

David Shaw

#4

4

REPORT

OF THE

TRIAL OF JAMES M. WILLIAMS

FOR THE

ALLEGED MURDER OF VANNESS WYATT,

AT WARREN, N. H.,

JULY 27, 1860.

---

Tried in the Supreme Judicial Court, at Plymouth, N. H., in January, 1861.

---

CONCORD:

WILLIAM BUTTERFIELD, PRINTER,  
SANBORN'S BLOCK, . . . MAIN STREET.

1862.





# REPORT

OF THE

## TRIAL OF JAMES M. WILLIAMS

FOR THE

ALLEGED MURDER OF VANNESS WYATT,

AT WARREN, N. H.,

JULY 27, 1860.

---

Tried in the Supreme Judicial Court, at Plymouth, N. H., in January, 1861.

---

CONCORD:  
WILLIAM BUTTERFIELD, PRINTER,  
SANBORN'S BLOCK, . . . MAIN STREET,  
1862.

The case of James M. Williams, who was indicted for the alleged murder of Vanness Wyatt, in Warren, N. H., in July, 1860, has excited a wide spread interest, and presents features of peculiar importance. It is believed by the friends of Mr. Williams that the circumstances antecedent to this unfortunate affair and which led to it, will exonerate him before an impartial public. With a view to a proper understanding of the case in all its relations, a full and authentic report of the evidence, derived from the minutes of Judge Bellows, is here presented, as well as the very lucid and able charge in which the Judge presented to the Jury the principles of law having a bearing upon the offence alleged.



## STATE OF NEW HAMPSHIRE V. JAMES M. WILLIAMS.

---

This was an indictment for the murder of Vanness Wyatt, at Warren, July 27, 1860, and was tried at an adjourned term of the Supreme Judicial Court, held at Plymouth, in the County of Grafton, and State of New Hampshire, January, 1861, by Justices Bellows and Nesmith.

Counsel for the State—JOHN SULLIVAN, Attorney General,  
H. W. BLAIR, County Solicitor.

Counsel for the Respondent—JOSIAH QUINCY and  
HARRY HIBBARD.

---

Mr. Blair stated the case in behalf of the Government, and then put before the jury evidence as follows:—

### TESTIMONY OF ISAAC MERRILL.

Am a surveyor. Have made a plan. This is it—from measurement—and the plan is true and exact as I could make it.

William Clement and Dan Y. Boynton assisted in measurements of red lines—rest I made without assistance.

Red lines represent lines of travel of Wyatt and Williams. Described street, railroad and side track—no house between Prescott and Williams', which are apart about 120 feet—from corner to Bixby's yard about 22 rods, 369 feet—tier of wood piled next fence from corner on street—opening in picket fence—east line represents travel of Williams west. Williams has resided at Warren most of the time since he was born—six or eight years in village, before that on a farm one and a half mile from village. Was in trade in village with George W. Prescott.

Wyatt lived four and a half or five miles from village. He was born in Warren. Had lived there about one year

and before that below village twelve or fifteen rods—most of the time with his father.

### TESTIMONY OF WILLIAM CLEMENT.

Live in Warren. On July 27, 1860, the day of assault, was in lower village. Left my house about five o'clock A. M. My house is in north end of village, nearly opposite Knapp's Hotel. Went up street a few rods and returned to the right and went east over Bixby bridge to Bixby's house. From my house to corner is perhaps one hundred and seventy-five feet and from where I turned to Bixby's about twenty rods. Went to his yard to milk. First man I saw there was Williams, and Samuel Bixby went out just as I went in. Isaac Merrill was there or came there. I went home after milking and defendant accompanied me. I had my milk pail. Had some talk. He had talk in the yard, but I did not hear it. We went back over bridge and turned down main street on east side of side walk, at rather a slow gait. Turned into street first and went by wood and then on to side walk. I was next to street and defendant next to fence, walking about abreast. Walked a little way and he then said "*Van is after us.*" I turned and saw him coming across common from side track. Wyatt coming about east, and about ninety feet from us. I noticed nothing unusual about him. Did not notice very particularly. I should think he was looking down. Had a stick by his side, moving end of it a little. This is the stick, (passed to jury and handed round) rather rapping his pants. We were then walking slow rather, and so continued throughout. Did not notice that Wyatt increased his speed. When defendant said "*Van is after us,*" I said I guessed not. Then we passed along about seventy-seven feet, and Williams then turned round and shook his pistol at Vanness and said now look out Van, don't you come near me." Wyatt was then on edge of road, about thirty-two feet from Williams, and about fifteen feet from side walk. Wyatt was passing along same as usual, and no change. Handled stick as before. Williams was still next fence. When he shook his pistol, he (Williams) might have stopped still, but think not still. We passed along a little ways further and turned again, and Williams drew up his pistol and said, "*Step another step and I will blow you through,*" and fired at the same time. Wyatt was then about thirteen feet from the side walk when defendant fired, and about fifteen feet from Williams. I did not hear Wyatt speak until after he was shot. I saw no menaces or



gestures towards any one. I saw Wyatt when he was shot. He did nothing more than to walk along as I know. When Williams fired he passed along the side walk to south corner of Boynton's fence. Williams stood about eleven feet from corner of my fence when he fired. From corner of my fence to my house is about twenty-four feet.

We passed gates in picket fence on by Boynton's house, about sixteen feet from side walk to Boynton's front door. There is another double gate for drive way at Boynton's, south of front gate. When Williams fired we were about against south end of double gate, might be a little south of it. Was another gate near corner, as we turned on to Main street. When Williams said "Van is after us," we were north of Boynton's front gate. I did not notice any attempt by Williams to enter any of the gates or enter any building. From where Vanness stood, when Williams first spoke to him to where he stood when Williams fired was about sixty-three feet. From where Wyatt was when defendant said "Van is after us," to where he was when he first warned him off, was about one hundred and twenty feet. From point where he was when Williams said "Van is after us," to railroad car was about one hundred and sixteen feet. After shot by defendant, Williams passed along on side walk about six feet and by corner of fence and made a sort of halt, and as Wyatt came up near where I was he stopped, and defendant started across the street. He (Wyatt) said "I haven't touched you Mr. Williams and wa'nt agoing to," and Mr. Williams had got out a little ways in the road and said "I know you haven't, but you followed me with a stick," and then he passed along across the road. Wyatt then looked up to me and said, "Bill, he has killed me." I then saw he was pale, and saw a red spot on his shirt and he was tottering; went towards fence and I sat part down and caught him. After I got hold of him I looked around for help but could see no one, but turned and saw Williams across the street and called to him to help carry in that man, or take care of him, don't remember which, and then I looked back up street and saw Boynton coming out of his door and called to him and he came, and we carried Wyatt to Knapp's Hotel. Wyatt lived five to ten minutes and then died.

Williams did not come to help us. We went for Dr. French, and he came directly. Wyatt had the stick in his hand and was tapping it along as he went on the ground. He threw the stick down as he started for the fence after he was shot.

The distances I have given from measure as accurate as I could make them the next Monday after the affray, which was Friday. On west end of street, opposite of Knapp's Hotel, then going south to Isaac Merrill's is about seventy-five feet. The Withington store is about five or six rods from Merrill's house, a garden between. Mr. Prescott's house comes next, and Williams' house is about eight or ten rods from Prescott's house, garden between. Merrill's garden has a common road fence, Prescott's has a picket fence. Street about four rods wide. After Wyatt spoke to Williams, Williams started at an angle across street, aiming at south corner of Prescott's house as near as I can judge, and when I called to him he was near the corner.

From corner of my house where Vanness spoke to Williams is about one hundred and sixty-four feet to place where Williams was when I called.

When Wyatt was shot he was looking down towards ground and facing down street. I heard him say nothing else to Williams. He was walking down street, not directly towards Williams. He was not approaching the side walk, though the courses they travelled were bringing them nearer together a little. I think it was a little muddy in middle of road, and it was a little lower towards side walk and a little muddy in one or two places. There was a path that had been used for foot persons between middle of road and side walk, and Wyatt was in it when shot. I think this path extended north nearly as far as Bixby's road. At upper end of Boynton's farm the road was dryer.

CROSS EXAMINATION.—Did not see Wyatt that morning as I went over to Bixby's. First saw him coming across the common, the ground between hotel and depot. There is a sign post near the northwest corner of Knapp's Hotel. Saw him between sign post and depot, one hundred and sixteen feet from cars. We were then on side walk, about forty-nine feet from where we turned at corner, though fence does not extend quite to corner. There is at corner a pile of wood. Side walk is earth, wide enough for two to walk on comfortably, perhaps about of uniform width; begins at end of wood pile and did not extend to my house; gutters or depressions about twelve inches deep. From side walk to travelled part of road don't know distance; never measured. The pathway by side of road commenced where they commenced making new walk, which extended down to south corner of Boynton's house. Pathway about ten feet from side walk—travel in travelled part not all in same place, but the ruts pretty near pathway—which was one and a half or two feet wide.



Wyatt when nearest sidewalk was about seven or eight feet off—as near when he was shot as at any time before.

I testified before the coroner on Friday, the day of the affray, or the next day. Gave affidavit after inquest I think. I stated this morning that Williams drew his pistol and turned partly round and told him not to come a step nearer or he would blow him through, and fired immediately. After he warned him off first time I think I turned to look at Vanness before Williams turned last time. As Williams turned last time, I did, and looked at Wyatt and also at Williams. Saw pistol in his hand. I saw Williams turn round, and I turned and looked at Wyatt. I think I saw Wyatt's eye, and I think he was looking down—head down. Don't remember swearing before coroner that I saw Wyatt before going over to milking that morning engaged in unloading bark.

I got the 116 feet by measure, measuring to a point as near as I could to where he stood—fixed point there because I thought it was the place as near as I could judge.

In testifying before coroner I don't remember what I said as to where we stood at the time of firing, in reference to double gates of Boynton's, but think near corner or south of it. May have said against middle or south of it. Don't remember what I said as to distance between Wyatt and defendant when he fired. Don't remember about stating that Wyatt was travelling about five feet west from us. Stated as near as I could without measuring. Don't remember how far I said Wyatt was from Williams when he spoke to him after firing. I think Williams did look round after he first saw him and said "Vanness is after us," and before he gave him the first warning. Think he looked once. Don't remember saying before coroner that he was looking most all the time, and said we walked slow. I stated the best of my judgment then. When he shook his pistol I think he did not stop still. Don't remember that I stated in my affidavit he did halt, and so Wyatt gained on us. Don't remember exactly about stating in affidavit that Wyatt was as near side walk when Williams shook pistol at him as when he fired.

**DIRECT EXAMINATION RESUMED.**—Made measurements after inquest. I measured from fence and not from edge of sidewalk next the road.

**CROSS EXAMINATION.**—Measured from fence—sidewalk about five feet.

**DIRECT EXAMINATION RESUMED.**—Williams travelled very near the fence—as near as he could comfortably.

## TESTIMONY OF WILLIAM CASWELL.

Live in Warren. Saw Wyatt shot July 27. I was at Knapp's hotel that morning. I saw him first in bar room about five o'clock or little past. Saw him go down to cars. He got onto wagon and I got onto car, and he commenced throwing up bark and I commenced packing it. He was on east side of car. He threw up a little while, and I told him he need not throw up any more until I got that packed, and he got down and walked off. I looked up and saw him most out to the house (Knapp's hotel,) and I got off also. I did not notice his getting off. I followed him near to corner of house and saw Mr. Williams turn round and shoot him, and I went from there into house and told Knapp Mr. Williams had shot Wyatt. I went after Dr. French, and Dr. French came. I went back into house.

This stick I have seen before. Wyatt took it up when he got onto his wagon to load bark. He brought the stick and laid it down on the forward end of load. Had this stick when he came out of house—might be making little motion down side of him. This is same stick, and Wyatt had it in his hand when he was shot. When he walked along there he was kind of stooping over. Heard him say nothing about Williams that morning, and saw no gestures towards him. When he was shot he was walking his usual pace. I think I was five, six or seven rods off when he was shot.

Wyatt had on a pair of overalls and vest. Williams and Clement were coming across the Bixby bridge when I first saw them, and went down street on east side walking rather moderately. I did not see Williams hasten his step at all. There are two gates in Boynton's fence—front gate and double gate. At time of firing, Clement and Williams were near the corner of Clement's fence, and I was near the corner of Knapp's hotel. I did not hear Williams say anything. I picked up this stick near the south corner of Boynton's fence, and north corner of Clement's. Did not notice that Wyatt when he approached Williams increased his pace. When shot Wyatt was near wheel path, Williams was farther south. I think Clement was nearest Wyatt when Williams fired, but was on sidewalk. Wyatt was saying nothing at the time he was shot, as I heard, and doing nothing but walk along.

CROSS EXAMINATION.—First saw Williams that morning going across the bridge with his cow. I was on the car and Wyatt on load. Wyatt said "hulloa you nervous whelp," but I don't know whether he meant me or Williams. He spoke it pretty loud. It may be ten or fifteen rods to bridge.



