Interrupting) A round hole?

A A round hole.

Q How large did that puncture seem to be?

A Well, it was about the size of a 30:30 bullet; maybe a 30:40.

MR. MILLER: We move to strike out the answer, as not responsive to the question.

MR. KNIGHT: It is certainly responsive.

MR. MILLER: And leaving an inference that it was a bullet hole.

THE COURT: Motion denied.

Defendant excepts and exception allowed.

Q You say you were a Deputy Sheriff for about six years?

A Yes, sir.

Q In that time you have seen some bullet holes, have you, Mr. Williams?

A Yes, sir.

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A-11

Q Handled a gun some?

A A great deal, especially thirties.

THE COURT: Speak a little louder, Mr. Williams.

MR. KNIGHT: I will offer this skull in evidence.

MR. DARROW: Has it been offered?

MR. KNIGHT: It has not in this trial.

MR. DARROW: I object, on the same grounds. Let the objection stand and pass on it later.

MR. HEITMAN: It has not been properly identified.

MR. KNIGHT: I can identify it further.

THE COURT: I think you had better identify it further.

MR. KNIGHT: Q What did you do with the remains you found there, Mr. Williams?

A I put the body in a blanket and rolled it up and put it in a gunny sack.

Q What did you do with the gunny sack; that is, the gunny sack containing the body, the remains?

A I took it to Wallace and turned it over to the coroner.

Q Turned it over to the coroner, Dr. Keys?

A Turned it over to Dr. Keys, the coroner.

Q Did you see it again?

A Yes, sir; I helped Dr. Keys examine it afterwards.

Q Where was it examined?

A In Mr. Woerstel's undertaking rooms.

Q At Wallace?

A Yes, sir.

Q And do you know what was done with the body and bones?



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A I dont know; I know what the request was of the coroner.

Q You saw the remains that were exhibited at the first trial, at Wallace, did you?

A Yes, sir.

Q And what can you say as to the resemblance of this Exhibit 17 to the skull that you found in the Marble Creek country?

MR. DARROW: To that we object. It is not a question of resemblance, but whether he can say it is the same one.

MR. KNIGHT: I shall not offer it in evidence upon this evidence.

MR. DARROW: Are you going to bring the undertaker here?

MR. KNIGHT: The undertaker and coroner, but I think the testimony of all three of the witnesses should go to the identification.

MR. DARROW: I am willing to let the objection stand for the time being and let him use it with the rest. I assume they are going to bring the undertaker and coroner.

MR. KNIGHT: Yes, sir.

MR. DARROW: Let the record show it is objected to, on the ground it has not been identified, and let the objection stand without being passed on.

THE COURT: Yes, sir.

MR. KNIGHT: Q Now, at the time that you found the remains there, was there any other part of the body, particularly noted by you, that would distinguish it in any way. I ask you more particularly did you notice the

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Hands?

A Yes, sir.

Q Was there any distinguishing mark on either of the hands?

A Yes, sir.

Q What was it?

A There was a large finger.

Q Which finger, if you remember?

A It was on the hand that was detached from the body, on the arm that was laying loose, the little finger.

Q The little finger?

A Yes, sir.

Q Was there anything else that you found there than what you have mentioned?

A There was a shoe, or apportion of a shoe and hat.

Q Who found the shoe?

A Mr. Yeager called my attention to it.

Q Do you know where he found it?

A About thirty or thirty-five feet from the body.

Q In the brush?

A Yes, sir.

Q In which direction from the body, if you remember?

A I am not positive as to the points of the compass there.

Q What kind of a shoe was it?

A It was a laborer's shoe.

Q What was the condition of the shoe at that time?

A The shoe was badly eaten by varmints of some kind.

Q What yet remained of the shoe, Mr. Williams?

A The sole and heel was all attached; the lower part



of the upper had been eaten away; the stiffning and the strap.

Q You mean the back strip?

A And a portion of the front; the eyelets were still there; the strap was eaten somewhat also.

Q Now, the back strip, did it extend to the top, containing the strap at the back of the shoe?

A Yes, sir.

Q About how high was that shoe, if you remember?

A Well, I would say it was eight inches or more.

Q Eight inches or more?

A Yes, sir.

Q What was the color of it?

A It was a tan.

Q Could you tell whether it was tan from usage and wear and exposure to the weather or whether it was originally a tan shoe?

A I judge it was originally a tan shoe.

Q You judge it was originally a tan shoe?

A Yes, sir; it might have been from exposure, I cant say positively.

Q You cant say positively about that. How much of the strap was there remaining?

A Almost all of it; it was eaten somewhat, the strap was.

MR. DARROW: What part does he mean?

THE COURT: The back part of the shoe, the strap he is talking about, I think.

MR. KNIGHT: Q You refer to the back part of the shoe, do you?

A The back part of the shoe; the strap was sown into the back part of the shoe; apparently it extended on above the top of the shoe.

MR. DARROW: Can you show what you mean by your shoe? what you mean by the strap?

MR. KNIGHT: He has got low shoes on. Q By the strap you mean the strap by which it was pulled on at the back, do you?

A Yes, sir.

MR. DARROW: That is all right.

Q What could you say as to the size of that shoe?

MR. DARROW: I object; he has not shown his competency to tell about the size.

MR. KNIGHT: I think it is apparent that every man knows something about the size of a shoe.

THE COURT: He can state whether or not he knows.

Q Do you know about what size that shoe was?

MR. DARROW: I object to "about what size".

THE COURT: I think you had better be a little more definite, Mr. Knight.

MR. KNIGHT: I would not care to ask the witness whether he knows what size it is, because I dont think that any man can ~~possibly~~ positively identify the size of a shoe; I know that I couldnt.

MR. DARROW: Can you identify a man by his skull after he is dead?

MR. KNIGHT: I can some men, Mr. Darrow.

Q Now, Mr. Williams, was there more than one shoe found?

A No, sir.



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A-16

Q Can you tell whether it was a man's shoe or a woman's shoe?

A A man's shoe.

Q Was it large, small or medium size?

A I would say a medium.

Q Medium size shoe. Do you know what was done with that shoe?

A I brought the shoe out with the remains.

Q Have you seen it since that time?

A Not since the coroner examined the remains at Mr. Worstel's.

Q I will ask you whether or not these are the shoes, or one of them?

A No, sir.

Q You are positive about that, are you?

A Yes, sir.

Q It was not exhibited at the other trial?

A No, sir.

Q What was the condition of the country immediately surrounding the body?

A It was a broken hilly country.

Q Were there any indications of the presence of human beings there that you noticed.

A Yes, sir.

Q What did you notice?

A I noted the print of nails on logs where people had been walking about.

MR. DARROW: I move to strike out the last part.

MR. KNIGHT: It certainly is admissible.

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A-17

MR. DARROW: It is purely an inference.

MR. KNIGHT: It is admissible under the rule laid down by both Mr. Greenleaf and Mr. Elliott.

THE COURT: The objection will be overruled.

Defendant excepts and exception allowed.

A (Continued) I saw the same marks on bushes; bushes had been tramped down.

Q What kind of bushes?

A Pine.

Q Small pine?

A Yes, sir. Saw a track, heel track especially in the clay where a tree had been uprooted.

Q Can you tell whether that heel track was going in that direction or going from that direction?

A Going from.

Q Did ~~that~~<sup>they</sup> appear to be old or fresh tracks?

A Very old.

Q Very old?

A Yes, sir.

Q And do you know the country there, that is as to where Mr. Simpkins' cabin was and Russell's cabin?

A I know where they are.

Q How far was the body from Simpkins' cabin; about how far?

A In a straight line, it would be half a mile, as you would survey---perhaps more.

Q You didnt make any measurements yourself?

A No.

Q How far would it be from Mr. Russell's cabin?



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A-18

A It would be a mile and a quarter.

Q Did you examine the clothing that you found there, particularly?

A Yes, sir, quite closely.

Q Q Examine the pockets of the overalls?

A Yes, sir.

Q Was there anything in them?

A I dont remember that we found anything in the pockets.

Q What was the condition of the pckets?

A One was turned.

Q Wrong side out?

A Yes, sir.

Q Do you remember which side of the back of the skull the round hole was found?

A I disremember now.

Q What was the condition of the teeth at the time you found the skull?

A The uppernteeeth were almost all there; some of them dropped out, I believe.

Q As compared to the skull shown you, I will ask you whether or not it was broken away as badly as this skull is now, the lower part of it?

A It was not at that time.

Q There was a greater portion of the lower part still attached there, was there?

A Yes, sir.

Q Were there any of these teeth gone or were they all remaining at the time you found the skull?

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A-19

A Some were gone; some dropped out while I was examining it.

Q Of course, the teeth from the broken jaw were more or less displaced, were they?

A Yes, sir.

Q Did you know Fred Tyler in his lifetime?

A No, sir.

Q Do you know whose remains those were that you found there?

A I donot.

Q Were there any other pieces of clothing on or near the body than those that you have mentioned, that you remember?

A There was a blue under-shirt or over-shirt, working shirt.

Q A blue over-shirt?

A Working shirt, I would call it.

Q What kind of over-shirt was that?

A Blue denim, I believe.

Q Blue denim?

A Blue denim.

Q Where was that laying?

A It was on the body.

Q What was that, a blue over-shirt?

A Working shirt; I would call it; jumper.

Q What was the condition of the upper part of the body at that time; how was it dressed? I believe you said it had a yellow under-shirt?



MR. DARROW: Yes, a blue over-shirt.

MR. KNIGHT: No, he didnt say it had on a blue over-shirt; but he said he found a blue over-shirt there.

MR. KNIGHT: Q Where did you find the blue over-shirt?

A The shirt was on the body.

Q Over the under-clothes?

A Yes.

Q You think so.

A Yes, sir.

Q You are sure about that?

A Quite sure.

MR. DARROW: I object to him cross examining his own witness.

MR. KNIGHT: I have a right to ask him whether he is sure about that.

MR. DARROW: When he says an answer that is sure.

MR. KNIGHT: Q You said you think so.

A Yes, sir.

Q You gave testimony at the former trial, didnt you, Mr. Williams?

A Yes, sir.

Q Do you remember when that occurred?

A You mean the preliminary?

Q No; the trial which occurred at Wallace.

A I disremember now the date.

Q Well, I will ask you to read from page one---

MR. DARROW: I object.

MR. KNIGHT: (Continues) from page one hundred forty-five, beginning at the eighth line, the balance of that page.

MR. DARROW: I object, if your Honor please; this is not a hostile witness and I have a right to cross examine him.

MR. KNIGHT: No, he has no right to cross examine him.

THE COURT: Under that section, he has a right to prove that he made statements other than he makes here, of his own witness.

MR. DARROW: When the time comes, your Honor, He has got a right to examine his witness and I have got a right to cross examine him. I should not be cut off from cross examination by this lawyer telling him what he wants.

THE COURT: It seems to me that the statute makes no provision as to when that is to be.

MR. DARROW: I think the Court ought to. I dont think it is fair for this attorney, when he finds that the answers to his questions are not what he wants, then to tell the witness what he wants; that is what it amounts to.

MR. KNIGHT: It seems to me eminently fair that a witness should be shown the testimony and asked whether he testified so and so at that time; our statute provides that we have the right to do it.

MR. DARROW: When the time comes; but I have got a right to cross examine your witness after you have examined him.

MR. KNIGHT: You have, but I have not completed my examination.



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THE COURT: (After argument by counsel) We will pass it for the time, Mr. Knight, I am not so clear as to the proper time. Examine him on some other branch of the subject. I recognize that under the statute it must be within the discretion of the Court as to when that should be done; showing that he has made statements at other times that are inconsistent with the statements that he makes at the present time. If they do not cross examine on that subject, I will allow you to reexamine.

MR. KNIGHT: Q Did you find any other articles of clothing there?

A I dont know that I did.

THE COURT: You can lead him, Mr. Knight, if you wish.

MR. KNIGHT: Q Did you find a handkerchief there, Mr. Williams,?

A I dont know that that would be considered clothing.

Q Did you find a handkerchief there?

A Found a handkerchief, yes, sir.

Q What kind of handkerchief was it?

A It was a very dirty one, stained somewhat.

Q What color, if you remember?

A Rather bluish cast, I believe, faded; it was very much faded, bleached.