Can't say whether Wyatt had got onto wagon or not. I could see Williams on top of car, can't say he could be seen on the ground which descends to bridge. I know ground. Williams was gone fifteen or twenty minutes, and I saw him when he came across bridge. Can't say whether Wyatt had started off load before that or not. It would not have taken me many minutes to have packed the bark he had thrown up—might be five minutes. Only a small portion had been thrown up. I did not see him when he started away from car—he had got some six or eight rods from car—somewheres like two or three rods—I got down from car and followed along five or six rods behind Wyatt. Can't tell whether I went fast or slow—or whether I gained on him. He may have been out of my sight a half moment when he went round corner of Knapp's house. I was then six or seven rods behind him. I followed right on behind him. I stopped by sign post five or six feet from corner of house. Wyatt was in street, but don't know how near to Williams. He was below Knapp's house a little. Shooting was immediately after I got to corner of house—in half a minute or minute—and I can't tell how near he then was to sidewalk. I don't know why I went. I don't remember what I thought about his going away. Don't remember that I expected anything to take place.

I testified before coroner. I testified that we had unloaded but a few pieces of bark before Wyatt left. Don't remember testifying that Wyatt was within eight or ten feet of Williams when he shot him. Don't remember saying that Wyatt had a small stick when he left the cart, or that he took it off the load of bark. If I did I think it was true. Gave an affidavit before Mr. Blair, I believe. Don't remember stating in my affidavit that Wyatt picked up a stick and went along. Don't remember stating in affidavit that if I said so I thought it was so. I know they did not like one another very well. I can't remember that I followed after Wyatt on that account, and expecting a collision, nor have I told any one so. Don't know that I said when Wyatt got within a few feet of him Williams turned and spoke to him. I now think he did and that Wyatt kept on his course. Never told any one that when Williams went by, Wyatt yelled at him and said "hulloa you nervous whelp," as I remember.

I don't know as I ever told any one that Wyatt got up and picked up a stick. I never told any one I expected Wyatt would do something to Williams, and that was the reason I followed him—not to my remembrance. There is a way through the shed to the road in front of the hotel, but not so near as other way. I had before this day told Williams

that Wyatt was after him, and if he caught him would shake the *shit* out of him. I think this was Wednesday before the affray. I don't know why I told him so. I did not know that Wyatt was after him. Thought I had heard said they had some difficulty.

### TESTIMONY OF DAN Y. BOYNTON.

Live in Warren village. My house is in north part of lower village, on east side of street, and next north of Clement's house. House is sixteen feet from picket fence. Witnessed affray. As I looked from my window, at south window, about half-past five o'clock A. M., saw Williams as soon as he came on range of south side of my house. William Clement was with him. Williams was next to fence—both on sidewalk. They passed on down Main street a short distance, and then I saw Wyatt in street passing in same direction, and all went along near to south end of my double gate, Wyatt still in street. Williams turned round and said to Wyatt, "step another step and I will blow you through," and fired same instant, and passed on, and so did Clement to south corner of my picket fence. Wyatt continued on in same direction as before till he came opposite corner, when Wyatt said to Williams, "I have'nt touched you, Mr. Williams, and was not going to." Williams passed on a short distance and passed across street in southwest direction. After passing a short distance Williams turned and said to Wyatt, "I know you hav'nt, but you followed me with a stick." I noticed then that Wyatt turned towards the corner of the fence, and I noticed he faltered. I then came out to front door, and Clement called on me to come and help, and when I came to corner, Clement was partly supporting Wyatt, and I took hold with him and we carried him to Knapp's hotel. Shortly doctor came, and soon after he died. I assisted in helping undress him. Clement and Williams were walking rather slow, and Wyatt about his usual pace—had a little stick like that. Williams and Clement did not change their pace, nor Wyatt. When I first saw Wyatt he was twelve or thirteen feet from picket fence, and somewhere near thirteen feet from it when he was shot. When shot Williams and Wyatt were fifteen feet apart. Williams was very near eleven feet from Clement's corner, where Wyatt was shot—and I about fifty feet off when the firing took place. Wyatt did not speak to him before he shot. Wyatt was swinging stick a little.

CROSS EXAMINATION.—Fence was built two years ago—



three gates in fence. Picket fence extended up to corner. Gate front of my house—small gate sixteen feet from front door. Next gate is double gate, near south corner—twelve feet in all—opens inward, opens very easy, no fastenings, shuts on to a little post. Small gate fastened by a wooden button, opening into street. When I first saw Williams and Clement they were north of large gate. At the window where I stood a pane of glass was out, and my head was out through. I had just come there. Heard nothing said by either till Williams spoke and fired as I have stated. Williams made no attempt to leave the sidewalk. I heard no more said by any one than I have stated, and saw nothing else done before firing than I have stated. When I came to door Williams was near corner of Prescott's house, and as I came he turned and went round towards other corner. He turned as soon as I saw him. When I first saw him he had his face towards me.

The distances I have stated I obtained by measurement. I recollected their positions, and with Merrill and Clement I pointed out the spots as near as I could tell—fixed pins before measuring. Nothing between me and the window but the low picket fence.

Glass to my window is seven by nine. Window gave me a view of street and tavern. I had then no more object in looking out than I had before. Often went and put my head out of that pane of glass. Had been broken out some considerable time. I remember distinctly putting my head out before. Don't remember any particular time before. This window is the only one in south end of that room. From southerly end of house to north part of gate is about thirty feet, measuring from point in fence. I could not see parties till they come to a range with south end of my house, but I saw them as soon as they came to the range. Wyatt came in sight after they had been in sight from ten to eighteen feet, can't say exactly, think fifteen to eighteen feet. Wyatt was travelling faster than they were. When I first saw him he was some thirteen feet from the fence—can't say the width of sidewalk—three and a half, four or five feet wide, not well defined. I have given an affidavit, but it was guess work as to distance he stood.

Gave an affidavit and testified before coroner. Don't remember stating distances from sidewalk. Stated perhaps ten feet I think that Wyatt was from Williams when I first saw him. Don't remember as I stated how far from sidewalk—could not state the distance I did say on the former occasions. I think Wyatt approached a little nearer to fence as he went along. The path he travelled approached a little to sidewalk. From

the line of the southerly side of my house they passed about forty feet before the firing. Williams was below the middle of gate when he fired—against south half of gate.

Wyatt was thirteen feet from fence, and fifteen feet from Williams when Williams shot. I did not hear Clement call upon Williams for help. I am sure I did not hear him call on Williams. I might have stated before that I thought I heard Clement call for help, and that when I got to door Williams was coming towards us, and when he saw me he turned back—can't say—don't remember how it was now. I don't now remember positively that I heard Clement call while I was passing through. From corner of my fence to south corner of Prescott's is one hundred and sixty-four feet. There was a window on the front side of the room I passed through.

I said in my affidavit I was looking out of window on southwest. Don't know as I stated in my affidavit that I had my head through the broken pane. I had just put my head out of window a minute or two—one light was broken out of this window—other lights cracked—fifteen lights in whole window. Broken light was in middle of lower sash. I put in a new light soon after.

DIRECT EXAMINATION.—It was a fifteen lighted window. I saw Williams have a pistol in his hand. I measured from Wyatt to where Williams stood when he fired, as near as I could—not to fence. Measured after inquest. Don't remember time I made affidavit, but think it was before I measured, which was when Clement measured. We measured from same.

*By Court.*—I was looking out from back room.

CROSS EXAMINATION.—Don't remember whether I stated before coroner that my head was out through window. I told Blair of it. Can't say to whom first. I told Mr. Blair of it, that my head was out, but don't remember stating it to others. Can't say when I first stated it to him, or whom, or the occasion.

DIRECT EXAMINATION.—I don't remember who were at coroner's inquest.

#### TESTIMONY OF ALPHONZO S. FRENCH.

Am a doctor. Have been seven years in practice. Knew deceased. Was present at post-mortem examination, July 27. Dr. Whipple, Dr. Hoyt and others were also present. I conducted examination in parlor of Knapp's hotel. I found a wound in left breast, near centre—a gun shot wound in appearance. Removed covering—found chest filled completely



with blood, which was removed. Took out contents of chest. Ball passed through between fourth and fifth ribs, above centre of breast, passing through covering over heart, and penetrating portion of heart, and penetrating right lung, where I found the ball in centre of right lung. This is the ball and portion of clothing that was forced in with it. Ball left heart near the right side of the base of the heart.

[The death by the wound from the respondent, from a pistol in the mode alleged, was admitted.]

#### TESTIMONY OF HAZEN LIBBEY.

Live in Warren. Knew Williams and Wyatt. Know nothing of shooting. Had charge of the prisoner from nine or ten o'clock the day of the affray till five o'clock in P. M. Saw this pistol. Mr. Williams gave it to me at my request. I asked him for the pistol with which he shot Mr. Wyatt. He said he had no objection, but would like to wait till Esquire Bartlett came in, and he would be in in a few minutes.

Esquire Bartlett came in soon, and Williams spoke to Bartlett, and he said he thought it would be right that I should have it, and Williams then got it and gave it to me, and said that was the one, and I took it, and he said it was perfectly safe. As I was looking for a place to put it he reached and took it, and put it into his pants pocket. He said he had carried it two or three weeks, but did not say where he carried it, and he then gave it back to me. This is the one. I have not examined to see how loaded—or the construction of the lock. I kept the pistol in my pocket a while, and then gave it to Dr. French, who said the Solicitor wanted it, and it was returned by the Solicitor in about twenty minutes, and I kept it until Tuesday. Then gave it to the Solicitor and have not received it since. I delivered it to Dr. French in same condition I received it.

#### DR. FRENCH, RECALLED.

I went to Libbey for the pistol and gave it to Solicitor, and made no alteration in its condition, but at Solicitor's room examined, and examined each barrel to see if loaded. They were all loaded but one which had been discharged, I believe.

#### TESTIMONY OF HENRY A. COLLEY.

Am of Lowell now. Last summer was in Warren. Saw assault June 25. I was engaged in drawing bedstead stuff down from my shop above village down below place of as-

sault a few rods. From my shop to depot is perhaps seventy-five rods. Just before I drove on to crossing of railroad, saw Wyatt just stepping on to car having a pair of slippers which he laid down on car as he stepped up and took Williams by collar with his right hand, and led him from car, and then sort of twiched him or overbalanced his body so as to lay him on ground, very easy. I went near, and at that moment Wyatt raised Williams on to his feet, and Swain told Wyatt he had better not touch him, or to that effect. Williams spoke and said, "folks take him off." Williams passed to car, and Wyatt stepped near to Swain, at the north a short distance. One or two persons came up, and one asked the trouble. Wyatt said Williams had taken his property for another man's debt. Some one asked if he had struck him, and he said no, if he did he should be afraid he would knock him all to pieces. I saw no blows. Wyatt went on to state how the property was taken. I immediately set my team down about eight rods next side, and commenced unloading, and my brother followed me—got on to front part of wagon, and a foot on each thill, and I behind, throwing off stuff, and William Clement came in sight, crossing the street, though I did not see him at place of assault. This was about five minutes after assault—not over five minutes. As I was facing the south I noticed Clement crossing Bixby's road down Main street. Near that time my attention was turned behind, and I saw Williams, who came along with Chamberlain, and my brother asked Williams the trouble with Wyatt. "Oh," he said, "nothing particular, only I attached some property on his father's debt, which he claimed, which he had sold that day, and Van told him if he sold it he would whip him. That he took him and laid him upon the ground and gave him a little shaking." My brother asked him if he hurt him, and he said no. My brother said "not a mite?" and he replied "no, not a grain." Brother said he handled you pretty easy, and he said he made no resistance. Brother asked him if he did not think he would get hold of him and give him a more severe flogging. Williams said "no, unless I show fight, and that I shan't do, for I am no fighting man."

CROSS EXAMINATION.—I put my right foot on the wagon am certain.

#### TESTIMONY OF ISAAC MERRILL.

Width of sidewalk from picket fence to post on outside of sidewalk in front of Boynton's house is five feet six and a quarter inches, to inside of horse post, which is six feet



further north than south corner of Boynton's house. Post is in slope of sidewalk.

#### WILLIAM CLEMENT, RECALLED.

Showed to jury a plan and pointed out the line of travel of himself and Williams. Wyatt went between sign post and Bixby's corner, and not between sign post and corner of hotel, about half way from sign post to Bixby's corner. At time of firing Williams stood against south part of double gate. Affidavits were before measurement, and so was talk with Joseph Chamberlain in my shed.

#### TESTIMONY OF J. B. S. OTTERSON.

A person located at station marked 5 B. on my plan, in the yard, can't see place of affray, or corner of fence. Knapp's house intervenes.

CROSS EXAMINATION.—From lower corner of Boynton's, Bixby's bridge is lower than point 5 B. Ground descends from corner of road.