Q Dark blue faded, you say.

A yes, sir.

Q Do you know whether it had any marks on it of any kind or not?

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MR. DARROW: Let him describe it first before you show it to him.

MR. KNIGHT: You are excited about showing it to him; I am not showing it to him.

MR. DARROW: I am not; I dont like to have you testify in this case.

THE COURT: He isnt showing it to him yet, Mr. Darrow.

MR. KNIGHT: You are getting in considerable testimony yourself.

THE COURT: Oh, no, he isnt.

A Well, it was marked by being very dirty; I dont remember particularly.

Q Was it all blue or was it blue and red or blue and white or blue and black, do you know?

A It was a bluish---

MR. DARROW: (Interrupting) You have got "blue" in a good many times in your question, Mr. Knight.

MR. KNIGHT: The witness stated it was of a bluish cast, Mr. Darrow.

MR. DARROW: He did.

MR. KNIGHT: What was that answer?

A It was very dirty, dark.

Q Where did you find it, if you remember?

A It was lying on the breast, I think, of the body, if I remember right, as if it had been around the neck.

Q What made it look like it had been around the neck?

A It was tied.

MR. DARROW: I object to that; I presume he could have got a handkerchief dirty by putting it around the arm or



or any other way.

THE COURT: Objection overruled.

Q How was it tied?

A It was tied in an ordinary knot, as it would be tied on the neck.

Q Do you remember the color of the hair found there?

A The hair was dark; rather dark.

Q Now, returning to the hand, Mr. Williams, you say one of the fingers was enlarged; one of the little fingers?

A Yes, sir, appeared to be.

Q Straight or crooked?

A Crooked; they were all more or less crooked.

Q How was this little finger crooked?

MR. DARROW: I object.

THE COURT: I think you better ask him to describe it.

MR. KNIGHT: He said it was crooked.

MR. DARROW: Said they were all crooked.

MR. KNIGHT: Said the little finger was crooked; I am asking how it was crooked.

THE COURT: Describe any peculiarity, if you observe any.

A The end from the joint out was considerably more than naturally crooked.

MR. KNIGHT: Q Where was it crooked?

A In.

Q Towards the other fingers?

A No, sir.

Q What is that?

A No, sir; it was crooked in towards the hand.

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A-25

Q Well, "in towards the hand", that would be towards the other fingers?

A Yes, I didnt see the other fingers.

Q What kind of a hat was that?

A It was an ordinary black hat?

Q Soft or hard hat?

A Soft hat, low crown, medium brim.

MR. KNIGHT: Take the witness.

THE COURT: Wait a minute. I shall overrule the Defendant's objection and allow you, instead of showing him that testimony, to ask him if in answer to questions which you read, if he made certain answers; and you can save your exception.

MR. DARROW: I will save an exception to it.

THE COURT: Exception allowed.

MR. KNIGHT: Q I will ask you, Mr. Williams, whether or not, at that trial, in answer to the questions I am about to read, you made the answers that I am about to read?

THE COURT: "At that trial", he refers to the trial last February, in Wallace.

MR. KNIGHT: (Reads) "Q Was there any clothes on the body? A Yes, sir. Q Just describe them to the Jury? A There was a pair of overalls and there was a medium light pair of underwear. Q Anything else? A I believe not; I dont remember exactly. Q Have on any shirt? A Had an under-shirt on. Q Any outside shirt? A I cant say as to that. Q What kind of ~~underwear~~ undershirt? A It was a light undershirt. Q Light in



color or light in weight? A Rather light in color and medium in weight, and it was fleeced-lined, I think. Q What color was the overalls? A They were blue. Q Did you find any other articles of wearing apparel on the skeleton?"

THE COURT: I wish you would confine it entirely to that over-shirt.

MR. KNIGHT: This next question is the one that comes to that.

MR. DARROW: I object; that is the only reference there is to the over-shirt.

MR. KNIGHT: This is the question; this next question (showing Transcript to the Court).

MR. DARROW: I may want to cross examine him myself a little later on.

MR. KNIGHT: You have a perfect right to.

MR. DARROW: I object to this because it hasnt any reference to the over-shirt.

THE COURT: You will stop right where you are, Mr. Knight.

MR. KNIGHT: Not ask this next question?

THE COURT: No; it has no reference to the over-shirt.

MR. KNIGHT: It has reference as to whether there was one.

MR. DARROW: No, he has already said what he wanted to say, about the shirt; he dont remember.

THE COURT: He has gone through all the articles of wearing apparel; now, then, he can answer that question.

Williams-D  
A-27

MR. KNIGHT: What is that?

THE COURT: You asked him a question.

MR. KNIGHT: Q In answer to those questions that I have read there, did you make the answers that I have read?

A Must have.

Q Do you remember whether you did or not?

A I dont remember it now; mind is not just right on that.

Q You say your mind is not just right on that?

A I dont remember particularly; must have made it.

Q Well, were they true?

A Yes, sir.

MR. DARROW: I object; he said he didnt remember.

THE COURT: The objection will be sustained and the answer will be stricken out.



Williams E  
cl

CROSS-EXAMINATION.

BY MR. DARROW.

MR. KNIGHT: I shall ask to examine this witness further.

MR. DARROW: I hope you won't examine him so much you won't let me examine him.

MR. KNIGHT: Not a bit of doubt about it.

THE COURT: Did you say, "Take him for cross-examination"?

MR. KNIGHT: Yes, take him for cross-examination; but I shall ask to examine the witness further.

MR. DARROW: You mean, read more testimony to him?

MR. KNIGHT: We will see when we get to that.

MR. DARROW: I object to his examining him on anything more; he should examine him now if he is going to do it.

MR. KNIGHT: That is exactly the position we will be put in if counsel is permitted to examine him now, then he will object to our examining him again.

THE COURT: We will let that question rest; proceed with your cross-examination.

MR. DARROW: I ask you, Mr. Knight, if it is to read something, if it is I will make no objection, but if it is original matter, I will.

MR. KNIGHT: Not original matter.

MR. DARROW: I will not make any objection to that on the ground of time.

BY MR. DARROW:

Q You were deputy sheriff over there in Shoshone County for several years?

A yes, sir.

Q Who was sheriff while you were deputy?

A Mr. Sutherland and Mr. Manley.

Q You never served under Mr. Bailey?

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Williams X  
c 2

A No, sir.

Q You were called on to go up there to the St. Joe country on account of the skeleton that had been found?

A Yes, sir.

Q Do you remember just when that was?

A About the first of August, I should say.

Q About the first of August?

A Along there, I should say.

Q 1905?

A Last days of July or the beginning of August.

Q You found a skeleton there, did you?

A Found a skeleton, yes, sir.

Q And some clothing?

A Yes, sir.

Q That was about half a mile away from Jack Simpkins's cabin in a straight line?

A Yes, sir; on a survey line.

Q And about how far from the trail?

A There was a trail about a quarter of a mile, a dim trail an old one; we crossed that direct.

Q Did you see Tyler's cabin, another cabin nearer the skeleton?

A About a mile from his cabin.

Q How is that?

A A mile from the cabin that was pointed out to me as being his.

Q Yes, you went there, bundled up all the bones and all the clothing that you found, put them in gunny sacking and took them down to the head of navigation?



Williams X  
c 3

A yes, sir.

Q Did you deliver them to Mr. Keys there, or did you take them on down to Wallace?

A Delivered them at Wallace.

Q Wallace. You picked up everything you could find and put them together?

A Yes, sir.

Q For the purpose of holding an inquest or for any other purpose that they might be needed?

A Yes, sir.

Q Now, you aren't very clear about all the clothing you found there, are you?

A Well, it has been some time ago.

Q Do you remember how many undershirts there were; whether there was one or two undershirts?

A There was but one undershirt, what I would call an undershirt.

Q That is the way you remember it, is it?

A yes, sir.

Q Do you remember how many pair of stockings the skeleton had on, whether one or two or more?

A He had one pair on.

Q Sure about that?

A Yes, sir.

Q Might have been two?

A No, sir.

Q Might have been two undershirts?

A No, there could not have been two undershirts.

Q Did you examine it close enough to make sure on that question?

Williams X  
c 4

A Yes, sir; quite sure.

Q And what was its color?

A The undershirt?

Q Yes.

A It was a light yellow color.

Q Do you know what material it was made of?

A No, I don't; it might---

Q Do you know whether it was woolen or not?

A No, sir.

Q Do you know whether it was fleece lined or plain?

A I think it was fleece lined.

Q Did you examine to find out?

A Well, I think my observation of the shirt at the time showed what it was.

Q The outside or the inside?

A The inside.

Q You looked at the inside to find out, did you?

A Yes.

Q You saw a handkerchief there?

A Yes, sir.

Q Do you remember what color it was?

A Bluish; rather of a bluish cast, I think.

Q Sure about that?

A Quite sure.

Q Do you remember whether there were any other colors there?

A I know it was somewhat discolored by dirt.

Q You testified at the preliminary examination at Wallace, didn't you?



Williams X  
c 5

A I disremember; I haven't got any copy of my evidence.

THE COURT: You remember that you were a witness;  
that is what he asked you.

THE WITNESS, Yes, sir.

Q You were a witness there and testified at the pre-  
liminary, didn't you?

A yes, sir.

Q I call your attention to page 75 of the prelimi-  
nary. (Addressing Mr. Knight). Have you got it?

MR. KNIGHT: No, we haven't got it.

(Mr. Darrow hands same to Mr. Knight).

MR. DARROW: Q Just read that part that is marked,  
Mr. Williams.

(Witness reads testimony handed him by counsel).

Q At that former trial was this question asked you:--

MR. KNIGHT: You mean preliminary examination?

MR. DARROW: preliminary examination. Q (Continued)

"Q What kind of a handkerchief was that? A I am  
not positive about the color of the handkerchief." Is  
that right?

A Well, perhaps that is right.

Q How is that?

A Perhaps that is right.

Q That is what you said then?

A Possibly.

Q You were not positive at that time?

A I might have got the impression since by the  
handling of these things as to its color.

Q That is, you might have been shown something?

Williams-X  
C-6

A I have seen them frequently since I made that answer.

Q And you have seen---you have seen this paraphernalia here, and from that you must have got the idea it was blue?

A It was exhibited at the last trial, yes, sir.

Q And also at the last trial, page 84---

A (Interrupting) Yes, sir.

MR. KNIGHT: Page 84 is preliminary?

MR. DARROW: Yes, that is cross examination preliminary.

Q This stuff was there at the preliminary, wasn't it Mr. Williams?

A Yes, sir, it was exhibited.

Q You identified it, didn't you partially?

A That might be where I got my impression as to color.

Q Now, Mr. Williams, from your remembrance of what you saw up in the woods, you don't remember what color the handkerchief was then; is that right? (After a pause) Or do you think perhaps your memory is better, now you have thought it over more? (After a pause) Just from that---

A (Interrupting) I think it is barely possible that my impression as to the color has been prompted since.

Q Yes. I just call your attention to this that is marked, about the same subject, Mr. Williams; that is cross examination at the same time.

(Counsel hands witness Transcript which the witness examines)



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Williams  
c 7

Q On cross examination were these questions asked and did you make these answers: "Q Did you examine the handkerchief sufficiently to determine its color? A I might have, yes; undoubtedly, I would recognize the color.

Q What color was it? A That I don't remember; I noticed the handkerchief was stained a dark brown of some kind we remarked about that and talked the matter over." Is that what you said?

A Yes, sir; that is what I said.

Q How do you remember that there was only one undershirt and one pair of socks?

A I remember examining the socks and the feet very minutely; had to pull the socks down.

Q Had to pull the socks down so you know there was only one pair?

A Yes, sir.

Q Well, was that undershirt a light one?

A It was light.

Q How is that?

A Somewhat lighter than it would be when it was new perhaps.

Q I didn't get that.

A Lighter; bleached, laying there in the exposure of the weather.

Q You don't distinguish between light and yellow; you say now it was yellow.

A I would say, if it lay in the weather, exposed to the elements, it would naturally be bleached a little lighter color.

Williams-X  
C-8

Q I mean as you saw it; I dont mean what the original color was; I dont mean to guess on that; I mean as you saw it?

A Light in color; it was not black.

Q What is that?

A It was not black, no.

Q Dont you know any colors between black and white?

A Yes, sir, light yellow or light green.

Q You dont say it was light green, do you?

A No, sir; dark yellow or dark red.

Q You mean this was dark yellow or dark red?

A I mean that that blue was a great deal darker at one time perhaps than it was before it laid in the ---

Q (Interrupting) Did you look at these as being all the same garment? (Exhibiting cloth to the witness)

A That I cant say.

Q You cant say?

A I misunderstood your question.

Q Do you consider this all the same garment?

A I thought you asked me if that was the same garment I pikked up?

Q No, I didnt mean that.

A You mean, was there two garments there?

Q Was there one or two garments there?

A There was two.

Q Well, what color are you referring to here? (Showing witness garment).

A I would call that a light yellow; wauldnt you?

Q This is the one you talked about as being light yellow, as being the undershirt?



Williams-X  
C-9

A Yes, sir.

Q And this, (illustrating) you dont know anything about; is that right?

A That I would call over-shirt; working shirt.

Q You think there was a blue over-shirt, a working shirt there, do you?

A That is my impression now; possibly I have got that impression somewhere else.

Q Well, now, what is a blue working-shirt; anything but a blue shirt, one of those sort with a roll collar; is that what you mean?

A They have a roll collar; may not have any; jumper.

Q Any particular kind of blue shirt that is sold up in this country that is called a "working shirt", or just a blue flannel shirt, or a blue shirt of some substance?

A I would call it a working---jumper.

Q Do you know whether there was any collar on it?

A I dont remember anything about it.

Q How is that?

A I dont remember anything about any collar particularly; my impression now is that it was a working shirt there among the effects.

Q Now, as far as you remember, this skeleton had on it an under-shirt, a blue over-shirt or working shirt, that is, a blue working shirt over it, a pair of blue overalls, a pair of socks. Do you remember whether there was any drawers?

A Had underwear on, the body did.

Q Do you know what color the drawers were?

Williams-X  
C-10

A I think the drawers were about the same color as the shirt. My impression is that the shirt, in fact, all of the underwear, was bleached from lying in the---exposed

Q You say the drawers were the same color because that is the way it is generally done, or do you remember it; do you remember it was or is it just because the drawers and shirt are generally the same color.

A I may have got that impression that they were alike.

Q You found a tobacco box. You say there was some fishing tackle in it.

A I put a couple of teeth in the tobacco box there.

Q How is that?

A I put a couple of teeth in the tobacco box there.

Q Do you say there was some fishing tackle in the tobacco box?

A Yes, sir.

Q What?

A Fish line.

Q Isnt this the first time you ever mentioned fishing tackle?

A I dont think so.

THE COURT: Speak louder, please.

MR. DARROW: Do you remember, Mr. Knight?

MR. KNIGHT: I dont remember ever hearing it before, myself, Mr. Darrow.

MR. DARROW: Q Mr. Williams, dont you think this is the first time you ever spoke of fishing tackle?

A May be.



Williams-X  
C-11

Q Well, unless you know, I will have to ask you to read this evidence over at noon to see. Did you ever speak of it before?

A I don't know; I might have.

Q What did you find in the way of fishing tackle?

A Saw his fish line.

Q What?

A Fish line and hooks.

Q How many hooks?

A I disremember.

Q You know there were some, do you?

A Yes, sir.

Q Haven't you got that mixed with some fishing excursion or something like that?

A Might be mixed with that one.

Q How is that?

A Possibly mixed with that excursion.

Q Well, I will ask you to read it over, Mr. Williams, Counsel, I guess, will furnish you a copy. If he won't, I will.

MR. KNIGHT: You have the Court copy of the preliminary?

MR. DARROW: But I mean the last trial. He will give you both so you can see whether you ever mentioned it before.

MR. DARROW: Q You saw a bottle there, did you?

A Yes, sir.

Q With some white substance in it. Do you know what has become of the white substance?

U-12

A No, I dont; was very careful to bring it out.

Q Yes. This is the bottle. Somebody has removed the white substance from that, if that is the bottle.

A Appears to be something in there yet. Yes, it is the bottle, as I remember; was half full; nearly full.

Q Well, you dont think there is any such amount in there now?

A No, sir.

Q Can you see anything in there that looks like what you saw before?

A Seems to be something in there similar.

Q Whereabouts?

A Taking on the sides. At that time it seemed to be more white; we thought it was salve at that time.

Q Some white is sticking on the sides, seemed to you to be the same as what the other was.

A Maybe, but it is badly discolored.

Q Except you think it was about half full then?

A Yes, sir.

Q You only found one hand, I believe; do you know whether you found one hand or two?

A We found two; one arm was detached from the body; one leg---

Q (Interrupting) The fingers were all---the bones were all crooked, weren't they?

A Well, they were drawed in from being dried.

Q You never saw a skeleton where the bones were not crooked, did you?

A Bones might not have been crooked except they were



Williams-X  
C-13

crooked from contraction.

Q They were crooked, weren't they?

A They were drawn; yes.

Q How was the finger next the thumb; do you remember that; do you recall it?

A No, I dont.

Q Dont recall any of them except the little finger?

A Excepting they were dry; the bones were dry.

Q Mr. Thomas called your attention to the little finger, didnt he?

A No, sir.

Q Mr. Yeager?

A Mr. Thomas at that time did.

Q I mean at that time.

A Yes, sir, at that time.

Q While you were there?

A Yes, sir.

Q That is how you noticed the little finger?

A Yes, sir.

THE COURT: Speak louder; everybody is entitled to hear.

Q Where, did you say, there was any enlargement on the little finger; whereabouts on it; or didnt you say there was any?

A It was at the joint next to the nail.

Q How is that?

A It was at the joint next to the nail.

Q How many joints are there in the little finger, as you understand it?

Williams-X  
C-14

A The finger proper, I dont know just how many there is; I havnt broken any fingers apart to see.

Q Two above the knuckle?

A It was the one next to the nail.

Q That is, the last one towards the end.

A Yes.

THE COURT: They can hardly hear you, Mr. Williams; please speak louder.

Q Did you compare it with any other finger?

MR. KNIGHT: Did he answer that last question?

MR. DARROW: Q That is the last one towards the end; is that right?

A Yes, sir.

Q Did you compare it with any other finger?

A I didnt make any comparison; simply looked at the finger.

Q Did you look for the other little finger?

A The other little finger was to the body still and all that was attached to the body.

Q This little finger wasnt the one also that was attached to the body?

A It was hanging down over the log loose; the shoulder was dislocated.

Q Let me see if I understand: one arm was lying out connected with the body, lying over the log?

A One was connected with the body and the other was disconnected.

Q Yes. And this little finger was on the disconnected one?



Williams-X.  
C-15

A I think so, yes, sir.

Q How is that?

A I think so, yes, sir.

Q You are sure about that?

A Yes, sir.

Q That had fallen down somewhere?

A Yes.

Q That finger was spoken of at that time by Mr.  
Thomas?

A Yes, sir.

Q As a matter of identification?

A Yes, sir.

Q You were a Deputy Sheriff, of course, and as  
a Deputy Sheriff would be interested in preserving  
evidence?

A I was instructed to get all the evidence possible.

Q You were instructed to preserve the evidence?

A Yes, sir.

Q And you carefully saved the little finger and the  
shoe, didnt you?

A I put the bones of the hand and ankle and legs  
in a sack; the skull I took and put in my handkerchief,  
with all the pieces.

Q How is that?

A Wrapped the skull and head bones up in my  
handkerchief; picked up all the hand bones I could find,  
put them in a large package.

Q And what about the feet and legs and that part  
of it?

C-16

A They went in the sack, wrapped up in a blanket.

Q Where did you put the shoe?

A Went in the sack with the clothing.

Q Well, before you got through with it, you took up everything that was there, so far as you know?

A As far as we could, yes, sir.

Q You took them down to Wallace and delivered it over to the coroner?

A Yes, sir.

Q Was there any inquest held?

A There was an examination made at the undertaker's, that I attended, I am sure.

Q Well, was there an inquest?

A I think not.

Q How is that?

A I think not.

Q No coroner's jury called?

A NO.

Q You would have know it if there had been?

A I was not examined before any.

Q Well, what examination was that?

A The remains were over-hauled and the skull--- pieces of the skull were placed together.

Q By whom were they over-hauled?

A Why, Dr. Keys and myself and Mr. Worstel.

Q That is all that were there at the examination, so far as you know?

A Well, some of the Sheriff's office force there besides myself.



071

Q Then they were directed to take them out and bury them, werent they?

A Yes, sir.

Q How is that?

A Yes, sir.

THE COURT: Speak louder, please.

Q In the potter's field?

A They were going towards the grave yard with the box the last ~~time~~ I saw of Mr. Worstel.

Q Buried at the expense of the county?

A I dont know as to that; I suppose they were.

Q You never saw any of the Tyler relatives since until after this case began.

A No.

Q And you stayed in the Sheriff's office for how long after that?

A Couple of years after that?

Q How long?

A One year rather.

Q Heard anything more about this matter; any investigation made up to the time of Steve Adams' arrest?

A No.

Q That was another year, wasnt it?

A I wasnt aware that there was any investigation.

Q No. As far as you know, there wasnt any made?

A No, as far as I know, there was not.

Q And that was another year, wasnt it; a year before Steve Adams was arrested, wasnt it?

A I dont know just when Steve Adams was arrested now; I dont remember the date.

Williams-X  
C-18

Q You remember the time of the Preliminary examination, when he was brought up there, dont you, the fall of 1906, wasnt it?

A It was; yes, sir.

Q That was at atleast a year after you brought this skeleton down and buried it?

A Yes, sir; I remember now since you have refreshed my memory about it.

Q Were you present at the digging up of the skeleton?

A No, sir.

Q The last you saw of anything was in the undertaker's room?

A Yes, sir.

Q Were these remains all together at that place; werent they kept together?

A Why, we put them in a box.

Q You put them in a box?

A Threw them back in the box.

Q After the examination. That is, you assumed you put everything in the box?

A yes, sir; that was the calculation.

Q Did you nail it up?

A I did not.

Q Did you see it nailed up?

A No, sir.

Q What kind of a box was it?

A Oh, a box say something about two feet two or four.

Q Rough box?

A Rough box.

Q For burial?



Williams-X  
G-19

A Yes, sir.

Q And you left it ready to be buried except to nail the cover on; is that right?

A I dont know what preparation was made after that for burial.

Q Well, you left it with everything in there that came from that country so that it could be buried in that box, excepting for nailing the cover on?

A Yes, sir.

Q And of course you supposed it was buried that way?

A Yes, sir.

Q The shoe was in there, was it?

A I dont know.

Q You suppose it was?

A We aimed to put everything back in the box.

Q Little finger?

A I dont know as to that.

Q You supposed so?

A Yes, sir.

Q You didnt keep it out anywhere?

A No, sir.

Q You didnt separate this little finger from the rest of the skeleton when you brought it down from the St. Joe country, did you?

A No, sir.

Q Just left it with the rest of the bones; buried it all there together?

A Yes, sir.

A Yes, sir.

Q And the shoe with the rest of the clothes?

A Yes, sir.

Q How do you say that gunny sack was made?

A Straps were on it, apparently, or fastened on it some way; made small; fixed up to go over the shoulders.

Q Did you find a whole pipe or part of one?

A I find the bowl of the pipe, I remember.

Q Intact, the whole thing or was it a part of it; or dont you remember.

A It was a pipe.

Q How is that?

A It was the bowl of a pipe; cob pipe.

Q How many heel marks did you see there?

A I dont remember seeing but one.

Q One. How many marks of nails?

A Oh, I cant tell you anything about it.

Q Didnt count them?

A No, sir; somebody had been walking on the log there; might have been Mr. Centry and the men that found the remains, for all I now.

Q You didnt count the marks?

A No.

Q Do you remember whether this shoe that you found there was nailed or sewed or pegged or hobnailed?

A My impression is that it was a nailed shoe.

Q Any hobnails in it?

A Yes, sir.

Q You dont know whether there was any pegs---nailed entirely, was it?



Williams-K  
C-21

A I disremember that.

Q And you say there was a strap on it; the strap was left?

A The strap had been eat somewhat.

Q But it was there?