#### WILLIAM CLEMENT, RECALLED.

A person at the railroad can see a man till he got on to Bixby's bridge a little ways, and then he got of my sight, and then I got on to car and he got out of my sight till he got to east end of bridge, or perhaps off. Could see him on bridge after stepping on to car, which was empty. In my house front door is about middle. Doors in rear part.

#### TESTIMONY OF HOBART WYATT.

Reside in Warren. Deceased lived with me at time he was killed. A few days before he was killed he was weighed and weighed one hundred and sixty-four lbs.—two weeks before. Wyatt said it was the heaviest he ever was. He was very near sighted. He did not know persons that he was well acquainted with. He has lived with me all but one year, or so. Could not distinguish as far as across the court house, lengthwise. Could not see tools he had dropped, such as clevis pin, &c. Called on me to find it, would hunt a long time, and I would find it readily. He usually in walking carried his head down and walked fast.

#### DR. FRENCH, RECALLED.

Pistol produced—not now loaded. Four barrels were loaded when I saw it before. [Admitted they have recently been discharged since trial.]

## TESTIMONY OF VERANUS P. DREW.

Wyatt four weeks before his death weighed one hundred and sixty-two lbs. Wyatt and I have been together when people have spoken to me from opposite side of street, and he would ask who they were, when they were some of our village people, four or five rods off. Once asked him to assist me at upper crossing in upper part of village, and I wanted him to keep an account of the amount, and some were rather poorly marked and dim, and he could not see any mark on them. He said they were not marked. I asked him to keep an account as he handed them up.

## TESTIMONY OF GEORGE H. MOULTON.

I heard Williams speak of the assault a few days after in Withington's store. As I was going in I heard some one ask him if Wyatt hurt him, and he said he did not, but dirtied his clothes some, and they asked him if he thought Wyatt intended to hurt him, and if I remember right he said he did not think he did.

CROSS EXAMINATION.—This was three to five days after, or might be a week. I don't know when assault was. It was before July 5. I remember James Blaisdell was in store at time. Can't name anybody else, think others were there. I went right out of store. This was July 5, or between 5th and 7th. I went to buy liquorice. It was in evening before fairly dark. I left him there.

## EZRA LIBBEY, RECALLED.

I never communicated any of the threats I heard from Wyatt to Williams before Wyatt's death. I don't now remember communicating them to any one before death. Always have known Wyatt. Did not know he was near sighted. We had no business with him. We played checkers with him—did not observe his holding his head nearer than usual to board. Have seen him driving horses, saw nothing peculiar in driving—though generally drove fast, pretty fast. As to strength, there was an anvil under Swain's shed, and a rope through it. We were lifting it with little finger—that is, myself, Knapp, Swain and Wyatt. Wyatt and Swain carried it on little finger ten or twelve feet. Knapp and I could just lift it so. It was a common sized anvil.

## TESTIMONY OF GEORGE MERRILL.

Wyatt worked on the railroad.



## TESTIMONY OF ISAAC SANBORN.

Have worked with Wyatt on the railroad. I have see him go from engine to switch within a rod or so when engine was not over four or five rods from switch, and the switch was right for him to move. Noticed it at different times. He was fireman and I engineer.

## TESTIMONY OF EZRA LIBBEY.

Checker board at Swain's large checker board.

## TESTIMONY OF BENJAMIN CLEMENT.

Knew Wyatt fifteen years or so. Knew of his playing checkers. He always used to select the white men. He rested his head on his hand on his knee: I played a great deal with him in daytime. He declined in evening on account of his eyesight.

## TESTIMONY OF HENRY A. COLLEY.

Harvey Chamberlain was near by at talk with Williams. Wagon was two or three rods from road. Chamberlain stepped on side path on west side, two or two and a half rods. Williams came up to side of wagon and stood with his hand hold of one of the stakes of wagon, most of time—his left hand. He speaks low, very, not louder then than usual.

## DAN Y. BOYNTON RECALLED

Produces sash seven by nine. I wore a wig, and do now. Looking out of the window I could see Withington's store, blacksmith's shop, most of Swain's tavern, and William's and another house, and Isaac Merrill's most of store. Could see Clement's, which concealed buildings farther south.

CROSS EXAMINATION.—Can see back part of Swain's tavern. Can't say about front. I could not say whether I did or did not say in my testimony before coroner in my affidavit of seeing the front.

## TESTIMONY OF DAMON G. EASTMAN.

Live in Warren. Was not present at assault. There in a few minutes. I am a wheelwright. There was something said in regard to paying something if Wyatt was prosecuted, something was offered. There were present Henry W. Weeks, and a peddler by name of Fifield. Don't remember any others. Wyatt said something.

## TESTIMONY OF HOBART WYATT.

Wyatt could conceal from strangers his nearsightedness.

The evidence for the Government here closed, and the opening argument for the defense was then made by Hon. Josiah Quincy. The position assumed in the defense was that the homicide was in self-defense and therefore justifiable.

Mr. Quincy then proceeded to put before the Jury the evidence for the respondent, as follows :

#### TESTIMONY OF JAMES B. S. OTTERSON.

Am a civil engineer. Have measured and made plan, and it exhibits truly the objects I found there, from actual survey. (Exhibits it to jury.) All on the plan is by actual admeasurement.

CROSS EXAMINATION.—Point near railroad is a mere station—arbitrary line from there to corner. Has no connection with any marks on the ground, or any facts in the case. Blue lines are lines of the survey, and the numbers are merely stations. Blue lines by side of road do not represent anything in connection with sidewalk, and so also line from first point to sign post, and so on. I call sidewalk seven feet sidewalk. Measured it in several places. Width not uniform—no curb stone, slopes off into road gradually. Not uniform between Bixby's corner and Clement's corner. Boynton's fence is a picket fence ; one gate at Boynton's besides the one represented on plan. Don't know which side of fence is sign post. From railroad track to east side of Bixby bridge is by plan three hundred and fifty-seven feet. From same point to corner of Clement's fence, going by natural course, is also three hundred and fifty-seven feet. From same point on railroad to corner of Clement's, passing by sign post, is two hundred ninety-one and eleven twelfths feet. To southerly part of double gate, it is seventeen and six-tenths rods, and little over. From point on railroad behind by barn, and easterly to nearest point you can see by corner of fence, eleven and fifteen one hundredths rods. From same point to northeast corner of piazza Knapp's hotel, eight and ninety-six one hundredths rods.

#### TESTIMONY OF ARTHUR KNAPP.

Keep hotel at Warren. Lived there six years last, except eighteen months. Knew Williams and Wyatt. I always considered Wyatt a very strong man—large, one hundred and eighty lbs. weight, larger than Williams, somewhat stout, tall, big boned man. Always in good health, so far as



I know. Have seen him at work. Handled boys and young men very well. None could handle him in Warren village. Latter part of June heard talk between prisoner and Wyatt at depot. I was in wood shed, and looking over wood, and we were about filling shed. While there I heard Wyatt say to Williams, "I will take your damned hide," or pelt, and started towards him. They were then twelve or sixteen feet apart. Had a small stick in his hand. When he made the remark he had got within eight or ten feet of Williams, and Wyatt struck his hands together. Heard no other conversation at any other times.

At different times I have heard Wyatt threaten to lick Williams. The day of the sale of peg wood he said in our bar room he would lick him, and same day called me out on platform and asked me if I thought it was best for him, and I said I thought not, and he promised he would not—would go home without doing it. Sale of peg wood was June 25. He used some profane language. I have heard him say he could unjoint him, and take him apart, and put him together again like an old wooden clock. Some one asked him if he could put him together again, and he said, "damn him, I could make him run." Same day pegs were sold he told me he had shaken him, had pulled him off the cars, and had churned him up and down, that his hair was so damned long he could not get his hands off.

The Monday before he was shot I had talk with him. I rode out towards east part of town with him, and he said he would lick him—would horse-whip him. I advised him to let him alone, and told him I understood he had a revolver. He said he did not believe it, and asked me if I did, and I told him I did. I don't know that he made a reply, don't remember it, or that he spoke of his being afraid to use it. He told me in July when he rode out east that he staid to Swain's one night.

#### TESTIMONY OF DARIUS SWAIN.

Keep hotel in Warren, about fifteen or twenty rods below Knapp's hotel. Pointed out on map. Knew Wyatt from boyhood, and Williams fifteen or twenty years. Saw difficulty between parties June 25, 1860, near the railroad shop in Warren village, north of depot thirty or forty rods. Track led by it—was where cars were unloaded and loaded. I was loading boards on my wagon, and Williams was loading boards on to a car. I saw Mr. Wyatt coming up the public highway. He came along and walked directly up to Williams, took him by his collar with his right hand, I think,

William's back being towards him, and on the car at the time. He took him from the car and threw him on to the ground, and on to his back. Williams begged to be let up, and called upon me to have Wyatt let him alone. Wyatt said he would not let him up at one time. Wyatt chucked his head up and down a number of times, and rubbed it round in the sand. I told Wyatt I thought he had better let him up, it would be the best way to let him alone—and after some minutes he hoisted him on to his feet and told him it was nothing but a drop in the bucket. Next Wyatt told Williams after he got on to the cars he would whip him twelve times, every time he met him. Williams said he was not a fighting man. I told Wyatt if he was going to whip him to do it when I was not round. I remember no more conversation then.

Williams left first and went away, and Wyatt remained, there being a pretty large crowd round. Wyatt continued his talk while I remained. He talked pretty loud, which is his natural way. I did not take particular notice of his manner. Wyatt had hold of Williams' hair—it was long. I think he had hold of it all the time till he let him up on to his feet. He continued his talk, but I can't remember anything more he said. I suppose the trouble was about bark and peg wood—property had been sold that day. At another time, a week or ten days after, at my house, Wyatt speaking of this, said the neighbors had contributed \$12, to pay fines, and in the course of the conversation he said he would unjoint every bone in him. This was on piazza near by hall. The Monday night before 4th July he staid at my house. The 4th July came Wednesday.

When I got up he was up. It was between four and five in the morning. I don't know any particular business he had there. I went into kitchen and I don't remember seeing him again that day. I think I was at home at noon and night of Tuesday. Mr. Libbey had charge of my house. I think Wyatt was a smart kind of a boy—more than usual. Handled Williams very easy. I don't remember that Wyatt said anything to Williams when he came up to him. Williams stepped immediately back on to car when Wyatt let him up, but he left in a few minutes without finishing his work. I think car was not filled, but I did not notice whether there were any more boards to be loaded.

CROSS EXAMINATION.—Wyatt was about twenty-eight years old. Wyatt had a pair of shoes in his hand coming up the road to Williams. Was going pretty good jog, holding his



head down as usual. Wyatt laid down shoes and walked along as before, about his usual pace, which is usually pretty fast. Wyatt approached Williams on east side, Williams being about in middle of car. Wyatt could not reach from the ground, but stepped on to car from ground, which was high. I don't know as Williams saw Wyatt approach. Wyatt took hold of him with his right hand, and I did not see him touch him at all with the other. Did not hear him speak when he took hold of him. He took him off quick and laid him down on his back about eight feet from car, his head laid south. I was about twenty feet off. He threw him down very quick, and kept hold of him, his hand under his head. Kept hold till he let him up. Saw no bruises on Williams, or marks of injury. Wyatt raised him up on his feet, and started him towards the car, and he got on and went to loading boards. I did not notice how he worked. Ground very near even with bottom of car.

Never saw any other violence offered by Wyatt to Williams. Wyatt hoisted his head and chucked it down a number of times, and rubbed it round on ground a number of times. Wyatt had his hand under all the time. May have raised his head a foot or so. I heard Williams say afterwards, I think the same day, that Wyatt did not hurt him much. At his garden he asked me what I thought about prosecuting Wyatt. I told him he had better not, it might make Wyatt worse. He said he did not care anything about that scrape, if he would let him alone hereafter. I think he said Wyatt did not injure him any. I might have said I thought he would not trouble him again, but don't remember. Gave affidavit to Mr. Blair, don't remember what I said about that. I don't know that he said whether he should or should not prosecute Wyatt. Don't remember saying that he concluded not to prosecute, but think from the conversation he had so concluded. About the talk at my house in July or last of June, I may have said that he began in his funny way. He talked in his usual way—not mad. I think I said in my affidavit that he began in his funny way. He said he would unjoint every bone in his body, and I said it would be difficult putting them together again. He was a droll fellow. I said in my affidavit he was accustomed to use odd expressions, and did not mean any thing. He was a clown for the whole village, that was about the amount. After the assault Williams went off down the road. Knew no other cause of quarrel but about the peg wood.

When he staid at my house he may have been all day at village. His wife's father lived down towards Wentworth

village about two miles. Think his weight one hundred and seventy-five. He was about my size—little heavier. There were men that could handle him, but not many. He always walked with head down.

DIRECT EXAMINATION RESUMED.—Wyatt took hold of his collar—had a little hair in his hand. When he threatened Williams at cars, spoke loud, appeared a little excited and earnest when he took him off the cars, and when he threatened him.