A There, most of it; yes, sir.

Q So pretty much the whole of the back part of the shoe was there all right?

A No, sir.

Q How much of it?

A The shoe where the strap was sewed on would be double, and the double part of it was eat away, the soft part of the upper was pretty well eaten off; the eyelets in front---there was still a piece of the eyelet intact.

Q Well, what portion of the front of the shoe was left; or dont you remember?

A Well, it was eaten away pretty well to the toe.

Q Was the shoe---did it use eyelets or hooks or both, or dont you remember?

A Eyelets, as I remember it.

Q How?

A As I remember now, nothing but just eyelets.

Q Do you remember how many?

A No, sir.

Q But you think you did see the eyelets?

A Yes, sir.

Q Your impression was that these were tan shoes?

A Yes, sir.

Q Do you remember what color the eyelets were?

A No, not particularly---brass perhaps.

Q How far away was this shoe from the skeleton?

A I would say thirty or thirty-five feet.

Q Where was it?

A It was lying in a bunch of bushes with the heel---  
rather hanging by the heel in a fork of some alder bushes.

Q It wasn't laying on the ground?

A Toe was on the ground.

Q In some alder bushes, was it?

A Yes, sir.

Q Up from the ground?

A The heel was up from the ground, as I remember it,  
rather hanging as though it had been thrown in the bushes.

Q In the forks of the bushes, wasn't it?

A If you know anything about alder bushes, they had---  
grow out before they grow up from the ground, ---generally  
laying on the ground, perhaps being pressed down by the  
snow, this shoe was lying in the alder, in the fork or  
between two bushes.

Q In the forks?

A So that the toe was resting on the ground.

Q I call your attention---I don't find there is any  
difference in your testimony excepting it was a little  
clearer.

MR. KNIGHT: Preliminary?

MR. DARROW: Preliminary. I will show it to you;  
it is not contradictory at all.

Q Just read that lower marked part, Mr. Williams,  
please?

A (Witness examines Transcript handed him by counsel)



Williams-X  
C-23

Q At the Preliminary examination, was this question asked and did you make this answer:---

A (Interrupting) Yes, sir.

Q (Continued) "Q New or old? A It had been worn considerable, wood rats had eaten some holes in it or something of that kind. We found one shoe about twenty-five or thirty feet away from the body, looked as if it had been thrown there; it was hanging up off the ground a little between the forks of clump of alder bushes."

A Yes, sir.

Q That is the way you recall it now, is it?

A Yes, sir.

RE-DIRECT EXAMINATION

BY MR. KNIGHT:

Q Mr. Williams, at your examination, at the trial at Wallace, page 145, just after the questions and answers I read you on your direct examination, was this question asked and did you make this answer: "Q Did you find any other articles of wearing apparel on the skeleton or about the body? A Not unless you would consider a handkerchief 'wearing apparel' " I will just state preliminary to that you had made no mention---

MR. DARROW: I object to "preliminary to that"; he had made no mention.

MR. KNIGHT: Then if he had made mention, we will read the entire testimony to see whether he had or not.

MR. DARROW: Is that the testimony that the Court permitted him to read?

Williams-RD  
C-24

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THE COURT: That is the succeeding question and answer to the testimony that was allowed to be read.

MR. DARROW: Yes. And there was no mention of an over-shirt. He says he dont remember whether there was any over-shirt or not.

MR. KNIGHT: That is just what I want to get before the Jury. That is the question whether this was a shirt or a jumper. This man has testified there was a jumper. IN his former testimony he made a statement that is entire ly inconsistent and under the circumstances we have a right to put it before the Jury.

MR. DARROW: He has put it before the Jury.

MR. KNIGHT: We have not, because there is a difference between "jumpers" and "over-shirt".

THE COURT: Well, the witness has stated in this examination that he calls his working shirt a jumper, and I would like to know what he means by that myself. I will overrule your objection.

Defendant excepts and exception allowed.

MR. KNIGHT: Q Now, answer that; did you make such answer?

A I did.

Q What do you mean by identifying an under-shirt with a jumper, Mr. Williams. Well, just answer that question if you can?

A Well, I might go back to my boyhood days as to what I consider a working shirt, compare it with what they call a jumper to-day.



Williams-RD  
C-25

Q That is, a duck jumper, do you mean?

A My impression is that it was a blue jumper or working shirt. Used to call it a hunting shirt when I was a boy.

Q Mr. Williams, do you know whether you got that impression from the skeleton or from what you saw at Wallace, at the prior examination?

MR. DARROW: I object to that question on the ground that it is cross examination of his own witness which he is not permitted to do.

MR. KNIGHT: I dont think that is cross examination.

MR. DARROW: What is it?

MR. KNIGHT: Explanation of his testimony.

MR. DARROW: It is leading.

THE COURT: The objection will be overruled; it is leading, of course.

Defendants excepts and exception allowed.

Q (Question read).

A My mind is not just clear on that.

Q Do you know whether you said anything about a jumper at the former examination?

A No, I dont remember now. If I may be allowed to make a statement, I have had a great deal to do with three different corpses in similar shape that this one was found in. I recall now that last fall I went to the Clearwater country and brought a man out. I found his fishing tackle in the same kind of a box, and it may be that I got that impression as to the fishing tackle and the clothing of some of these fellows mixed. The same man



Williams-RD  
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that I found that was frozen to death in the Clearwater country, two years ago last March, was dressed simply in underwear and a blue jumper, was all the clothing he had and these things may have got me a little confused as to these people, how they were dressed.

Q Page 149, in answer to the question which follows these questions concerning the little finger which you say was crooked: "Q Which hand was that? A The right hand. Q You remember it was the right hand? A Yes, sir the right hand", did you make those answers?

A yes, sir, I did.

MR. KNIGHT: That is all at present; we may want to examine him again.

-----RE-CROSS EXAMINATION.

BY MR. DARROW:

Q The right hand did not lay over the log?

A The right hand did not lay over the log?

Q No?

A The right hand did lay over the log loose.

Q Well, it was the hand which was attached to the body laying over the log, was it?

A The left hand was attached to the body.

Q Lying on the log?

A The body lay on its back and the right hand lay on this log loose.

Q It was the right arm?

A It was the right arm which lay down that way over the log.

Q One hand lay up over the body, and that was attached to the body, as it?

A Yes, sir.



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Q And that was not the one that the little finger was on?

A No, sir.

Q What were these three different skeletons or corpses that you have spoken of?

A I went in to the Clearwater and got there on the 11th of September.

Q Of what year?

A Last year; and went on the 10th of-- no, I was mistaken at first; it was on the 10th of August I went in and buried the body on the 11th, and went back on the 10th of September and dug him up; that was dressed the same as this one.

Q Where was the other one?

A The man that was froze to death in the North Star Gulch over east of Milan about sixteen miles.

Q How long ago was that?

A That was the 16th day of March.

Q You think you may have got the skeletons mixed up?

A As to dress I might have, as to some articles of clothing.

Q You may as to the shoes, may you not?

A Not likely.

Q For what reason the dress, more than the shoes?

A Perhaps I might as to what they wore.

Q Were there other significant things?

A O'Neil had been dead a year

Q Why would you not be as apt to mix up the skeleton as you would to mix up the clothes?

A In my recollection I would not be as apt to mix them.



Q That is what I mean, in your recollection?

A Yes, sir. I remember that O'Neil's fishing tackle was in the same kind of a box that this was in.

Q You think that you may have got these things mixed from the three, don't you?

A In my mind I might have got the impression that I--

MR. DARROW (Interrupting) That is all.

MR. KNIGHT: We may examine him afterwards. The next witness will require about an hour and a half for examination; I don't think we will lose anything by adjourning. I would like to make his examination complete while he is on the stand.

MR. DARROW: We are willing to adjourn; in fact, I would like to.

Thereupon, at 11:20 o'clock A. M., November 10th, 1907, the jury was duly admonished by the court, as required by law, and the officers were sworn, and the jury retired in charge of the officers, and court adjourned until 2 o'clock, P.M., Saturday November 10th, 1907.



Thomas-B-24

Q And when you say he had a wooden pipe, you were just guessing at it, weren't you?

A I know he had a wooden pipe, but whether it was the same one, I couldn't say.

Q You don't know whether he had a wooden pipe, or a clay pipe or a stone pipe?

A Probably the same kind in Michigan.

Q Well, do you know?

A Yes.

Q What kind did he have in Michigan?

A I saw him in Michigan with a wooden pipe and a clay pipe.

Q Both?

A Not at the same time.

Q Any other kind?

A I don't think so.

Q Did you ever see him smoke a clay pipe?

A I don't think I ever did.

Q Was the wooden pipe straight or curved?

A That I couldn't say.

Q You don't know whether it had a straight stem or a curved stem?

A I don't.

Q Or a small bowl or a large bowl?

A That was a matter of indifference to me.

Q You couldn't identify the pipe if you saw it?

A I could not.

Q When was your attention called to the pipe?

A My attention was not called to it, only in the evidence that has been given.

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Thomas-B-25

Q Now, all I further want to ask you is whether you said anything in your former testimony about cougers or wild beasts. You can look that up at noon.

MR. DARROW: Just a moment, please. Q When did you see him working?

A Why, just a while before he went away, he was working there at home.

Q How is that?

A He was working there at home, at his sister's just before he went away.

Q He was in his under-shirt?

A I dont know just now whether he was then.

Q When did you see him in his under-shirt working?

A I cant say just the times, but lots of times, Mr. Darrow.

Q Well, when?

A What is the question?

Q When do you recall seeing him working with his under-shirt on?

A Well, back in Michigan lots of times.

Q You werent with him when he was back in Michigan lumbering?

A Oh yes, I was; didnt really call it lumbering, but he was getting out bolts---stay bolts for lumber at that time, Mr. Besser, Alpena.

Q Do you remember any special time seeing him working in his under-shirt?

A Well, in Michigan frequently.

Q Do you remember any particular day or anything that happened?



Thomas-B-26

A I dont remember any particular day; I know it was his custom.

At this time the Jury was duly admonished by the Court, as required by law, and officers were duly sworn to take charge of the Jury, and it retired in their charge and Court adjourned until two o'clock P. M., Wednesday, November 6, 1907.

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Mrs. Thomas-X  
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Wednesday, November 6, 1907.

Afternoon Session.

At this time defendant being present in court with his counsel, present as before, the jury came into the court in charge of the officers, and being duly polled, all answered to their names, and the trial of this case proceeded as follows:

Mrs. ANNIE THOMAS. CROSS-EXAMINATION RESUMED.

BY MR. DARROW.

Q Did you find anything about wild animals?

A No, sir.

Q Now, I have a little bit of that marked here I would like to have you read; it is on page 46, the last half, and first half of page 47; just a little on two pages there. I guess I will let it go. At the former trial of this case Mrs. Thomas, was this question asked and did you make this answer:

"Q Now, do you say to this jury that the only reason why "the question of fear was discussed between you was because "he was going so far away from you?

"A Why, he was going away to take up his home indefinitely, and before he was only away for a short period of "time to work.

"Q Well, then, it was not because he was so far away from "you that this question of fear was discussed?

"A No.

"Q He was expecting to come back soon?

"A Yes, sir.

"Q So he would not be away very long?

"A I could not say how long.

"Q And you were going over where he was pretty soon?



Mrs. Thomas-X  
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"A I could not say how soon.

"Q Well, pretty soon?

"A As soon as my husband got home.

"Q Now, do you mean to say you were afraid when he was going to be away only a few weeks?

"A Why, only a mother's fear for her son's absence, that is all."

THE WITNESS: Yes, sir.

Q Those were your answers before?

A Yes, sir.

Q You said <sup>you said</sup> nothing about cougars or wild animals?

A Nothing whatever.

Q Before he went away you knew just the piece of property he was going to locate on, did you not?

A I didn't know what special piece of property it was, no.

Q Didn't you have a talk with Mr. Kersting about the man who was already claiming the title?

A Yes, but that was-- I didn't know that he was to have that homestead; I was to be located on that homestead myself.

Q Where the man already claimed the title?

A They was to buy out his location for me.

Q That was your understanding?

A That was the understanding.

Q That was Jack Simpkins, wasn't it?

A Simpson's homestead, you mean?

Q Yes.

A Yes, I believe it was; afterwards I heard the name.

Q So you were to go on that homestead, but for some reason your son took it?

A Yes.

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A Yes.

Q To buy it out for \$150.00?

A That was the understanding, I believe.

Q You stated that if there was any danger of a contest you did not want it?

A I did, and he said there would be no danger.

Q He told you he had good lawyers to take care of it if there was?

A Yes, sir; if there was any contrst.

Q Did he say who they were?

A No, sir.

Q Before you sent the letter you speak of, or soon after you had heard some rumor that your son had gone off crusing hadn't you?

A Yes, sir.

Q You heard about this skeleton that was found a year later in the year 1905?

A Yes, sir; I did.

Q And your husband and your son-in-law went down there into the woods, didn't they?

A Yes, sir.

Q You did not go down?

A No, sir.

Q And you knew that it was taken to Wallace and buried?

A Yes, sir.

Q Did you ever go down there?

A Not until I was summoned there as a witness.

Q You never were out to the graw?

A No, sir.

Q How far was Wallace from where you lived?



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A We are about 120 miles, I think.

Q From Santa to Wallace?

A I think that would be about what it would be called.

Q Were you down to Coeur d'Alene?

A No, sir.

Q In the meantime?

A No, sir.

MR. DARROW: That is all.

RE-DIRECT EXAMINATION.

BY MR. HANSON.

Q You stated, Mrs. Thomas, that you did see one of the Chambers brothers at one time?

A Mr. Clarence Chambers.

Q When did you see him?

A He came up to my homestead in 1906.

Q After the death of Fred?

A Yes, sir.

Q What did he come to your homestead for?

A He was cruising among adjoining timber and he came on my homestead and requested a drink of water; that was the extent.

Q That was the extent of your acquaintance with him, was it?

A Yes, sir.

Q Did you ever have any business with him?

A None whatever.

Q Did you ever have any conversation with him over this homestead that you expected to take up?

A No, sir; no conversation whatever; only passing him the water.

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Mrs. Thomas- X

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Q You had some conversation with some one with reference to attorneys having been retained in case any contest came up, I believe you stated?

A That was this Jock Kersting.

Q And he is the only person you have discussed that question with is he?

A Yes.

WITNESS EXCUSED.



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Mr: Thomas -D

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JOHN R. THOMAS, a witness called on behalf of plaintiff, having been heretofore duly sworn, testified as follows:

DIRECT EXAMINATION.

BY MR. HANSON:

Q State you name, residence and occupation?

A John R. Thomas; I live four miles, about three miles, south of Santa; my occupation is prospector and miner.

Q How long have you lived at Santa?

A In the neighborhood of five years.

Q Your occupation has been the same all the time, has it?

A Yes, sir.

Q Where did you live prior to coming to Santa?

A A little east of St. Maries, no, I lived right in St. Maries.

Q How long did you live there?

A I think I held the place two years that I was living on.

Q Been in the west for some time, have you?

A Yes, sir.

Q Do you know the defendant, Steve Adams?

A No, sir; I do not.

Q Did you know Fred Tyler in his life time?

A Yes, sir.

Q How long had you known him up to the time of his disappearance?

A I got acquainted with him in 1904.

Q About what time in the year?

A Some time the first part of March.

Q You are the husband of Mrs. Thomas, who just testified, the mother of Fred Tyler, are you?

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A Yes, sir.

Q You were not married to her until after Tyler disappeared?

A No, sir.

Q You became acquainted with Mr. Tyler in March of 1904, did you say?

A Yes, sir.

Q And about how much did you say you saw of him up to the time he left Santa?

A The first time I saw him I went out and cut wood at Mr. Yeager's.

Q How long were you with him at that time?

A I think it was three days.

Q You were with him constantly during those three days?

A Yes, sir.

Q And when did you next see him?

A In Tyson, Tyson Camp.

Q What was he doing there?

A He came over to help me on a prospect.

Q How long was that after the first time you saw him?

A I think it was about a week.

Q And how long did he remain there and help you on your prospect at that time?

A It took about three days to do the location work; but he staid there I think all of the week.

Q Lived with you, did he?

A Yes, sir.

Q What were you doing after you got through working on the prospect?

A He waited around me to see if he could get a job; I promised to help him get a job in the camp.



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Q He staid with you during that time, did he?

A Yes, sir.

Q Where did he go hen he left your cabin?

A He went home, I believe.

Q When did you next see him?

A It was in Tysen

Q About how long after that?

A I could not tell for certain, but I think it must have been from four to six weeks.

Q And how much did you see of him at that time; how long did he remain there?

A I think somewheres near a week.

Q Did you see him every day.

A Yes, sir.

Q What was he doing?

A He was working to see what show there was of getting a job in the camp.

Q When did you next see him?

A I think that was the last time I saw him.

Q About what date was that?

A The latter part of May, 1904.

Q How well did you become acquainted with Mr. Tyler during the time that you knew him?

A Well, I got very intimate with him; I thought quite a lot of him and was trying to get him work there, but there did not happen to be any opening for him.

Q Can you describe to the jury Mr. Tyler as you remember him. Do you remember him when you last saw him?

A Describe what?

Q Describe Mr. Tyler's personal appearance to the jury;

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his physique, his physical condition?

A He was a middling large man with dark brown hair, blue eyes; his hair was middling curly, a little crinkly; had one finger that had a real large joint.

Q Do you remember which finger that was?

A It was his little finger.

Q Do you know which hand it was?

A No, sir; I do not.

Q Anything else about him that would distinguish him from the ordinary individual?

A The way that he dressed when he was working; he used to go in his undershirt to work what time I ever worked with him.

Q Anything else peculiar about his dress?

A He wore a common handkerchief, a blue handkerchief with white spots, tied around in a knot around his neck.

Q What kind of a hat did he wear?

A Well, you might call it a low crown hat.

Q What color?

A A black hat, soft.

Q Soft hat?

A Felt hat, yes, sir.

Q Now, you stated he had a little finger with a large joint. Was there anything else about him which was peculiar or that would distinguish him from any one else; any scars or marks of any kind?

A When he would be alive, do you mean?

Q Yes, sir.

A He had very calloused feet; very thick-hided feet.

Q How do you know?



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A I have seen his mother pare them, and when he would take off his socks and complain of them being sore, when he would go to bed at night, staying with me in the cabin.

Q Ever look at his feet?

A Yes, sir.

Q Where were they calloused?

A They were calloused on the ball of the foot; and on the heel.

Q How far up on the heel?

A Pretty high up on the heel.

Q Any different from any other of the ordinary man's foot that is calloused?

A Well, they were calloused more than any one's I ever saw before.

Q Did you ever see his mother pare his feet?

A Yes, sir.

Q More than once?

A Twice, I believe.

Q Where?

A At Mr. Yeager's.

Q When?

A That was in 1904.

Q Do you remember who was present at the time?

A Mr. Yeager, s family, but I would like to correct a little mistake I made before about that, concerning them.

MR. DARROW: Let him do it if he wishes.

Q Very well; make any correction you may desire.

A Mr. Yeager himself was not there. I stated that he was; but all of the rest of the family was there; four children, Mrs. Yeager and Mrs. Simpson, is now.

Q When did you discover this mistake, Mr. Thomas?

A I discovered it right off after I had been sworn to my

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testimony, but I did not have any chance for to rectify it.

Q Did you say anything about it to anybody?

A Yes, I spoke to some one, but I don't remember now who.

Q You don't remember whether you spoke to any of the  
attorneys in the case?

A I think I did.

Q Do you remember which one it was?

A No, I do not.

MR. DARROW: We will not make any point on that.

A (Continuing) But I think the attorney told me it didn't  
make much difference or something of the kind.

Q How long before Mr. Tyler left Santa--how long before  
he left did you see him? Was that the time you referred  
to as having seen him in Santa?

A I could not tell just when he was away.

Q Do you know when he left?

A Left my cabin?

Q When he left the cabin of his brother-in-law, Mr.  
Yeager, where his mother was staying?

A No, I could not tell what day he left then.

Q You knew he left didn't you?

A I got a letter from him stating that he would like to  
have me get a bottle of Peruna; for his mother, that was  
the first.

Q Have you got that letter?

A Yes, sir.

Q Where is it?

A I think I have.

MR. DARROW: I think it was read in evidence before.

MR. HANSON: I don't believe it was.

MR. DARROW: May be I read about it in the papers.



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I was thinking it was in; it does not matter one way or the other; put it in if you want to.

MR. KNIGHT: Eddon't make much difference to us.

MR. HANSON: I offer this in evidence.

THE COURT: It will be admitted, if there is no objection.

MR. DARROW: No objection, your Honor.

MR. HANSON: (Reading)

"Santa, Idaho, May 31, 1904.

Mr. Thomas: I am going away for a while and I want to ask a favor of you. I want you to get a bottle of Peruna for mother and one for Winnie; they need it very much, or I would not ask it of you, and if you do you may be sure I will pay you for it as soon as I possibly can.

Yours truly,

Fred D. Tyler."

The paper just read was marked Plaintiff's Exhibit No.7.

MR. HANSON: Q" Did you ever see Mr. Tyler after you received that letter?

A No, sir; not alive.

Q Did you ever see him dead?

A Yes, sir.

Q You may state the circumstances, Mr. Thomas, and tell how you happened to go there and what you found; who was with you when you found him?

A I got a telephone from Mr. Williams, at the head of navigation--

Q Where were you?

A I was in Tyson Camp.

Q Go on.

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A For to meet him at the head of navigation, and I got one of the men that brought the telephone to me to 'phone him back that it was impossible for me to meet him there; that I would cut across the mountains and meet him at Mica Meadows.

MR. DARROW: I don't object to this; suppose you get right down to it.

THE COURT: You met Mr Williams somewhere?

A Yes, sir.

THE COURT: Go on.

A I met Mr. Williams there, me and Mr. Yeager, and we started from there to where Mr. Gentry was camped in a tent, and we stayed there all night.

MR. DARROW: Lead him up to it.

THE COURT: Go right ahead.

Q MR. HANSON:  
Theriaut

Q You met Mr. ~~Therrell~~, did you?

A Yes, sir.

Q And then you went up to where the remains had been found?

A We stayed there all night, and Mr. ~~Therrell~~ Theriaut went with us next morning and Mr. Gentry, Mr. Yeager, Mr. Simpson and myself to where the remains was.

Q Well, what did you find when you got there?

A We found the remains laying lengthwise of some logs; some trees.

Q First tell us what locality you found it in?

A About three quarters of a mile from Russell's cabin.

Q Russell's cabin?

A Yes, sir; in the neighborhood of that, I should think, a half a mile, a little over from Mr. Simpkins's cabin.

MR. DARROW: A half a mile from Simpkins's cabin?

A Yes, and maybe more.



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THE COURT: Go ahead.

A (Continued) And we stayed around for a few minutes looking at it and I spoke to Mr. Williams--

MR. DARROW: Just tell what you saw, not what you said.

A I went and looked at the hands and saw the enlarged joint on the little finger; it was laying over the log in that way (illustrating) plain in sight, and I looked at it, and thinks I to myself--

MR. DARROW: Never mind.

THE COURT: Never mind what you thought; tell what you saw.

MR. KNIGHT: He can tell what he recognized, I presume.

MR. DARROW: He can tell what he saw.

MR. KNIGHT: Did you recognize it?

A (Continued) We stayed around the body for a few minutes, and finally some one went to looking around; the shoes was off of the feet; looking around for the shoes, or whatever they could find, and some of the time I helped them. Before we meddled with the remains, any more than I felt of that hand and came back again. I came back; Mr. Yeager found the shoe and hollered out, he said, "I have got a shoe;" He says: "I recognize it."

MR. DARROW: No matter what he said.

THE COURT: No.

MR. HANSON: Don't tell us what Mr. Williams said or Mr. Yeager, just go on and tell us what you found; what the condition of the remains was.

A The head was off, lay in a hole where the logs went lengthwise under, underneath, formed a hole down there, and

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the head was down in there. Somebody found the hat, I don't know just who it was, found the hat, but anyway it lay down where I could pick it up on the ground. I looked at that and the body had two socks I think on each foot; I looked at the one and examined it and felt of the heel, which was uncovered; all of the heel was uncovered, under part of the ankle, so I could see it <sup>real</sup> ~~raka~~ plain and I went to feel of it, and it seemed to be preserved, quite compact.