When Wyatt was shot, heard pistol and looked towards Clement's house, and saw three or four men. I looked immediately and saw the parties near together, within a rod or two, or so. My house is forty rods off, eighteen or twenty from Williams' house. Gave affidavit to Hibbard & Bartlett.

CROSS EXAMINATION.—Peg wood was sold same day of assault.

### TESTIMONY OF OTIS CHAMBERLAIN.

Now live in Hunterstown, Canada East. In summer of 1860 lived there. Moved to Warren in January 1859, and left May 1, 1860. Knew deceased and Williams. Heard conversation of Wyatt June 25, 1860, near railroad crossing in Warren village. As I was crossing down street by Whitcher's store, above the railroad crossing twenty or thirty rods—may not be quite so far—Williams was lying on ground, and Wyatt standing by side of him. I went to the place, but Williams left before I got there. Quite a number of persons were there collected. I heard Wyatt say that what he had given Williams was but a drop before a plentiful shower to what he should give him. He said "Damn him, I will lick him every time I meet him, till I lick him twelve times." He said "the damned ugly cuss did not look as if he had a drop of blood in him, but if Swain had minded his business I would have found out whether he had or not, and I will yet." He said after he had got him shook up and got his blood in circulation he would have kicked his damned face for him, and have throwed him over the bank. There is a high bank by side of road ten or twelve feet high, I think. He said also he would strip him naked and kick him through the streets home. He said he wanted those pretty teeth of Williams, and "I will have them or knock them down his throat." Swain told him he had better let Williams alone, and he said "damn him I won't, I'll lick him within an inch of his life." Swain then said to him "If you are going to whip him don't do it when I am round." He also said he would kick his face so his folks



would not know him. I remember no more. After this I had a talk on same day with Wyatt in Damon Y. Eastman's shop. He said he would lick Williams, and he would do it if it was not for a year. "God knows my word is good for that." First time he said he did not know but Williams would prosecute him, and put him under bonds, and said, "damn him, if he does I will knock him in the court room." There were persons who offered money towards paying his fine. Anson Pillsbury, Damon Y. Eastman, Ephraim Colly, and a peddler by the name of Fifield, offered \$2 each, except Fifield, who offered \$5.

I saw Williams after this on the same day. Had business to settle with him. I told him what Wyatt had threatened, and that others offered to pay his fine, and I advised him to keep out of Wyatt's way till he got over his mad fit. Williams asked me what he had better do about prosecuting him, about putting him under bonds. I advised him not to do it, but to keep out of his way, and if worse comes to worst, to take care of himself.

I advised him not to prosecute as he threatened to whip him in the court room. I told him I thought he had better wait (a few days I think,) till the excitement was over, and then Wyatt would let him alone. The same day I saw Anson Pillsbury and William Clement near the railroad track, and Wyatt was there near by. Wyatt at my left and Pillsbury at my left, between me and Wyatt but a little back, and Clement a little to left of Wyatt, but a little in front, and about eight feet from Pillsbury and a little further from me. Pillsbury said to Wyatt "you might have licked him to death, and Bill and I would have gone behind the shop and not have known anything about it." I understood he meant Clement, his partner, who is generally called Bill. I don't know that Clement made any reply to it, though he could hear it, I think. I think Clement was present at the threats I have named.

CROSS EXAMINATION.—This talk might have been twenty minutes or so—fifteen or twenty minutes. I took no part I think in the conversation. May have said something. I am on friendly terms with Williams. I don't know as I heard Clement say anything at that time. There was a crowd round, and it might have been twenty minutes after the assault when Pillsbury said this. I think it was four or five rods below place of assault, near the railroad crossing. Veranas Drew was present, and he spoke. Also Levi Whitcher, Drew, brother, D. Y. Eastman, Darius Swain were present, and also George Libbey, and I think others.

Williams, when I saw him down, lay with his head south, and Wyatt beside of him. Williams got up in half a minute after I saw him. I did not go down at once—but in five or ten minutes. There was a general talking among the crowd. I don't know as Clement spoke at all then. I don't know that he spoke when Pillsbury made the remark I have stated. The persons I have named were present when Wyatt made the threats at the railroad. Whitcher came after I did. Wyatt was making threats when I got there. When I first saw Williams he was on the ground. I was twenty to thirty rods off, and Wyatt stood by side of him, and near. I don't know whether Wyatt had hold of him or not—he was on side of him next to street, little descending perhaps from where I stood to them.

I saw Williams go on to car, did not notice anything peculiar in him as he went on to car. I think he may have staid on car five or ten minutes. Saw him down street thirty rods. Saw nothing peculiar in his walk as he travelled from me. I presume I heard some one in the crowd laugh. When I saw them first they were nearer railroad track than the bank by river, which was thirty or forty rods off. Saw no marks of violence on his person at his house.

One reason I gave for not prosecuting Wyatt was his threat to lick him in court room. I thought it a good reason that Wyatt said so, and others said they would back him up in whipping him—not perhaps in court room. I don't know what I expected he would do. I gave him other reasons for not prosecuting him, that I thought he would cool off. I had had business transactions with Williams. I have had no talk with Wyatt since the day of assault. Talk in Eastman's shop, Eastman was present, remember no other. Said he would lick him. "God knew his word was good for that, if he did not do it for a year." Remember no more threats. Don't remember that I replied. Told me why he whipped Williams.

DIRECT EXAMINATION RESUMED.—Eastman's shop was close by where assault was. Bank next river opposite place of assault ten or twelve feet high, and I think rocky—not sure.

#### TESTIMONY OF JOSEPH BIXBY.

Reside in Warren. Have always resided there—nearly twenty-six years. Knew Wyatt and Williams. Lived just across the river. Heard threats by Wyatt at Knapp's hotel on day of sale of peg wood, think June 25. He said "damn him, I will unjoint him and put him together like an old



clock, and see if I can't make a decent man of him." This was after sale. Same afternoon he said "damn him, I'll take his hide off, I had lief do it as not," and would pound him every chance he could get, if Haines, deputy or the devil was round, and should continue to pound him every time he saw him \$25 worth, till he canceled the whole debt. He said he should watch for him every day in the week till he got satisfaction out of him, and no matter if he was dead, for he was no good to community. Should watch for him day and night till he got satisfaction. Heard some threats after that—most every day that I saw him—that he should pound and flog him every chance he could get. Saturday before July 1, saw him at Swain's, and I asked him what he was down for that morning, and he said "damn him, I came down to see my Jack Williams." I asked him what he was going to do with his Jack that day. "Damn him," said he, "I am going to unjoint him." Next Sunday he told me he was going to stop at Swain's hotel the next Monday night, and thought it would be a good time to catch him out the next morning when he was driving his cow to pasture, and thought there would not be likely to be so many folks round, it would be a good time to catch him. On Tuesday next I saw him, he staid round Swain's all day, he was there at work for him. He asked me if I had seen his Jack, and I told him no. He said he should like to see him. Told me about his taking him from car and laid him on ground, and if Swain had not interfered he would have been thrashed so he would have enough to last him a month. He said what he had done was not a drop in the bucket to what he would do. I told him if he was going to whip him he had better do it and not make so much talk about it, that if Williams should shoot him they could do nothing as he had threatened so much. He said he had stated he should whip him, and he should do it.

The night before he was shot, in Knapp's bar room, he said he had got down there where he could attend to his Jack. I did not tell him at any time that Williams had a pistol. I saw him very often during the last month, and he had his usual talk—most of it I did not pay any attention to. He said he had plenty of backers. I saw Williams the morning of shooting at my yard, and he kinder hung round there longer than usual, and I noticed it. I knew Wyatt well. He was a powerful man—but not quite so tall or thick as I am and not near as heavy. He had wrestled me and threw me, and I gave it up.

CROSS EXAMINATION.—Am twenty-six years old. Wyatt a

year older or so. Wrestling was about six or eight years ago. I weigh about two hundred lbs. Sale at Knapp's bar room of the peg wood. I told Wyatt after sale same day, at Knapp's hotel, to lick Williams, which is first conversation I had with him. I had heard him make threats at sale.

He said he would whip him. I told him I did not believe he would. I have told Wyatt at the conversations I testified to in which he made threats, that I did not think he would whip him, that it was brag and bluster, and he replied that he would whip him. I was once all day at Swain's with him, the 3d of July—he was a sort of supernumerary there, at work there. He then asked me about his Jack out in the bowling alley. He was on mountain July 4, at celebration. Talk not very serious on my part. Can't say whether he was very serious—he expressed himself with a good deal of force, appeared mad—anything said about Williams would make him fly like fun, and that is the reason I introduced it. Had several talks at Knapp's bowling alley, and on Saturday—and all along from June 25 to the time he was shot—sometimes when I was riding with him on his team, which was often. I lived at north part of village across Bixby's bridge at a place called Bixby place. Since that I have lived near Williams, and have staid at his house perhaps three nights. Did not work for him during day. Have had *special* business but not very urgent.

DIRECT EXAMINATION.—I stopped there at the request of Williams's wife, who was afraid on account of threats.

#### TESTIMONY OF HAZEN LIBBEY.

I got the pistol of Williams about noon. He said he meant to face this in an open manly way, though he regretted what had happened. That he should never have carried the pistol had he been as stout as I was, but he did not want to be pounded all up.

CROSS EXAMINATION.—He made the remarks not at the time he gave me the pistol, but after that, and after he had been out with his counsel, and had been gone twenty minutes.

#### TESTIMONY OF WILLIAM CLEMENT.

Williams and I were on sidewalk when he said "Van is after us," north of Boynton's front yard gate a little way—might have been thirty feet, as near as I can tell. Can't say how far north of northerly corner of Boynton's house—perhaps twenty feet, very near the lower end of the wood. Can't say whether we had got half a dozen feet by



end of wood, but it was near the end of the wood. Don't remember what I said before, but I think now very near end of it. Pile nearest fence was longer than the other, and I don't know whether we had passed that or not. Can't say how far from south end of wood pile to northerly end of house of Boynton, or from his front gate. My impression is we had not got by northerly corner of house—not quite by end of wood pile—but very near end of it. From where he said Vanness first to where defendant shook his pistol was about seventy-seven feet, as near as I could fix it. I placed my pins and then measured. I began at lower end of Boynton's fence, and measured eleven feet to where Williams stood when he fired, to gate, and I think a little on to it. Then to where he stood when shook his pistol about forty-three feet, I think below front gate a little, then to point where Williams stood when he said Van is after us—seventy-seven feet thence to turn of road about forty-nine feet, not a square turn, wood pile round on to cross fence. Where I first him to car was 116 feet, and he was then ninety feet from us. From where Wyatt was when we first saw him to where he was when Williams shook pistol at him was about one hundred and twenty feet. From there to where he was when shot was about sixty-three feet.

CROSS EXAMINATION.—Was not in court house this forenoon. I saw Wyatt take Williams by collar and lead him off the cars, and when he went off he was out of my sight. That is all I saw. I was in door of my shop. From car to my shop is about six rods. They seemed both to walk off together. I don't remember Pillsbury saying that Wyatt might have whipped Williams to death and he and Bill would not have interfered, but would have gone behind shop.

DIRECT EXAMINATION RESUMED.—I passed from my shop and went directly home, leaving Williams on the car. Did not hear Wyatt say anything. Pillsbury was out in the road near the car, and I left him there. Had no difficulty with Williams.

#### TESTIMONY OF EZRA LIBBEY.

Have lived in Warren most thirty-four years. Knew parties. Was at Swain's hotel in July 2d, 1860, in forenoon, to help Swain about the house. Staid till just at night on 5th.

Wyatt was there most part of day, and staid over night of 2d. I saw him before I got up. He got up first and looked into my door as he passed. When I came down he was in bar room, and went out, and he came in when I was sweep-

ing out and said he had been up and run Williams mad into Prescott's, and I asked him what he wanted of him, and he said if he had got hold of him he would have taken his damned hide off. He said he thought it was about the time he would be driving his cows to pasture, and he went up to the railroad track so that Williams should not see him, and came through under Knapp's shed and run Williams into Prescott's. I cautioned him about making threats—that he might get prosecuted for them, and that might be worse than for assault and battery. He said Williams did not dare to prosecute him, that if he did he had friends that would pay the bill, and it would not cost him anything. That he had but just begun, and he should follow his hand till he had licked him twelve times. That he was going to stay round there that day, and Williams would not dare to come out at all. That he would get the weeds well pulled out of his garden, and he called my attention two or three times that forenoon to Williams being in his garden, as he said, and I saw him there, but did not notice his being out of his garden, but saw him several times by fence talking with people on street by side of fence. Once I heard Wyatt call out to him "you rascal," looking that way. It was about fifteen rods off, and Williams looked up as he called. He was in sight of Wyatt. I told him I did not want he should call out so—it did not sound well. Others were round during the day, and he was telling considerable that he would do to him. He said Williams had taken his property and sold it on another man's debt—that he had not the money to fight him with and was going to take it out of his hide. Last of June Williams was at Benj. Clement's in Warren, and Wyatt was there and others. I went there about noon and Wyatt sat in a wagon near the barn. Joseph Chamberlain came out, and directly after Williams and Rand the solicitor. Chamberlain came down to get his team, and Wyatt said Williams did not dare to come down and get in. I asked him why. He said he would lick him if he did. I said you would not with those men around, and he said he would have struck him just as soon as if they were not there. Williams and Rand walked along up the road and got into Chamberlain's wagon, and then came back after dinner.