Q Flesh on the heel?

A It seemed to be thickskinned, preserved, very thick.

Q Well, what else; tell us what you did and saw.

A There was a glass cup found there; we thought had mustard in it.

MR. DARROW: Wait, no matter what you thought.

THE COURT: No matter what you thought; describe the appearance of the cup and its contents.

MR. DARROW: I suppose you are going to offer it?

MR. KNIGHT: Yes, we are going to offer it.

THE COURT: It is a good time to shorten the examination.

MR. DARROW: I am not objecting at all.

MR. HANSON Q Was there any flesh on the bone that possibly may have been on the feet?

A No more than a little fine skin over the eyes, somewhere on the skull; it was not really a skin, but like a scale or something like egg shell peeling, the skin of an egg shell, transparent, very fine.

Q Any hair on the head?

A Yes, sir.



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Q What was the condition of that?

A The back part of the head was pretty well covered with hair and seemed to be dried flesh; you could not tell.

Q What kind of hair was it?

A Dark brown hair and a little curly. I took up some of the hair and examined it with my glass.

R. KNIGHT: I think the jury better wait until we get this in shape.

THE COURT: Yes, suspend and examine and get your exhibits in shape.

MR. KNIGHT: (Producing various articles, hereafter marked as exhibits and laying them on the table) I think perhaps for the present that is all we want of that stuff.

MR. HANSON: Q You say you found some kind of a bottle there, Mr. Thomas,

A Yes, sir.

Q Do you know what was in that bottle?

A No, sir; no more than we thought it was--

MR. MDARROW: No matter what you thought.

THE COURT: No matter what you thought; describe it.

A (~~Brac~~ Continued) --Some kind of a salve.

The stenographer marked article at the request of examining counsel, Plaintiff's Exhibit 8 for identification.

Q I pass you plaintiff's Exhibit 8. Did you ever see that before?

A It looks like the bottle that we found, sir.

Q What was done with that bottle?

A That bottle was put in with the rest of the remains and taken to Wallace.

Q What else did you find?

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A A tin tobacco box, one of those oval tin tobacco boxes with plug tobacco, comes in cut plug.

MR. HANSON: We offer the bottle in evidence.

MR. DARROW: No objection.

THE COURT: If there is no objection it will be received.

MR. DARROW: It may not be properly identified, but I will make no objection.

THE COURT: I don't think it is sufficiently identified now.

The same was marked Plaintiff's Exhibit 9 for identification.

Q I will pass you Plaintiff's Exhibit 9 for identification, did you ever see that before?

A I think that is the same box.

Q You think that is the box that was found near the remains?

A It was taken care of ever since.

MR. HANSON: I offer that in evidence.

THE COURT: The box will be accepted.

The same was marked Plaintiff's Exhibit 9 in evidence.

MR. HANSON: Q You say there was a hat found there?

A Yes, sir.

MR. DARROW: We perhaps had better make formal objection.

THE COURT: I won't accept it if you do; I will have it further identified if you do, before it is accepted.

MR. DARROW: We have been over this case and I think they will identify it. I just want to save my



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objections, is all, and I am willing to make formal objection and not have the Court pass on it at this time.

THE COURT: It will remain in that stage; I will not pass on it until it is further identified.

MR. DARROW: I don't want to delay it any.

THE COURT: Probably there had better be the same ruling in regard to the bottle.

MR. DARROW: Yes, I would like to do that in regard to the bottle also.

THE COURT: I will withdraw that ruling until it is further identified.

MR. DARROW: Use it just the same, Mr. Hanson.

Hat was marked, at request of examining counsel, for identification, Plaintiff's Exhibit 10.

MR. HANSON: I hand you Plaintiff's Exhibit 10 and ask you if you ever saw that before?

A Yes, sir.

Q Where was it?

A That was what they picked up with the remains.

Q The hat you picked up with the remains?

A Yes, sir; only being torn more from handling.

MR. HANSON: I offer that in evidence.

MR. DARROW: Was that marked?

MR. HANSON: Yes, that was marked, No. 10.

THE COURT: It will not be received yet but can be used I suppose under the agreement of counsel.

Q What clothing do you say you found upon the remains?

A The remains, I don't remember any clothing, except a hat, only what was on the remains.

Q What did you find on the remains?

A There was blue overalls and drawers and an undershirt and a handkerchief and some kind of a sack.

Q You said you found some socks there too?

A Some kind of a fishing sack, I guess, intended for; also a pipe.

Q What kind of pipe was it?

A I am not positive what kind of a pipe it was, but I thought at the time it was a wooden pipe; I didn't pay much attention to it, but there was no stem on it.

An article of clothing was marked at request of examining counsel Plaintiff's Exhibit No. 11.

Q I hand you Plaintiff's Exhibit No. 11 and ask you if you ever saw that before?

A That looks like what was on the body.

Q The overalls?

A Yes, sir.

MR. HANSON: I will offer it in evidence.

MR. DARROW: Let the objection stand in the same way.

THE COURT: It will not be accepted yet; it will wait for further identification.

An article is marked at request of examining counsel for identification, Plaintiff's Exhibit 12.

Q I hand you Plaintiff's Exhibit No. 12-- this is in several pieces here and I think it better be kept in the envelope-- and ask you if you ever saw that before. Examine it.

What is that, Mr. Thomas?

A That is a piece of a corn cob pipe.

Q Did you ever see it before?

A Yes, sir. I seen it when the case was on trial before,



Mr. Thomas-D

B 20

when the things were brought up.

Q Did you ever see it before that?

A But I could not swear positively then that was the pipe I saw at the time or not.

Q You found a pipe near the remains, but you could not swear whether that was the one or not?

A No, I could not swear whether that was the one or not; we found a pipe there, but I had the idea it was a wooden pipe I had seen--

THE COURT: This is not a wooden pipe.

The Witness: This is a corn cob pipe.

MR. HANSON: Do you know whether this was a wooden pipe or a corn cob pipe?

THE COURT: He says he doesnot know; he had the impression it was a wooden pipe.

The Witness: I don't know positively.

MR. HANSON: We will offer that under the same condition.

MR. DARROW: Yes.

THE COURT: Note the exception, until further identification of course.

MR. DARROW: If you want to use it.

MR. KNIGHT: If you don't object, we will offer it for identification now, but I don't think we are gaining anything now by offering the pipe or the bottle.

MR. DARROW: Have you got anybody here that you can take it up with?

MR. KNIGHT: Mr. Keyes was there. We expect Dr. Keyes tomorrow morning.

Mr. Thomas - D

B 21

THE COURT: I don't think the identification is sufficient to admit any of those articles.

MR. DARROW: I don't think it is, but if they choose to use it subject to our saving this objection and making this proof hereafter, we are willing they should do so.

THE COURT: Not accepted in evidence, but there is nothing to prevent their using it for the purpose of illustrating the testimony of the witness.

MR. KNIGHT: There are three articles that I think are identified, or at any rate partially identified by this witness; sufficient to entitle them to be admitted in evidence; they are the bottle, the box and the hat. He said he had seen that hat before, and that it was one picked up near where Tyler's remains were found.

MR. DARROW: Picked up near the log.

MR. KNIGHT: Yes, sir; picked up near the log.

MR. HANSON: Do you know whether Tyler smoked or not?

A Yes, sir.

Q What did he smoke?

A He smoked a pipe.

Q Do you know how many pipes he had?

A I do not.

Q What kind of a pipe did you see him smoke?

MR. DARROW: If you remember.

THE COURT: If you remember.

MR. HANSON: Q Yes, if you don't remember say so.

A I don't remember.

Q Now, you spoke of finding some kind of a sack. Was there anything in the sack, if you remember?



A I think that they got this bottle out of the sack.

Q Anything else?

A His tobacco box.

Q Anything else?

A Mr. Williams found the sack on the body.

Q Now, you also stated there was a shoe picked up there?

A Yes sir.

Q Was it found on the body?

A It was off of the body; it was about---

THE COURT: The sack?

A That was when they begun to pull the body up again to get it into the sack; Mr. Williams took hold of the sack and made remarks about, it, the gunny-sack.

Q How was it placed; on the body?

A I cant tell you; I think it was laying on the body.

Q On the body?

A I think it was; it had been there so long that the clothes, some of them were decomposed.

Q What kind of a sack was it; how was it made?

A It was made of gunny-sacking.

Q How was it made, if you know, if you remember?

A Well, at the time I thought the straps were out of the same material, the way they held it up and showed it to me.

Q Could you see it very plainly when you held it up?

A Yes sir, I could see it very plainly; it was daylight.

Q I dont remember whether you described just exactly how the remains were laying with reference to these logs or

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Thomas-D-B-23

not; I wish you would do so.

A The logs, that was two trees that appeared to me to be blown down at some time and they both laid the same way, only the top was laying across the other one.

Q You mean the trees were lying parallel beside one another?

A Parallel with each other, side of each other, only one, the tope of it was over the top of the other, and underneath there was another cross log the whole way up, and in front of that crosslog was another short piece with the head tumbled down into this hole, a kind of a triangular hole there, and I think it was me and Mr. Williams that pulled this rotten piece of a log out.

Q And the head you said was lying how?

A On the top of the head, in this hole.

Q Right underneath the neck, you mean?

A Yes sir; where the neck ought to be.

Q And there was some hair on the head, I believe you said?

A Yes sir.

Q And this hair, that was up on the head?

A Yes sir.

Q What did you do with that hair when you picked it up?

A I put it on the log for Mr. Williams to take care of.

Q Do you know what he did with it?

A I think he took care of it and put it in with the handkerchief, and I know we spoke of it at the time.



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Thomas-D-B-24

Q What kind of a handkerchief was it you found there?

A It was a blue handkerchief, with little white spots on it.

Q Did you ever see one like it before?

A Yes sir.

Q Where?

A Mr. Tyler used to wear them.

Q Used to wear them. Where did you find that handkerchief with reference to the remains?

A It was right near where the head had fell down on the remains, on the log, if I remember rightly.

Q And what was its condition?

A The handkerchief was still tied in a knot.

Q In a knot. Who picked that up?

A I cant tell whether it was Mr. Williams.

Article is marked at request of examining counsel  
PLAINTIFF'S EXHIBIT NO. 13, FOR IDENTIFICATION.

Q I hand you Plaintiff's Exhibit No. 13, what is that, if you know?

A That is the handkerchief, sir, that we found with the remains?

Q That is the handkerchief that you found with the remains?

A Yes sir.

Q What was done with it?

A It was brought to Wallace with the remains.

MR. HANSON: We will offer this in evidence.

MR. DARROW: We will make the same objection and let it go.

Thomas-D-B-25

THE COURT: Very well.

Q Now, what kind of a country was it right in the neighborhood where you found the remains, Mr. Thomas?

A It was a pretty rough country, sir; it was on a knoll, very thick with, I should call it, second growth timber, pine and fir; so thick that we would have to back out some of the time when they were going in there to get around.

Q Was there any trail in there.

A I didnt notice any trail.

Q Who was Mr. Simpson, the man who was with you?

A It was my step-son.

Q That is Fred Tyler's brother-in-law?

A yes sir.

Q And who was the Mr. Yeager who was with you?

A He was a brother-in-law;---a step-son.

Q Who was Mr. Williams?

A Mr. Williams was the sheriff.

Q Deputy sheriff you mean?

A Or deputy sheriff, yes sir.

Q And Mr. Gentry, who was he?

A Gentry was the man that was supposed to have found him, that took us over.

Q Mr. Theriaut, he was the man that took you in there with horses, was he?

A He brought them out, the remains.

Q After looking over the remains, the condition in which you found them there, could you identify them?



Thomas-D-B-26

A yes sir.

Q Did you identify them?

A yes sir.

Q Whosere mains were they?

A They were Fred Tyler's.

Q What was done with what you found there?

A We packed them up in sacks, brought them to the head of navigation; then boxed them up, and I came with Mr. Williams to St. Maries with them and he went on to Wallace.

Q Did you ever see them afterwards?

A Yes sir; I saw them once afterwards.

Q How?

A I saw them to the other trial.

Q Also saw them at the preliminary, did you not?

A Yes sir.