CROSS EXAMINATION.—Can't tell when Wyatt left bar room. Did not see him go out. From time I saw him in bar room first, to seeing him again on his return was one hour or more. I think he called him Mad. He sometimes is called Mad Williams. I am sure Wyatt said Williams did not dare to prosecute him. He said he was going to whip him twelve times.



I saw Williams in garden in forenoon. I was very busy in afternoon and did not notice much. What I noticed was mostly in earlier part of forenoon. Williams' garden is northerly of his house, and Swain's house is south of Williams' house, which sets back, and he was at work in front part of garden. There is a shop and dwelling-house between Swain's hotel and Williams' house. It is about 15 rods from hotel to Williams' house. Williams' front fence is a picket; can't tell fences in rear; one might have gone round into R. R. and so into garden from rear—entrances to his house are three—one in front, one on south side and one in north end—garden 10 rods on road, same in rear—runs back of his house to R. R., don't know whether it extends behind house. His southerly line of his land comes very near to window place 4 to 6 rods to shop. I paced distance from Swain's hotel to Williams' house this morning and found distance about 15 rods.

There were quite a number of people about, forenoon and more in afternoon. His talk about what he was going to do to Williams seemed to please him and others—Benjamin Clement's is about 3 miles from village—Road passed Clement's house, nearly north and south—Chamberlain's horse hitched down by barn—where Wyatt sat in a wagon and Chamberlain passed within fifteen or twenty feet of us—Williams and Rand came within perhaps two rods of us—Wyatt did not seem to be mad but said Williams would not dare to come down here—when he said he run Williams into Prescott's, he seemed to be pleased that Williams was afraid of him. I had talk with Williams at B. Clement's at the barn—he asked me out there from the house to talk on another matter, and then after that I spoke about his whipping one of our district, meaning Wyatt, who lived in our district, and said I could not have him whipped—I was joking. He said Wyatt took him down and shook him some, but did not strike him or choke him, jam him or punch him or hurt him. It is rather my impression that he said he did not think Wyatt meant to hurt him. My attention first called to this, first of August, 1860. I may have said then I was confident he said so in my affidavit—don't remember anything more.

DIRECT EXAMINATION RESUMED.—Benjamin Clement soon came in while Williams and I were talking—I got Wyatt to do a few chores the day he was at Swain's.

#### TESTIMONY OF ARTHUR KNAPP.

Wyatt said he staid at Swain's about first of July—from

2d to 4th—and he thought that would be a good time to catch him early in the morning—he said he saw him in the morning, and chased him into Mr. Prescott's house—he said a number of times that he would lick him and could unjoint him. He used to ask me if Williams ever said anything about his threatening him. Williams used to work some, loading lumber before the assault but would not work alone afterwards—he came once for me to help him and I said I would send William Caswell and Daniel Hoyt, and he said he did not want them and if I could not come myself he would get Sanborn. Wyatt has said there were persons who would pay his fine—don't remember seeing Williams alone at depot after assault. On the morning that Wyatt was shot, had talk with William Caswell—I asked him soon after they came into bar-room if he saw the shooting—he said he did—that he stood down below sign post. I said I thought you was loading bark on the cars, and he replied he was below the sign post. I said “then you thought there was going to be some fun and you run to see it, did you?” and he said he thought Wyatt would do something to him when he took the stick. I asked him where he took it from, and he said he did not know whether he took it from the wagon or the ground. I don't know as he said anything about following.

He said all Williams said in the morning was “halloo you nervous whelp,” when Williams went over the bridge—he said Wyatt got off of the wagon when Williams came back. Before the assault Williams had had Caswell and Hoyt to help him load lumber.

CROSS EXAMINATION.—Caswell was not friendly to Williams—had not much dealing with Williams. Caswell did not like Williams because he thought Williams sued him—he was not willing to work for him; he was sued and I settled it for him. Hoyt was a young man that I had employed some. Wyatt handled some people easily.

#### TESTIMONY OF ADONIRAM WHITCHER.

Am of Warren, 54 years—knew Wyatt and Williams—Had talk with Wyatt in going to Warren village when I overtook Wyatt and he got out of his wagon and got into mine. This was last of June or first of July. Wyatt commenced in regard to peg wood attached and sold by Prescott & Williams. He said it was sold—and he said he would whip him anytime he could catch him. I said to him you know I am not for a quarrel, and he said “I know it,” and I admonished not to lay hands on him, for Williams would be likely to prosecute him. He said it would not cost him



any thing, enough stood ready to pay it—told me what he did to him at the cars—said when he went up, Williams kicked off the plank and he stepped to side of cars and on to it, and took Williams down on to lumber. He said he told him —“they say you have been with other women, but I don’t believe it, no woman would lay with you—is mean enough to do.” I spoke of Court between Dr. French and Mr. Chamberlain coming on, on July 27. He said he would whip him the morning before the Court. He said he took him by the hair of the head at cars and threw him into middle of road. I asked then if he struck him and he replied “they said I did not.” He said he had put him down on the ground and righted him up and put him down again. Told him to go directly home and not call into Prescott’s.

CROSS EXAMINATION.—I had always been on friendly terms with Wyatt and I had often given him advice. Said others would pay the costs after, I think, I had advised him. I can’t say whether Wyatt said he put him or *jammed* him on the ground—I may have said *jammed*, in my affidavit.

#### GEORGE W. PRESCOTT’S AFFIDAVIT.

Have been in partnership in business with Williams over six years—reside in Warren village, next house to him—about ten rods off. During that period have known him to be a peaceable man and a good citizen—he is a thin pale man, and far from stout. Williams advised with me as to whether he had better prosecute Wyatt for the assault and threats, in order to insure his future protection. I advised him not to prosecute Wyatt, assigning to him as a reason, that I thought the bonds to keep the peace might not be large and they might club together to back him up. I said I thought the bonds might not be large enough to deter him from further violence, as he would be likely to get bonds and attack him again, as he had threatened to do. Williams concurred in this opinion of mine and expressed himself afraid to prosecute. Sometime after the assault on Williams by Wyatt, Williams desired me to consult with his friends and lay the facts before them, and take advice as to what measures he had better take to defend himself. I agreed with Williams to do so, and did; I consulted with several gentlemen whom I considered most respectable and judicious and whose advice was entitled to most weight; they advised and I so reported to Williams, that he had better be prepared to defend himself, but keep out of Wyatt’s way and avoid him as much as possible; but that he had better not prosecute Wyatt at present for fear that it would make Wyatt worse and exasperate him the more.

I understood the advice to be that he should defend himself in this way only as a last resort, when unavoidably necessary, that he should not use force if he could avoid it, and should use no more than was necessary for his protection; it was also advised, and I so informed Williams, that some intimation should be conveyed to Wyatt, that Williams was prepared to defend himself; in the hope that it might deter Wyatt from further attack. When I repeated this advice to Williams, he concurred in it. I am 49 years of age, and my health is, and during all the time spoken of was very poor, and have been under the care of a physician most of the time for the past eight months. August 2, 1860.

### TESTIMONY OF CALEB H. NOYES.

Have lived in Warren most of the time; lived there in 1860—always lived there except two years. On the morning of the 26th of June, I passed out of Prescott's house and saw Williams coming from his garden or going towards it. I spoke to him and said I heard of the attack the day before, in fun. He said Mr. Wyatt pulled him from the cars and threw him upon the ground and that he was afraid that Mr. Wyatt would come to his house and attack him that night, and he said he would like to have me come and stay at his house that night. I told him I did not think he would attack him, but if he was afraid and wanted me to go, I would go; but I did not go on account of sickness in Mr. P's family. About July 1, he came into my room next to Wiggin's store, in Prescott's house, said he was afraid of Mr. Wyatt, and did not know what to do, and was afraid to prosecute, for fear it would make him worse; because there were others to lead him on and had offered to pay his fine if he prosecuted him. He said he thought he would go armed.

CROSS EXAMINATION.—He said Wyatt did not hurt him very bad.

First talk was in morning after assault. He did not say whether any one staid with him the night before, i. e. day of second talk. That day I worked in hay field below bridge, some; also went to North Benton. The first day I was at Eaton, haying, in evening went to vestry, and returned and staid at Prescott's that night on account of sickness. Can't say whether of Prescott or not. Don't know that I saw Williams till I told Prescott's folks if he, Williams, would let me off, I would stay there and that I would go and see, and I did; told him the circumstances and he said he would let me off. This was about nine o'clock. He never requested



me after this to stay with him after this and before staying. He said nothing of his having attacked him any time except at cars. I knew Wyatt well. I did not hear of Wyatt being round the evening of the day he (Williams) spoke to me. I don't know as he expressed what he feared particularly—may have said that he had attacked him and was afraid he would do it again. I got a revolver about that time, saw it and took a fancy to it, and bought it; had owned one before; I saw one in Williams' possession three or four days or a week after this talk in my room; I got mine before; when he told me that he thought he should go armed, he asked me to get him a revolver and I said "well." I did not get the pistol for him. I got my pistol after the assault. My getting it had nothing to do with the assault. I never carried it. I let Mr. Haines have my pistol, and Williams returned it to me in one or two days after Haines had it, which might be about 7th or 8th of July. Williams returned it same day or next day. No complaint by Williams after what I have stated, that he was afraid of Wyatt. I did not know that Williams carried the pistol.

#### TESTIMONY OF MORRILL J. SANBORN.

Of Warren, at R. R. Station seven years—knew parties well. Latter part of June saw Mr. Wyatt about a week before sale. Wyatt came up the track and addressed Mr. Williams, "you damned rascal, I'll take your hide off;" he had a stick or cane in his left hand, and when he spoke he threw down his right hand, clenched. I heard no reply from Williams. There was more said by Wyatt, of a like character, which I can't repeat. Williams loaded lumber and bark at depot, and used before assault, to work there alone; but after that I never saw him loading alone, or at work there alone; and after that he came on R. R. track from his garden, about eighty rods. Before that, he came generally through the street. Once I was helping Williams load lumber near Rail shop, thirty or forty rods above station and Wyatt came along and passed down main track and when opposite the lower end of car he halted and turned round, and said nothing as I remember. Williams said to me that was why he got me to help him when Wyatt was round, he did not wish to be alone. This was about one week after the attack, and he employed me at other times when I could help him. When I could not help him, he would defer his work, after the assault, but not before as I remember. I never knew of his being quarrelsome.

CROSS EXAMINATION.—No knowledge of his being quarrel-

some. Williams had boards, plank, hard-wood lumber, &c., various widths and lengths. Loaded in May, June and July, some bark, and saw him work alone loading bark and spruce boards and hemlocks, before the assault. First of the time most of the last, lumber and bark. Have seen him have help loading boards before assault. I think I have assisted him oftener since sleighing than before, more since assault than before. Men at work for Knapp, Caswell.

Wyatt came within two feet of the car at the time I speak of; don't know as he had anything in his hand. Could not swear that he was armed, but after Wyatt had passed, Williams asked me to put my hand on his pocket and said "I carry that." He said nothing of the assault then, or about using that; this was about one week from assault of 25th June. I think we were loading square timber, Williams lifting one end and I the other. Knapp and another man were about. The distance by track to Williams' house, was about the same as other way. I think he travelled by R. R. before the assault less than two-thirds of the time.

The remarks of a like character, I can't repeat; it continued three to five minutes—heard what I state distinctly. The stick Wyatt had was a sort of whip stick, striking along, same as described by government witnesses.

DIRECT EXAMINATION RESUMED.—Wooden stick; Wyatt eyed us both when he stopped, within two feet of car.

CROSS EXAMINATION RESUMED.—I think a person on car might see between sign post under piazza to double gate but on the ground they could not.

#### TESTIMONY OF GEORGE LIBBEY.

Of Piermont now, last summer in Warren. Knew Wyatt, but not Williams much. At time of assault saw Wyatt near Williams on the ground. I was by Whicher's store; I went there, and saw a number of persons collected. Wyatt was shaking him up and down on the ground, lifting his head and shoulders up and down. When I got there Wyatt was blaming Swain for interfering, and Swain said he would thank him sometime for advising him to let him alone. Wyatt said, no, he should not—said something about his teeth, that he wanted to get them or something like that—said he could handle him as easy as a two years old boy. Said he would whip him twelve times; he said if he had thought of it he would have thrown him down over the bank. Saw him after that in Eastman's shop and wanted a whip stock that John Marstin owned, and Marstin said he might have it. Wyatt did not say what he wanted it for.