Q Now, you spoke something about being familiar with the kind of hair Mr. Tyler had on his head. What made you familiar with it?

A I cut his hair before he went away, before he left Tyson.

Q How did he wear his hair, as to the length?

A He wore it middlin short; not so short as mine is behind, but I dont know as it is quite as short as it is on top either.

Q He wore his hair longer in front than you do?

A He had me cut it so he could part it, but at the time I did cut his hair, it was longer than mine is now, quite a little.

Thomas-D-B-27

Q Did he have more hair than you have?

A Yes sir.

Q Did you identify the hair on the skull which you found there as his hair.

A Yes sir.

MR. DARROW: Had you not better put the hair in, the same as the rest?

MR. HANSON: I dont know whether it is there or not.

MR. KNIGHT: I think the hair is there, but I dont know whether there is enough to identify it or not.

MR. DARROW: Better get it all.

THE COURT: Proceed, Mr. Hanson.

MR. HANSON: That is about the next thing we want to do, if it goes in.

THE COURT: Very well.

Envelope containing hair was marked at the request of examining counsel PLAINTIFF'S EXHIBIT NO. 14 FOR IDENTIFICATION.

Q I hand you PLAINTIFF'S EXHIBIT NO. 14 and ask you what that is?

A Yes sir; that is the hair of Fred Tyler.

Q The hair you found there.

A Yes sir.

MR. HANSON: We offer that in evidence.

MR. DARROW: Subject to the same exception.

Q Is there any difference in the condition of that hair now and what it was at the time you found it?

A Yes sir; it is not so bright as it was.

Q Any other difference?



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Thomas-D-B-28

A It looks more dead looking.

Q Is there more or less of it than there was then?

A No, there is a great deal less of it.

Q Less hair than there was when you found it?

A Yes sir.

MR. HANSON: Take the witness.

CROSS EXAMINATION

BY MR. DARROW:

Q Mr. Thomas, when did you marry Fred Tyler's mother?

A In 1905, the 16th day of April.

Q When was the first time you ever saw Fred Tyler?

A It was in 1904, sometime, the first part of March,  
about the 1st.

Q Are you a barber?

A No sir; I am not a barber.

Q But you cut hair now and then?

A yes sir.

Q Did you cut anybody's hair after that?

A I dont think I have.

Q That was the last hair cutting you ever did, was it?

A yes sir.

Q You never cut his but once?

A No sir.

Q When did you ever cut any before that?

A Well, I cant tell exactly, but I used to cut most  
of them up on the St. Joe River, when I was on the homestead.

Q Whose did you ever cut up there?

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Thomas-X-B-29

A John Ferguson.

Q When did you cut his?

A Jimmy Pattersons. A good many years ago.

Q What color was John Ferguson's hair.

A His hair was black.

Q Wavy or straight?

A His hair was straight and coarse.

Q Live up there now, does he?

A Yes sir.

Q That was John Ferguson?

A Yes sir.

Q What color was Jimmy Patterson's?

A His hair was black.

Q Jet black?

A Well, that I could not tell; no sir, it had been so long ago.

Q You could identify it if you saw a piece of it, couldnt you?

A No sir.

Q Sure?

A I am pretty sure I could not.

Q Was it wavy or straight?

A Jimmy Pattersons I said; Jimmy Patterson's instead of Ferguson's.

Q Was it wavy or straight?

A I dont remember that.

Q Forgotten that?

A Yes sir.



Thomas-X-B-30

Q Ever cut it more than once?

A Yes sir; I think I must have cut his a good many times.

Q Cant you remember whether it was straight or wavy?

A No sir.

Q If you saw a piece of it, you would know it, would you not?

A No sir.

Q You would not?

A No sir.

Q Ever cut anybody's else hair that you recall?

A Yes sir.

Q Whose?

A Cut Mr. Dyton's.

Q Where does he live?

A He lives up at the head of navigation.

Q How many times did you ever cut it?

A I could not tell.

Q About how many times?

A That I could not tell, sir.

Q When was the last time?

A It has been a good many years ago, when I was living on my homestead; I worked for him some then.

Q What color was it?

A His hair was light.

Q Brown?

A Very light brown.

Q Very light brown?

A Yes sir.

Thomas-X-B-31

Q Wavy or straight?

A That I could not remember.

Q Forgotten that?

A Yes sir.

Q What color is Yeager's hair?

A Well, sir, I would call his hair black.

Q Black.

A Yes sir; black or dark brown.

Q Which would you call it, black or dark brown?

A Black or dark brown; never paid any particular attention to it.

Q You never did?

A I would call it black, though.

Q You never took a good look at it to see, did you?

A No sir.

Q Is it wavy or straight?

A I think his hair is straight.

Q Do you know?

A Yes sir; it is straight.

Q And you think dark brown or black?

A I would call it black.

Q You think you could identify a piece of his hair if it was cut off and handed to you?

A I don't think I could.

Q How long have you known him?

A I have known him in the neighborhood of five years, I think.

Q You lived in the house with him?

A Yes sir, some of the time.



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Thomas-X-B-32

Q How many years?

A I have not lived with him a year at a time; I visited backwards and forwards.

Q How many years have you lived with him altogether in the last five years?

A That I cant tell.

Q You have lived with him half the time havnt you, nearly.

A No sir.

Q traveled with him?

A yes sir, a little.

Q Slept with him?

A Quite a little.

Q He is down here now?

A He is not here now, I dont think.

Q Been here since this trial has been on?

A I think so.

Q Seen him every day?

A Every day when he was down here.

Q You could not identify his hair, if you had a piece, even if he was living.

A No sir; I dont think I could.

Q What color is Simpson's?

A Simpson's hair is black.

Q Jet black?

A Yes sir.

Q Not dark brown?

A No sir.

Q Could you identify that?

A No sir.

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Thomas-X-B-33

Q You could not?

A There are so many others that are black.

Q Can you identify brown hair easier than you can black?

A No sir.

Q A number of people have got brown hair, havnt they?

A yes sir.

Q You think you know of anybody's hair that you could identify if a piece was cut off?

A Not unless my attention was called to it right at the time.

Q You mean at the time it was cut off?

A Then I would have my doubts about it.

Q You mean at the time it was out off?

A Yes sir.



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Thomas-D-1

Q What color is your wife's hair?

A My wife's hair is pretty gray.

Q Pretty gray?

A Yes.

Q Dont look at all like her son's?

A No sir.

Q You are sure of that?

A Yes sir, I am sure of it, more curly.

Q You had to take a look at it to make sure, just now,  
what color it was?

A No sir.

Q You say that these remains are Fred Tyler's?

A What do you say?

Q You say that these remains are Fred Tyler's?

A Yessir.

Q From what do you identify them, sir?

A What do I identify them with?

Q Yes sir.

A Why, put the whole thing together.

Q Well, what?

A His hair and the joint on the finger mostly.

Q Anything else?

A And the shoe.

Q You dont know anything about the shoe, do you?

A You mean the shoe there?

Q You dont know anything about the shoe, do you?

A I saw the shoe there and Mr. Yeager recognized  
his own make.

Q Never mind getting Mr. Yeager into this. You never  
saw him wear any shoe that you found there, did you?

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Thomas-D-2

A I cant say that I saw him wear that shoe.

Q That is what I am asking about. So far as you are concerned, you dont identify him by any shoe, do you?

A No sir.

Q Lets get what you identify him by. You identify him by the hair and the finger?

A Yes sir.

Q Anything else, sir?

A By the clothes and---

Q (Interrupting) And what?

A And the way he went dressed and the feet.

Q Well now, is that all?

A And the shape of his forehead.

Q You idetify him by the shape of his forehead do you?

A Not alone.

Q Well, partly?

A yes sir.

Q That is, from the shape of this skull, you identify Fred Tyler, do you?

A Some other things with it.

Q Well, partly?

A Yes, partly.

Q You think this looks like Fred Tyler's skull?

A Yes sir.

Q Did the photograph ever help you do that? (After a pause) Did the photograph ever help you do that; was that any assistance?

A I havnt looked at the photograph, sir.

Q You havnt seen the photograph?



Thomas-D-3

A I have seen it before.

Q I mean did that ever help you any about identifying this stub?

A No sir.

Q Did you ever see a skull before?

A I saw it when it was alive.

Q Did you ever see any other skull than this one, when it was dead?

A Yes sir.

Q When?

A I cant tell now; I have seen others besides.

Q Do you remember any other skull that you ever saw?

A Yes sir.

Q What one?

A A man had---back East, was a doctor.

Q What?

A A doctor that had it to practice on.

Q Where was that?

A That was in Chelsea, Michigan.

Q How long ago?

A A good many years ago.

Q That looked different from this skull, did it?

A That I cant tell now; been so long ago.

Q Then you cant tell one from the other.

A That I cant tell.

Q Do you think from this skull, you could tell that that was Fred Tyler?

A Not alone.

Q No. Do you think you could tell it from his feet?

Thomas-D-4

A Not altogether.

Q Well, could you tell it at all from his feet, as you saw that skeleton up there in the woods?

A It went to help with the rest.

Q Well, could you tell anything about the feet?

A Not alone.

Q Well, could you with anything else?

A Yes sir.

Q What were there about the feet that were peculiar?

A Very compact when I examined the one foot, and I took hold of the heel and pressed on it and lifted it and I saw that it was very calloused; thick calloused heel; and I also pressed on the rest of it and that seemed to be compacted in there as though there was some part of the foot in there yet, in the socks.

Q Did you take the socks off?

A No sir.

Q You just felt of the feet?

A Just felt of the feet.

Q And you thought it was Fred Tyler's feet?

A With the rest of it.

Q That made you think it was Fred Tyler's feet by feeling of it did it? (After a pause) Is that right?

A Yes sir; by feeling of it and looking of it.

Q Well, by feeling of what part of it?

A The heel.

Q Yes. And looking at what part of it?

A The heel.

Q Well, did the stocking come off the heel?



Thomas-D-5

A The stocking was worn off the heel in that shape  
(indicating on his own foot)

Q Well, what did it look like?

A Looked like all calloused skin, preserved.

Q Well now, did you ever look at a dead heel before?

A No sir, I didnt.

Q You dont know that on any man who walks a great deal,  
the heel and the bottoms of the feet are calloused and last  
longer than any part of the body, do you?

A Yes sir, more or less.

Q What?

A More or less, I should think.

Q You do know that?

A Yes sir.

Q Was there anything else about the feet that makes  
you think it was Fred Tyler?

A No sir.

Q Now you say you cut his hair just once?

A Yes sir.

Q And would you say the color was light brown or  
dark brown?

A Dark brown.

Q Can you compare it with anybody here in the Court  
room?

A I should think something like this gentleman right  
here, by what I can see of it.

Q Like the man that is taking the testimony in this  
case, Mr. Kane.

Thomas-D-6

A Yes sir.

Q That is the nearest of anybody you see around you at this time?

A Yes sir.

Q You say that this is Fred Tyler's hair, do you?

A Yes sir.

Q And it couldn't be anybody's else?

A No sir.

Q Was there anything but the color about it that you recognize?

A Dark brown.

Q Was there anything but the color that you recognized.

A A little curly.

Q What was the curly part of it, as you saw it?

A Witness examines hair handed him by counsel, being PLAINTIFF'S EXHIBIT 14) This is all curled up.

Q What?

A This is all pretty well curled up.

Q Well, that is curlier than his, isn't it?

A No sir.

Q Do you think the curl there is due to---

A (Interrupting) But some of the hair was not as curly as other; the top part was not as curly as down below.

Q Do you think the curl is due to this hair being naturally curly or laying matted up in the wool s for a year or more, or dont you know?

A It was matted up in the back part of the head, the hair was.



Thomas-D-7

Q That may account for the shape of this hair, may it not?

A It might in some ways.

Q Now, when did you say you last saw Fred Tyler?

A It was the latter part of---

Q About when. I dont ask you to give the exact date.

A It was in 1904, last part of July or first part of August.

MR. DARROW: I guess you have got that mixed a little, havnt you. I dont want to take any advantage of that. He is supposed to have gone away the 31st day of May, Mr. Thomas, 1904. Now, lets get it right. About how long before he went away? Take your time to it.

A I only saw him, I should think, a day or two before he went away.