I asked him if he intended to whip him again and he said yes, if he lived—that he should not dare to strike him with his fist for fear he would stave him all to pieces. He took the whip stock and tried it, and broke one of the strans and said it would be of no use to him. The persons who offered him money to whip Williams were Anson Pillsbury and Ephraim Colley and a pedlar.

CROSS EXAMINATION.—Pedlar said he would treat him for what he had done, and Wyatt said “no I thank you, I never drink.” Don’t remember how much pedlar offered, nor the others—did not take out the money. Don’t remember Wyatt made any reply. When I saw them in the yard I was thirty or forty rods off.

#### TESTIMONY OF HARVEY CHAMBERLAIN.

Of Warren ; knew Williams—not Wyatt ; knew him about two years. June 25th, saw them immediately after. Wyatt said to Williams “ God damn you Williams, I will claw you every time I meet you”—said he would pound him, whip him every time he met him. He said he would have done it then if Swain had minded his own business. The persons there were Darius Swain, A. Pillsbury, William Clement, and others, two or three more. Think I heard Pillsbury offer Wyatt money.

#### TESTIMONY OF N. P. FOLSOM.

Live in Laconia ; was at Warren latter part of June and left latter part of July. Knew Wyatt and Williams. I boarded at Knapp’s hotel. Heard Wyatt on day of assault and after it, say that he thought he should go home without whipping him but when he came in sight, could not go home without whipping him. Said he was not on the car at first, but when Williams saw him he got on to car and he walked up on to car without saying a word and took hold of him and threw him off of car on to ground and churned the ground with him, and then threw him back on the car ; but this was nothing to what he should do with him—should whip him everytime he saw him. If he prosecuted him he should owe him another for that. Heard talk between Knapp and Caswell on day of shooting. Knapp asked Caswell how he came to leave his work at that time in the morning and come down if he did not expect Wyatt was going to whip Williams. He said he expected he was going to do something to him.

CROSS EXAMINATION.—I have stated all I remember of that talk.

## TESTIMONY OF EZRA B. EATON, JR.

Of Warren five years; knew parties; heard Wyatt about June 1, threaten to whip Williams if he sold his lumber, speaking of peg wood — others were present. I told him I thought he was not in earnest, saying, I thought a barking dog did not bite, at which he appeared angry and repeated his threat with an oath, and that if Haines interfered he would thresh him too. About one week after assault on Williams, I was going down opposite side of Williams' house and just as I came where William Clement was at work in his garden Wyatt was coming up street. When he come where Clement was at work I had a paper folded in my hand and so Wyatt asked what I had. I told him a subscription paper and asked him to sign it; he said no but pointed to Williams who was at work in his own garden and said if I would ask him over to sign it, he would give him a thrashing. I declined and said he had better let Williams alone. He said then if a man owed him a debt he would not be hard on him but Williams had taken his property, and he was bound to pound it out of the damned rascal. Day after assault I saw Williams as I was going down street and he motioned to me and I crossed over. He asked my advice about Wyatt—what he had better do. I asked him what he meant, not having heard of the assault; he told me about it. I told him I did not know what he had better do, but said he could put him under bonds. He said yes, but he supposed they would make a great fuss about it. He did not say he was afraid.

CROSS EXAMINATION.—He showed no other signs of fear but what I have stated. I asked him if he hurt him and he said, some. I saw no marks of violence—seemed reluctant and afraid—a coward. My residence is on same street.

## TESTIMONY OF ADDISON ROBINSON.

Of Concord. In the wholesale bread cart business—well acquainted with Williams and some with Wyatt. Was in Warren first part of July and left July 6th; was there 4th and 5th and part of 6th, in forenoon.

Took breakfast on 4th at Swain's; saw Wyatt on morning of 4th or 6th, I think; I was at sink washing and heard a voice ask "did you see him?" and he said "no" and following it a familiar voice using very profane language. Soon he came into bar-room, and kept on swearing to that degree that I stepped into bar-room and saw it was Mr. Wyatt; I said first I am sorry to hear any one use such language; are you mad? he said with no one but with Mad. Williams and then with



bitter oaths said "I whipped him once and will whip him eleven times more before I leave him." I asked him to be good enough to desist, and said "I am sorry to hear any one use such language." I then went into sink room, and when I went back he was gone. His language was very harsh. He said "God damn his shitten soul to hell, I have whipped him once, and God damn him I will whip him eleven times more."

CROSS EXAMINATION.—I heard him say no more. He did not say he would whip him. When I checked him he stopped, or appeared to, and then I went into sink room. Others were in room, but don't remember who. I don't remember seeing him at any other time while there.

#### TESTIMONY OF FERDINAND C. KEZER.

Live in Wentworth, two and a half miles from Warren village. Knew parties. Called at Williams' house on afternoon of assault at about three o'clock, and was with him until nine o'clock, P. M. He said Wyatt had pushed him off cars, &c., that he offered no resistance, that Wyatt could lick or kill half a dozen like him. After business was over he said he was afraid, and asked me what he had better do—wanted to get along as well as he could. I told him not to prosecute, but keep cool and keep out of Wyatt's way, and it would die away. I thought that to prosecute would irritate Wyatt and make him worse. Williams was much depressed, not able to do business. Sat at supper table but could not eat anything. About two weeks after, I met him and asked him how the lumber was going off? He had not sent any for a week, and he was afraid to trust himself with the boys.

CROSS EXAMINATION.—I am one of Williams' bondsmen. I never knew he was armed. I did not understand that Williams was afraid of any of the boys but Wyatt. Wyatt's name not mentioned. I had heard nothing about Wyatt continuing his threats after my talk at Williams' house. We relied on Williams to get the lumber loaded and sent off. I was interested in it with Williams. I had business with Otis and Harvey Chamberlain in settling with them for sawing lumber, and Williams was interested in it, but he could not foot a column of figures right. Assault was about three o'clock P. M.

#### TESTIMONY OF JOSEPH CHAMBERLAIN.

Live in Warren, fifteen rods or so from William Clement's. Morning of shooting had a conversation with Clement in his shed, in about half an hour after shooting. He said they

were coming from Bixby's together. As they came against Boynton's house Mr. Wyatt came behind them at a distance. Mr. Williams turned round and pointed a pistol towards him and told him to keep his distance, for he should defend himself. They then walked along together upon the sidewalk until they got to the large gate against Boynton's yard. That Williams saw Wyatt approaching near and going to his right as though he would pass by them. Williams then turned and pointed his pistol to Wyatt, and Wyatt paid no attention. Williams fired soon or immediately after speaking. That then Wyatt had got nearly opposite Williams—about four or five feet from him.

#### TESTIMONY OF DARIUS SWAIN.

Was in Williams' house on morning of shooting for three quarters of an hour at least after shooting, before I had been to breakfast. I was in there twenty minutes before I went home. My breakfast hour was half-past six—shooting about five o'clock. I think Damon Eastman was there and Williams.

CROSS EXAMINATION.—At the time of shooting, parties apart ten to fifteen feet or so—can't tell—may be further and may not be so far. I think I was 30 or 40 rods off. I did not see the firing. Did not take notice of the distance, and can't state the distance now. Stated in affidavit that they were not a great ways apart—from five to ten feet. Did not take particular notice and can't estimate it nearer. When I turned I saw them—can't say whether they were moving or not.

#### EZRA EATON, RECALLED.

Conversation with Wyatt when I had subscription paper, and which I stated as a week after 1st, is according to my affidavit two weeks before haying, and I was probably right, though my memory is not different now—but I have no accurate memory now. My affidavit is most likely to be correct.

#### MARY G. NOYES' AFFIDAVIT.

[Read by agreement—not to go to jury.]

I was at Augustus Eaton's in Warren, on or about June 26, last. Vanness Wyatt was present while I was there. I told said Wyatt that I had heard bad stories about him. He answered jocosely that he presumed so, for he was a bad fellow, or to that effect. He said he threw James M. Williams off the cars into the road, and that he (Wyatt) landed



there about as soon as Williams did. He said if Swain had not interfered he should have given him what he deserved—that he told Williams that he did not know that he (Williams) had a drop of blood in him—but if he had he would find it, or to that effect. He further said he told Williams that if he went on and sold my lumber I should lick him. He said I shall not lie to him (Williams,) and I will lick him—the law don't know poor folks, and there is no other way for me to get my pay but out of his body. This was said in an earnest and angry manner. Dated Aug. 9, 1860.

TESTIMONY OF WILLIAM CLEMENT BEFORE CORONER, AUG. 28, 1860.

[Signed and sworn to by Clement, day after shooting.]

The first I saw of Wyatt yesterday morning was unloading bark near railroad, and loading some in the car standing on track near the wagon, about a quarter past five. Mr. William Caswell was with him. I saw this as I was going with Williams over to Samuel Bixby's barn yard. Vanness Wyatt was at the instant of the firing about eight or ten feet back and at our right as we walked down street.

*Clement's statement in affidavit of July 27, 1860, taken before the inquest.*

Wyatt had got a little way from cart back where I had seen Wyatt and Caswell at work when I went over to milking. \* \* Wyatt was not coming on to the sidewalk but directly down the road, and should think three feet or more from the edge of the sidewalk next the road. \* \* \* When the pistol was fired it was about ten feet from Williams to Wyatt.

DAN Y. BOYNTON'S AFFIDAVIT, JULY 27, 1860.

I heard Clement call to Williams for help, and he came part of the way back, but when he saw me he turned away again. Preceding this he says—between five and six in the morning of to-day, I saw William Clement and James M. Williams passing down Main street of our village, on east side, next my house. Williams was next to the fence, Clement by his side, not going very fast. They were a little past front of my house. Wyatt was about ten feet behind when I first saw them, going in the same direction. They were on the side of the road, about five feet from the sidewalk, appeared to be minding his business. They walked on in this

way a few steps when Williams turned, took his hand from his breast and pointed a pistol towards Wyatt and said "if you step another step I will blow you through," and fired instantly upon Wyatt.

#### WILLIAM CASWELL'S AFFIDAVIT, TAKEN JULY 27, BEFORE MR. BLAIR.

We had been there about twenty minutes when we saw Williams driving his cow on Bixby Bridge, nearly opposite where we were. Wyatt spoke and said "Halloo you nervous whelp," or words of that kind—he said no more—and Williams passed on without noticing him at all. Williams had nearly reached the bridge—it was from ten to fifteen rods from us.

In testimony of Caswell before coroner he says—Wyatt was within about eight or ten feet of Williams when he shot him—he was near the sidewalk. In affidavit before read from he says—he picked up a stick that he used to drive his horse with, and started along. When he got some three or four rods I started after him.

#### TESTIMONY OF SAMUEL L. MERRILL.

I was the coroner. Lived in Warren always, sixty years. Known respondent always. I was his guardian from nine to twenty-one years. When a boy he was out of the place in a store some. Known him intimately. His character as a peaceable, quiet man was good.

[Attorney General offers to admit that his character has been good up to the time of the slaying. Received, and no other witnesses examined, though a number, ten or a dozen, more were sworn.]

#### TESTIMONY OF EZRA EATON.

Knew Wyatt four and a half years. First three years lived very near. About two years lived fifty or seventy-five rods off. Saw him almost every day. Never saw anything that indicated that he was near sighted. When I was near William Clement's garden he pointed to Williams' garden and said "There is Mr. Williams," and pointed towards him.

CROSS EXAMINATION.—I was by Clement's garden rather N. E. of Williams' garden, three to six rods further north than Williams' garden. Williams was then near N. W. corner of main building of his house, which is thirty to forty



feet. Points out the direction where he stood. I was going south. I did not see Williams till Wyatt pointed him out. Wyatt met me on the same side of the street.

#### WILLIAM CLEMENT'S AFFIDAVIT, JULY 27, 1860.

We walked down the street, but very slow, for Williams was looking back most of the time till Wyatt got most up to us, then Williams turned and shook his pistol, and said, "look out Vanness."

#### TESTIMONY OF JAMES P. WEBSTER.

Saw William Caswell in Knapp's hotel, Aug. 2, 1860. I asked him how far Williams was from Wyatt when he shot Wyatt, and he said from eight to ten feet. I asked him where he was, and he said in front of Knapp's house. I asked him if Wyatt and Williams had had any words that morning. He said nothing except Wyatt hallooed to him as he was driving his cow. I asked him where he was when he did it. He says he and I were unloading bark out near the railroad track. I asked him where the shooting was, and he said near Mr. Boynton's house, which he said was the old Bixby house. I asked him how Wyatt came down there, and he said he went there. I asked him if they had got through unloading bark and he said not—had about quarter of a load more to unload. I asked him how he came to be out by Knapp's house—if he thought Wyatt was going to do anything to Williams—and he said he thought he would do something.

#### TESTIMONY OF HARVEY CHAMBERLAIN.

Was present at a conversation between Williams and Colley at Colley's wagon. I went down street with Williams from place of assault at car. When we got down street twelve or fifteen rods, came to Colley unloading bed slats. Ephraim said to Williams "what was the trouble between you and Wyatt?" Williams said Wyatt's father was owing them and we sued them and attached peg wood. Wyatt claimed the peg wood as his, and he supposed that was the trouble. Colley asked Williams if Wyatt hurt him. Williams said he did not hurt him, or hurt him much, can't say which. He said he did not know what he might have done, had he offered any resistance, but he did not, and thought he had taken altogether the best course. I remember no more, and I left with him. He went to his house. I heard all. Remember nothing said about attacking him again.

Did not as I remember hear him speak about not being afraid. Staid there only one or two minutes. I think, I am confident I don't remember any such remark.

CROSS EXAMINATION.—Told this first I think yesterday. I think to Mr. Keazer, not sure. Don't know as my attention had been called to it before yesterday. Told it also at boarding place, Kezer and my brother Otis present, perhaps others. I heard the circumstances stated here, and I understood it differently. Have stated all I remember of the conversation. I was near Williams all the time, from four to six feet from him, can't say which side. Colley said it probably would not have done any good for Williams to have offered resistance—the last of the conversation.—Went down on west side of street, not so near as ten feet from rut. Wagon was near railroad track. Think we did not go over one or two rods out of road. Wagon was north of depot.

DIRECT EXAMINATION RESUMED.—Have ridden with Wyatt once—night before he was shot. Came late after bark—we helped him load, and so did S. M. Boynton. Between sunset and dark. Did not notice but he drove well. Road crooked and rough. After we got into Boynton's field, he turned and called to Boynton thirty or forty rods off, in front of his house.

CROSS EXAMINATION.—It was a pretty crooked and rough road.

#### TESTIMONY OF J. B. S. OTTERSON.

Williams' house back from his fence in front in S. E. corner nineteen feet ten inches—N. E. twenty feet nine inches. Fence extends in front of garden—on same line. Garden above house extends ninety-five and a half feet—five and seven-tenths rods. [Plan shown to jury.] From southerly end of Boynton's double gate to opposite Clement's front door is about forty feet. From line of street to his front door is fourteen feet. From station 5 B. I can see down on Boynton's fence to a point fifty-eight feet from S. W. corner of it, which point would be south of gate. View is interrupted by Knapp's hotel.

#### TESTIMONY OF DARIUS SWAIN.

Standing on piazza of my hotel at north end can see one at work in front part of Williams' garden. Shop is on line with body of my hotel without piazza, and Williams' house is on line with mine—nothing to obstruct view of garden. I have been into Boynton's house at window at southerly end,



and from that window one can see back part of my hotel, but none of the front part. P. O. was kept between my house, about twenty rods, and can't be seen from this window. P. O. was then in Clement's old store there.

#### TESTIMONY OF MORRILL J. SANBORN.

At car could see the whole of man about ten rods from track, and then he begins to descend, and standing on track could see his head till about half way across the bridge. Ground nearly level to where it begins to descend. On the car can see a man's head all the way across the bridge to yard. I spoke to Mr. Knapp about Williams' being armed. Told him I thought he was armed. This was about one week after assault.

CROSS EXAMINATION.—Joseph Chamberlain was the man that assisted me in this examination. I am six feet, one inch, Joseph Chamberlain two inches lower. My attention called to telling Knapp about the time I was summoned to Court.

#### TESTIMONY OF ARTHUR KNAPP.

Morrill J. Sanborn informed me of Williams' going armed before I told Wyatt, sometime when I was down with Swain. Wyatt drove a little French horse there on Sunday, and told me what he could do with him—could call him. He called me out to railroad track and looked up to where horse was, and said he would call him down, and did, thirty or forty rods off. He played checkers. Don't know as I observed any peculiarity in his eyesight in doing it. Have seen him take a newspaper and hold it close to his eyes. Nothing else peculiar.

CROSS EXAMINATION.—Have seen him play checkers a great deal—day times mostly—sometimes evenings. Checks large. He generally rested his head on his knee, bringing his head rather near the board. Horse was turned loose on railroad track on Sunday.

#### TESTIMONY OF JOSEPH BIXBY.

Wyatt has called me at a distance, twenty-five or thirty rods off in street, at P. O. and lower hotel. Often so happened. Played ball with him often. Round ball and four years old cat. He was worth nothing to catch—good to run. Don't remember about picking up ball. I guess he was a skillful driver.

CROSS EXAMINATION.—Knew him well.

## TESTIMONY OF EZRA B. EATON.

July 3 Wyatt was driving his own team in front of Swain's hotel. There was a horse and two pair of wheels, and two large boards and a seat. He was driving in company with Powers of Orford, who had a team, and were driving round in street, following each other fast and striking each others horse, and persons; a good many people there. Band from Newbury. Circle of people all around there. Wyatt drove skillfully, very fast, and made some short turns, and drove close to other carriages.

CROSS EXAMINATION.—I don't live over seventy-five rods from Williams. They would sometimes drive outside the circle.

## TESTIMONY OF NATHANIEL MERRILL.

Live in Warren. Knew Wyatt. He has worked for me at haying. Mowed uneven ground, stones and stumps. Noticed no difficulty about his eyesight. Whet his own scythe. This was in July, '56.

CROSS EXAMINATION.—Lived lately four miles off. Never saw him read or play ball.

## TESTIMONY OF JAMES M. BIXBY.

Live in Warren. Brother of Joseph. Knew Wyatt from a boy. Lived half a mile off. He worked some for my father haying. Played round ball with him. Noticed no difficulty in his eyesight. Drove home often. Knew of no want of skill. Did not always whet his scythe—father did, and for the rest of us.

CROSS EXAMINATION.—He would hold his paper close to face and a little above his eyes.

## TESTIMONY OF GEORGE W. MERRILL.

Live in Warren. Knew Wyatt from a boy—used to live within three quarters of a mile. He has worked for me some ploughing. Struck out his own land well. Ground his axe. Went trouting with him. Been in woods and saw him pick strawberries. Saw no peculiarity about eyesight. He has called me from six to ten rods off. Think he knew me at that distance.

## TESTIMONY OF SALMON GLEASON.

Wyatt called me day before he was shot as I was mowing, six or eight rods from road in which he was passing. Can't say which spoke first.

CROSS EXAMINATION.—He knew where I lived.



## TESTIMONY OF MRS. ARTHUR KNAPP.

Saw Wyatt play ball. Saw him pick it up and throw it. Saw him run after it as it was rolling. Three years ago this was.

## TESTIMONY OF MARIANNA WILLIAMS.

Am daughter of defendant. Am sixteen years old. Remember assault and shooting. I noticed father's staying in house. Before assault he went to store by road, after assault oftener by garden. Wyatt quite often went by our house after assault. He would turn and look at the house till he got by. Never noticed it before assault.

CROSS EXAMINATION.—He passed before quite often, but I did not observe him to look at it. After assault saw him pass sometimes several times in a day.

After the evidence was closed Mr. Hibbard addressed the jury in behalf of the respondent, and Mr. Sullivan for the State.

Judge Bellows then charged the jury as follows :

Indictment. First count charges that the prisoner on the 27th July, 1860, killed Vanness Wyatt by shooting him with a pistol with malice aforethought. The second count charges the same thing substantially, leaving out however, a description of the means by which the death was caused—the substance of the charge then, is the killing of Vanness Wyatt by the prisoner, and with malice aforethought. The killing at the time and place alleged, and with a pistol, is both proved and admitted. The malice aforethought is denied by the prisoner. And it is this question that you are to try. The case of the government as its counsel claim it to be, is in substance this: That early in the morning of July 27, 1860, between five and six o'clock, the prisoner and William Clement were returning from Bixby's barn yard, and passing down Main street, in Warren, upon the sidewalk, on the easterly side—that after having turned round the Bixby corner, and passed along forty-nine feet on the main street, the prisoner said to Mr. Clement "*Van is after us,*" upon which Clement turned and for the first time that morning saw Wyatt moving across the common, from the direction of the railroad, and was then about one hundred and sixteen feet from a car which was being loaded with bark. That Clement in reply to Williams' remark that "*Van is after us,*" said "*he guessed not,*" and they continued on as before.

That at this time Wyatt was about ninety feet from Williams and Clement, and moving in the direction of the same sidewalk. That *all* continued on at the same pace as before until Wyatt had approached within about thirty-two feet of Williams, he having walked about one hundred and twenty feet from the place where Clement first saw him, while Williams and Clement were walking seventy-seven feet on the sidewalk. When Williams turned and presented a pistol, and shook it at Wyatt, and said "*Now look out Van, don't you come near me,*" that Wyatt was then walking in a pathway by the side of the road, and about fifteen feet from the sidewalk, [measuring from the edge next the fence. That Wyatt made no reply to Williams' remark, but continued on as before in the pathway which approached a little nearer to the sidewalk. When Wyatt had walked on about sixty-three feet further, and Williams and Clement about forty-three feet, bringing Wyatt within about fifteen feet of Williams, and thirteen feet of the outer edge of the sidewalk—Williams turned again and drew up his pistol, and said, "*Step another step, and I will blow you through,*" and fired at the same time. Up to this time the State contends Williams and Clement were walking rather slow, and that Wyatt was walking at his usual pace, and that the pace of neither was accelerated or changed from the time they first saw Wyatt until he was shot, and that Wyatt said nothing and made no menacing or other gestures towards Williams, but walked along with his head down, and tapping his pantaloons with a small stick which he carried in his hand. That at the time he fired Williams was about against the south part of Boynton's double gate, and after the firing he passed along the sidewalk about six feet, and made a sort of halt, and as Wyatt came up near to Clement he stopped, and Williams started across the street, Wyatt saying to Williams, "*I haven't touched you, Mr. Williams, and was not going to,*" to which Williams replied, "*I know you have not, but you followed me with a stick.*" That Wyatt then faltered, and was caught by Clement, and he called upon Williams, who had got a little ways into the street, for help. But Williams did not return or lend any assistance. That Mr. Boynton came and assisted Clement in carrying Wyatt into Knapp's hotel, where he very soon expired. This is substantially the account given by Mr. Clement, and it is in its most important features corroborated by Mr. Boynton and Mr. Caswell. On this evidence which the government contends is neither impeached or controlled, it is claimed that a wilful, premeditated and malicious homicide is proved, and



that therefore the prisoner is guilty of murder in the first degree.

On the other hand the prisoner introduces evidence to show that the killing was necessary self defence, and therefore excusable, and this leads to the inquiry whether the homicide was felonious or not, and if felonious whether it is murder or manslaughter, and if murder whether of the first or second degree. In entering upon these inquiries it will be convenient to have in mind the general definitions of the different kinds of felonious homicide, and also of excusable and justifiable homicide. At common law there were two kinds of felonious homicide—*murder* and *manslaughter*. By our statute murder is of two degrees, so that in New Hampshire felonious homicide is of three kinds—murder in first degree, murder of second degree, and manslaughter. Murder is the unlawful killing of a human being with malice aforethought either express or implied. (3 Greenleaf Evi., § 130, Wharton on homicide, 33, 4 Blk. Comm. 195.) This is the definition of murder at common law, and includes both degrees of murder under our statute, which does not undertake to define murder in general, but leaves *that* to the already established definitions, and divides murder into two degrees.

I. All murder committed by poison, starving, torture, or other deliberate and premeditated killing, or committed in perpetration, or in the attempt at perpetration, of arson, rape, robbery or burglary, is murder of the first degree. II. And all *murder* not of the first degree is of the second degree.

In both there must be malice aforethought. But in that of the first degree there must be the *deliberate* and *premeditated* purpose to kill, unless where it happens in the attempt to commit arson, rape, robbery or burglary, in which cases it would be murder though there was no intent to kill. Murder in the second degree is where the killing was with malice aforethought, but without a deliberate and premeditated purpose to kill, and not done in perpetration of the crimes enumerated, as if the purpose was only to commit the crime of mayhem, as by cutting off a leg or arm and in doing it life be taken. To apply it to the case before us. If the act was committed with malice aforethought, and the killing was *deliberate* and *premeditated*, it is murder in the first degree.

If the killing was not deliberate and premeditated, but the prisoner only designed to maim the deceased, it is murder in the second degree, if done with malice aforethought. In either case the malice is necessary, but in the second degree the *design* to kill is wanting. (3 Greenl. Evi. §. 145.)

What then is malice aforethought? As descriptive and as characterizing the crime of *murder*, it is not to be understood merely in the sense of malevolence towards the person killed in particular, but as meaning that the act proceeded from that general malignity and recklessness of the lives and personal safety of others which denote a heart void of a just sense of social duty and fatally bent on mischief. (3 Greenl. Evi. § 144. 1 Russ on Cr. 482.) Therefore if in attempt to kill A. the prisoner by mistake kill B. it is murder, just as if he intended to kill B. So if in attempt to rob or commit arson he kill another by accident it is murder. So if the killing be the consequence of such a wilful act as shows the accused to be an enemy to all mankind, as shooting a gun among a crowd of people whereby death ensues. Express malice is proved by evidence of a deliberate formed design to kill another, and such evidence may consist in antecedent menaces, lying in wait, former grudges, preparation of poison, or other means of doing great bodily harm and the like. [3 Greenl. Evi. § 145.]