Q And about how long did you see him at that time; that is, were you together several days or just a day.

Q Before he went away?

A Somewheres in the neighborhood of a week.

Q That, of course, was the last time you ever saw him alive, at least?

A Yes sir.

Q And were you living at the house?

A I was living over in Tyson then.

Q How far from the house?

A From what house?

Q He was with his mother, was he not, or was he over at Tyson?

A He was staying with me.

Thomas-D-8

Q Yes. What clothes was he wearing then? Now, think back, if you can, and remember what clothes he was wearing?

A He had a black hat and I dont remember what color his pants was; but I think he had a light coat, a light colored coat.

Q You dont know whether his pants were light or dark?

A No sir, I dont.

Q You think he had a light coat; you wouldnt be sure about that, would you?

A I dont remember; he used to carry his coat on his arm from the cabin.

Q Then you dont remember what colored coat it was?

A I think it was a light coat; I dont remember the color definitely.

Q Dont remember for certain. Were his pants cloth pants, woolen, or dont you remember that?

A I dont remember about his pants.

Q Did he have more than one pair that you saw at that time?

A Pair of pants?

Q What?

A Pair of pants?

Q Yes. As far as you saw, Mr. Thomas?

A Not as far as I know.

Q Did he have more than one coat, as far as you saw?

A I dont remember.

Q What shirt did he have?

A I dont remember what shirts he had at that time, not over-shirts.



Thomas-X-D-9

Q Well, he had one, I suppose, or dont you remember about that?

A I know he worked in his under-shirts.

Q Well, do you know he had an over-shirt at any time; did you ever see him work in a shirt excepting an under-shirt

A Yes sir.

Q When.

Q When he was going---when he was doing the prospect work, we took it off there.

Q What kind of shirt was it?

A I dont remember what kind it was.

Q You dont remember whether it was blue or yellow or white or figured?

A No sir.

Q Or anything about it.

A No sir.

Q You dont remember anything about any colored pants you ever saw him wear?

A No sir.

Q And you are not sure whether you ever saw him have a coat on or not; is that right?

A I think I saw him have a coat at Santa once.

Q I say, are you sure about it?

A Not certainly.

Q Well, are you sure about any colored under-clothes he ever had?

A Yes sir.

Q You are surer about his under-clothes than you are about his pants?

A Yes sir.

Thomas-X-D-10

Q What color?

A They was light colored.

Q Wear more than one under-shirt at a time?

A That I couldnt tell.

Q Eve r know that he did?

A No sir.

Q Have you seen him wear a handkerchief about his neck?

A Yes sir.

Q Do you know how many handkerchiefs he had?

A No sir.

Q Do you know whether he had any different kind of handkerchiefs?

A I never saw him have any different kind but that.

Q Did you ever wear one around your neck?

A Yes sir.

Q What kind?

A Different kinds.

Q What kind?

A Cant say.

Q What color?

A Sometimes a blue, sometimes a purple, whatever handkerchief I could get handy.

Q Did you ever see other people wear them?

A Yes sir.

Q When they were at work?

A Yes sir.

Q And other times.

A Yes sir.



Thomas-X-D-11

Q Quite common in the woods, isnt it?

A Well, I dont know as it is common in the woods.

Q You dont?

A No sir.

Q Did you ever see anybody else wear a blue and white handkerchief?

A Yes sir.

Q Ever wear one yourself?

A yes sir.

Q Well, you dont know how many he had or whether he had any others?

A No sir, I do not.

Q When was the first time you ever saw Fred Tyler?

A Over to Mr. Yeager's---no---to know him, do you mean?

Q Yes, to know him?

A To know him was over to Mr. Yeager's.

Q How long before the last time you saw him; how long was it before this last time, is what I mean.

MR. KNIGHT: The question really is how long from the first time until the last time.

MR. DARROW Yes; that is, how long did you know him?

A From the first part of March to the last part of May.

Q The time he went away?

A yes sir.

Q The first time you ever saw him was the first of March?

A No, I saw him once before that, but I was not acquainted.

Thomas-X-D-12

Q Where was that?

A That was in the saloon at Santa; I didnt know who he was until afterwards.

Q You didnt pay any attention to him then?

A No sir.

Q And you saw him a number of times between March and the last of May?

A Yes sir.

Q What kind of shoes did he wear the last time you saw him?

A I think he had a pair of light shoes on then?

Q You mean light color or weight?

A Midlin, light weight shoe.

Q You mean tan shoes?

A No sir.

Q You mean weight, I suppose, not heavy?

A Light-weight shoes.

Q well, did you notice them particularly?

A No sir, not more than while he would be walking.

Q Well, did you notice them?

A Not that I remember of.

Q Ever see him with more than one pair of shoes? ever see him with different pairs of shoes, or dont you know.

A I dont remember that.

Q Do you remember whether he had any more---whether he had any valise that he carried clothes in; whether he had any clothes other than the ones you saw?

A I expect he had.



Thomas-X-D-13

Q Well I want to know whether you know he had or dont you know anything about that?

A No sir.

Q As far as you know, you dont know anything about it? That is, the shoes he wore, do you?

A No sir.

Q Ever see him with those shoes on that I show you that are marked DEFENDANT'S EXHIBIT---

MR. KNIGHT: I object as improper cross examination.

THE COURT: I think you will probably save time by letting it go on.

Q (Continued) that are marked "DEFENDANT'S EXHIBIT 14 FOR IDENTIFICATION"; did you ever see him with those?

A No sir.

Q Never did?

A They are not big enough for him.

MR. HANSON: What was that answer?

THE WITNESS: Not large enough.

MR. DARROW: Q Do you know what size shoes he wore?

A No sir.

Q You have seen him smoke?

A Yes sir.

Q Whereabouts?

A In my cabin.

Q Never noticed what kind of pipe he had?

A I think I saw him smoke a wooden pipe.

Q One of those bent ones, or straight, or dont you remember.

A I think it was a crooked stem pipe.

Thomas-X-D-14

Q Are you sure about that?

A No sir.

Q And you are not sure about the kind of pipe you  
picked up out there by the logs?

A No sir.

Q You say you have seen him wear a low crowned black  
hat.

A Yes sir.

Q And this (indicating PLAINTIFF'S EXHIBIT 10) is the  
hat you picked up at the logs?

A Yes sir.

Q Ever see him wear over-alls, that you remember?

A Only on the skeleton.

Q First time you ever saw him wearing them?

A Yes sir, I think so.

Q That skeleton had on one under-shirt or two or  
three?

A I couldn't see but the one.

Q Do you know now?

A I think there was two found.

Q You never saw Fred Tyler wear two that you know of,  
did you?

A No sir, I can't tell for certain.

Q Did you find a blouse or an under-garment there?

A I don't remember any.

Q You never saw him wear such a garment in his life  
time?

A No sir.

Q Do you know how many logs were up there in connec-  
tion with this body?



Thomas-X-D-15

A There was three logs---

Q (Interrupting) Three logs?

A (Continued) and a short rotten piece.

Q (Counsel hands witness half a dozen pens and pencils)

Can you lay these so that we can get just as near as we can, so we can get in our minds about how the logs lay? Just take your own time to it.

A (Witness indicates by placing the pens and pencils on top of each other)

Q That is the rotten log there?

A Yes sir, that is the rotten log. Of course, the trees was longer than that. pretty close together in this way, fallen a cross at the top.

Q Where was the rotten log?

A This rotten piece was down here in this shape (indicating)

Q About like that?

A No; just come in there so that the hands were in the way, or remnants of the small bones.

Q Now, lets get this and you point out to us where the head was?

A The head was right down in here(indicating)

MR. HANSON: Step around so the jury can see.

A (Continuing) these logs were closer together so it held the body up.

Q These were closer together?

A yes sir.

Q And the rotten log---

Thomas-X-D-16

A (Continuing) and the head had dropped down low--- well, I picked that up and afterwards we went a-hunting for the remnants of little bones that we supposed had come out of the neck and we had to pull this chunk back and we cleaned up all around here, the leaves and vegetation.

Q This chunk was loose?

A Yes sir, this chunk was laying loose.

A JUROR: What was the position of the body?

A The body was lying long ways on the log.

A JUROR: Just where?

A Right in here(indicating).

Q Lying the the trough of the log?

A Yes, also one leg was a little higher than this other one and the hand was over the log in that shape(indicating).

MR. DARROW: Q Which log?

A Right over this log(indicating).

Q The under one?

A This one at the side.

MR. HANSON: Q The lower one or the upper one.

A The lower side log.

A JUROR: The log run parallel with the body; his arm was lying over in that direction.

A Yes sir.

A JUROR: Which side of the cross log was the body lying?

A There was just the head laying over this left side.

MR. HANSON: Q Which direction?



Thomas-X-D-17

A Well, I meant---I meant this way---well, no, here (indicating).

A JUROR: Parallel with the legs.

A Yes sir, parallel with the legs, and the head seemed to be about this way, just dropped over so as to drop down here (indicating) and the shoulder right in here.

MR. KNIGHT: So the shoulders and neck were right below the head, isnt that it?

A Yes.

A JUROR: The head was right above that piece of log?

A Yes sir.

A JUROR: And the rest of the body was down below the log?

A Yes sir.

MR. KNIGHT: And now, as I get it, and Mr. Darrow, I want it right, you say there was one, you say there was one full log under this side and one short piece?

A This short piece was a piece of rotten log that was in the way of my hunting, scraping in there.

MR. KNIGHT: Q Just wait. Besides this, short log there was another log beneath these two?

A No sir.

MR. DARROW: Q That was the only logs?

A Just these three logs.

MR. KNIGHT: Q And the underneath one was the rotten log?

A And this (indicating) wa rotten; this was more rotten than the other (indicating).

Thomas-X-D-18

MR. KNIGHT: Q Now, lets us understand it: Was there three logs or four logs altoghether.

A With this short piece?

Q Yes.

A Four with the short piece.

MR. DARROW: Q Now, there was one good log under these two?

MR. HANSON: Parallel with this short rotten piece?

A That is the short rotten piece you speak of?

A JUROR: This separated the other two long logs?

A Yes, this separated the othertwo long logs only they reached out so they come pretty close together before they come to the butts of them.

MR. DARROW: Q Now, Mr. Thomas, where were you when you first heard about the discovery---there is one thing I want to ask you first. You say you noticed some time that Fred Tyler had calloused feet?

A yes sir.

Q When was that?

A That was over to Mr. Yeager's.

Q Well, once or twice?

A How is that?

Q Once or twice.

A Twice, I believe.

Q Well, take each time. Mrs. Thomas was living at Mr. Yeager's?

A Yes sir.

Q Was Fred living there too?



Thomas-X-D-19

- A Why certainly.
- Q Mrs. Thomas was not then married to you?
- A No sir.
- Q And you went over to call on the family, I suppose?
- A I had been there cutting wood with Fred Tyler.
- Q Well, what did you see there with reference to feet?
- A His feet were very calloused, and Fred, I think, was the first one drew my attention to it; he said---
- Q (Interrupting) What was he doing?
- A His mother was paring them.
- Q Paring them?
- A Paring his feet; he had been watching them.
- Q What time of the day was that?
- A At night.
- Q After day?
- A At night.
- Q What time at night?
- A After supper.
- Q How many rooms were there there?
- A There was two rooms.
- Q Bed-room and dining-room and---
- A (Interrupting) living room.
- Q And sitting room altogether?
- A Yes sir.
- Q And you people were gathered around there in the sitting room while she was paring his feet?
- A Yes sir.
- Q How long was she doing th s?
- A I cant tell.

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Thomas-X-D-20

Q What?

A I cant tell; but quite a little while.

Q But he washed them, had he?

A He washed his feet before she pared them.

Q What was she paring them with?

A A knife.

Q What kind of a knife.

A I think it was Fred's jack-knife.

Q Are you sure?

A What is that.

Q Are you sure about that?

A No sir; I am not sure.

Q Did you go and look closely at the paring?

A Yes sir.

Q Both feet.

A I think I did.

Q Sure?

A Yes sir.

Q What part of the feet?

A The soles.

Q Look any different from any other feet you have  
ever seen?

A Yes sir.

Q How?

A They was the most calloused feet I about ever saw.

Q You have seen feet before?

A Yes sir.

Q Calloused all over?