Implied malice is an inference or conclusion of law from facts found by the jury to be true—as if a man wilfully poison another, or kill another without any or with a slight provocation, the law will imply malice, for no person unless of an abandoned heart would be guilty of such acts upon a slight or no apparent cause. [Roscoe on Cr. Evi. 708.]

In this case the circumstances of the killing are before you, the previous relations of the parties are shown, and also the assault and threats of the deceased, the arming of the prisoner, and the advice of his friends. From these and all the evidence before you, you are to determine whether the killing was with malice aforethought or not, and in deciding that question you will inquire whether the malice be proved beyond reasonable doubt. If you are not so satisfied it will be your duty to find that the malice is not proved. If a voluntary killing were shown and *nothing* further, the law would imply malice, but *here* all the circumstances are to be considered, and it is purely a question for the jury on all the evidence, both that which is adduced by the State and by the prisoner, whether they are satisfied beyond a reasonable doubt that the killing was malicious.

Manslaughter is the *unlawful* killing of another *without malice*, either express or implied, and is either voluntary, as where upon a sudden quarrel two persons fight and one kills the other. So if a man be greatly provoked, as by pulling his nose, or other great indignity, and immediately kill the aggressor, though this is not excusable, *se defendendo*, since



there is no absolute necessity for doing it to preserve his *own* life, yet neither is it *murder*, for there is no previous malice, but it is manslaughter. But to reduce such killing to manslaughter, it must be done in the heat of passion and before there is cooling time for passion to subside, and reason to interpose. Otherwise it would be deliberate revenge and consequently murder. [4 Blk. Com. 191. Wharton on Hom. 35. 1 Easts. Crown law 233. 3 Greenl. Evi. § 119-121.] So to reduce the homicide to manslaughter the provocation must be considerable and not slight, and proof of reproachful words how grievous soever, or if actions or gestures of contempt or reproach, without an assault, actual or menaced, on the person, will not be sufficient if a deadly weapon is used. But if the fatal stroke were given by the hand only, or with a small stick or other instrument not likely to kill, a less provocation will suffice. [3 Greenl. Evi. § 122 and 124, and cases cited among 1 Russ. on Cr. 580. 1 East. crown law 233, and cases cited. Foster 290.] But if the words were words of menace of bodily harm, accompanied by some outward act, showing an intent immediately to do the menaced harm, this would be a sufficient provocation to reduce the killing to manslaughter. [3 Greenl. § 124 and notes. 1 East. crown law 233. Russell on Crimes 580.] Homicide not felonious is either excusable or justifiable. Justifiable homicide is where the killing is of necessity—without any voluntary will and without any negligence—as where an officer executes the sentence of the law on a person condemned for crime, and the like.

Excusable homicide is of two kinds as it is said. I. By misadventure or mere accident—as where a man engaged in doing a lawful act, by accident unfortunately kills another, as if he be at work with an axe and the head flies off and kills another, or if he be shooting at a mark and accidentally kill another. The other kind of *excusable homicide* is the killing another in self defence. Excusable homicide because in self defence is where one is assaulted upon a sudden affray, and in defence of his person, where certain and immediate suffering would be the consequence of waiting for the assistance of the law, and there was no other probable means of escape, he kills the assailant. To reduce the homicide to this degree it must be shown that the slayer was closely pursued by the other party, and did what he could in good faith, with the honest intent to avoid the violence of the assault. The jury must be satisfied that unless he had killed the assailant he was in imminent and manifest or apparent danger, either of losing his own life or of suffering enormous bodily harm—or that he had reasonable apprehen-

sion of it. [See Greenl. Evi. § 116. 4 Blk. Comm. 182-3. Wharton on Hom. p. 36.]

Mere words, however aggravating, will not furnish such excuse. But there must be an actual attack made by the deceased of a character to create a just apprehension in the mind of the slayer of extreme and immediate personal violence which could be avoided only by slaying the assailant. It would not however be necessary that he should wait until a blow was actually given, as if one should advance upon another with a drawn sword, and with deadly threats or menaces, the person so assailed having no other way of escape, might rightfully kill the assailant without waiting to receive the blow. So if the assailant approached with a drawn pistol aimed at another and with menacing gestures, such as to furnish reasonable ground to apprehend a design to kill, the person assailed might protect his own life by killing the assailant before he had time to discharge his pistol. And the excuse would be the same if it turned out that there was no such design to kill, and that in truth the pistol was not loaded, if the jury found that there was in the prisoner's mind a bona fide belief in such design, and the apparent circumstances afforded just cause for such belief. It is not, however, every assault upon a man's person that will reduce the killing of another to excusable homicide, as if it was but an ordinary trespass, the striking with the hand, horsewhip, pulling the nose, or spitting in the face, under circumstances affording no grounds to apprehend great personal injury and causing no such apprehension. Such is the regard of the law for human life, that assaults of this character will afford no justification for taking it away. So the force used by the person assailed must be no more than is required for his protection, and must be used in good faith for that purpose alone.

And the law requires that a person who kills another in self defence should have done what he could to avoid the violence of the assault before he turns upon his assailant and slays him, and this not ficticiously or in order to watch his opportunity, but in good faith and from a real tenderness of shedding his brother's blood. This right of self defence is well stated in these words: "If the person assaulted being himself without fault, reasonably apprehends death or great bodily harm to himself unless he kills the assailant, the killing is justifiable." [2 Bishop Cr. Law 561.] And this necessarily implies that the danger is immediate and the killing is necessary to avert it, there being no other way of escape. So the person assailed should avoid the use of a



deadly weapon as long as he can, and then only so far as is necessary for his protection in the last resort. Was the homicide excusable or felonious? Respondent's counsel says it was excusable. He says the deceased was advancing upon him with the purpose of inflicting upon him great bodily harm, that the prisoner had reason to apprehend and did apprehend such injury, that he retreated as far as the nature of the attack would permit, and that he used the force he did use in good faith and for the necessary protection of his person from a deadly or dangerous assault or great bodily harm. The State on the other hand say that Wyatt advanced with no purpose of assaulting defendant at all, and that if he had any such purpose it was not with a purpose of using such violence as to justify the use of such a deadly weapon; that defendant feared no such violence, but killed him without just cause, and maliciously.

As has been said before, mere words would not furnish a sufficient provocation, but if the deceased was approaching the prisoner in a menacing manner, and with the actual and manifest purpose of inflicting upon him great bodily harm, (calculated to endanger life or limb,) and with the strength and means to execute that purpose, and the prisoner actually believed such to be the purpose, he might lawfully protect himself in the last resort by using so much force as was necessary, even to the taking the life of the assailant.

And it is for you to decide upon all the evidence whether such provocation did or did not exist in this case. And in deciding this question the prisoner is to have the benefit of any reasonable doubt that shall be left on your minds after a careful consideration of the testimony. [3 Greenl. Evi. sec. 29 and notes—note on p. 36.] Not every doubt in the power of ingenuity to suggest, for in that sense few things could be proved—but the proof of guilt must be full to a moral certainty, to that degree of certainty upon which reasonable men would act in their own grave and important concerns.

The questions then are, was the deceased then advancing upon the prisoner? did he meditate an attack upon him? if so of what nature? Did he merely design to chastise him, to commit an ordinary trespass upon his person, or did he design to take life or inflict great bodily injury upon him? If the latter, had he the strength and means to execute it? Was such a purpose made manifest and apparent to the prisoner in such way that he had just cause to fear an immediate attack of that character? and did he really fear it and act under the influence of such fear? or was it but a pretext for taking the life of the deceased in execution of a precon-

ceived purpose? Did he avoid Wyatt as long as he could safely, considering the nature of his purpose and demonstrations? and did he slay him at last for the protection of his own person, in good faith and not in a malignant spirit? In determining whether the deceased was advancing upon prisoner with the purpose of making an assault upon him, it will be useful to enquire into the circumstances as shown at the time—the driving by the prisoner of his cow to pasture—the remark of the deceased as he passed along, and whether or not it was directed to the prisoner. And in making this inquiry, consider whether the deceased saw the prisoner, or was prevented by being near sighted. If the remark was directed to the prisoner it may be considered in its bearing upon the temper and disposition of the deceased's mind toward the prisoner at that time—then the prisoner's return from the pasture, and the deceased leaving his work and the purpose of it. Where was the prisoner when deceased got off the load? Clement says when they saw him and the prisoner said "Van is after us," they were forty-nine feet from the corner, and Wyatt one hundred and sixteen feet from the car. Why did deceased leave the load at that time? Consider the condition of his work at that time—the statement of Caswell that he might suspend throwing up bark till he had packed what was already thrown up—Caswell's statement that Wyatt did not state the reason of leaving his load. Weigh this in connection with his statement that he himself left the car and followed a few rods behind Wyatt—that he don't remember why he did so, or that he expected an affray—and also that he told Williams on Wednesday morning that Wyatt would shake him. Weigh his statements also in connection with his statement in his affidavit of July 27, in which he states that Williams passed with his cow and Wyatt said, "*Halloo, you nervous whelp,*" without stating that he did not know who he meant as in his testimony now. Also Arthur Knapp's statement that very soon after the shooting Caswell told him in reply to his inquiries that he expected Wyatt would do something to Williams when he took the stick. Also his statement that Wyatt said "halloo you nervous whelp" when Williams went over the bridge, and that Wyatt got off when Williams came back. Also statement of James P. Webster to same effect as to what he expected and hallooming to Williams. Weigh these statements all carefully, with the view of ascertaining why Wyatt left his work at that time, giving to Caswell's statements such credit in view of any different statements proved to have been made by him as they are entitled to. So it is



proper to consider the circumstances of his taking the stick which you have seen with him. Also the direction he walked and the rapidity of his pace. That his course brought him *near* to the respondent is not disputed.

But it is said by the government that he was walking in the travelled part of the highway in a path way, nearly parallel with the sidewalk, and did not intend to approach nearer, and was moving at his usual pace. And the testimony of Mr. Clement is to the effect that he was walking at his *usual* pace, and in a pathway nearly parallel with the sidewalk, "though the courses they travelled was bringing them a little nearer together," as he said. So he says Wyatt was within about fifteen feet of Williams when he shot, and about thirteen feet from sidewalk, measuring from fence—so seven or eight feet from edge next to the road. So Caswell says Wyatt was walking his usual pace when shot—was near wheel path. Before coroner he said "within eight or ten feet." Told James P. Webster, as he says, eight or ten feet. So Boynton says "Wyatt was walking about his usual pace," though Williams and Clement rather slow, and neither changed their pace. Wyatt about twelve or thirteen feet from picket fence when I first saw him, and about same when shot, and about fifteen feet from Williams. Says Wyatt was travelling faster than they were. Says Wyatt, I think, approached a little nearer to fence as he went along. The path he travelled approached a little to sidewalk.

Upon the other hand defendant contends that the approach was rapid and menacing, and he asks your attention to the distances travelled by each. Supposing Williams and Clement to have been forty-nine feet from corner when they saw Wyatt, and Williams said "Van is after us," and that Wyatt was one hundred and sixteen feet from car and ninety feet from them. That being the case, Wyatt moved according to Clement, one hundred and twenty feet to where he was warned—while Williams moved seventy-seven feet, and then was within thirty-two feet of them. When Wyatt moved sixty-three feet to place of shooting, while Williams moved forty-three feet at same time.

So Wyatt	183
And Williams	120

---

63

Wyatt moving a little more than three feet to Williams two.

So respondent asks your attention to the warning given by him, and Wyatt continuing to advance in silence and without disclaiming a purpose to attack him. If Wyatt heard the

warning and saw the pistol, and continued to advance in silence, it may deserve consideration in weighing the evidence as to his purpose. Did he hear the warning and see the pistol? The government say he was near sighted and did not see it. Consider the evidence on that point and see how the fact was. If he did hear the warning and see the pistol, it will be for you to determine its significance. Does it indicate that he regarded it as an idle threat, and of no account, or that he was resolutely determined upon his purpose and would not be diverted in this way—or what does it indicate? So defendant says that Wyatt was abreast of him, and that this fact is indicated by the direction of ball, and that he was close upon him, not over six or eight feet, or less. The government witnesses make the distance twelve or fifteen feet. But it appears that on other occasions they stated a less distance. They say, however, in reply to this, that the witnesses had not then measured the distances, but have since done it and are now accurate. On this point weigh all the evidence and see how the fact is. Consider the character of the government witnesses, their appearance, contradictory statements, and see what allowances, if any, should be made. Again see if any light can be gained from the course taken by the deceased.

It would seem that it was not directly from the car to the place of shooting—as according to Clement he was at *one* time about half way between sign post and Bixby's corner. Did he change his course after he started—if so, why? Did he intend or expect to fall in with them—if so did he expect to meet them at a point nearer the corner—or was he moving in the road naturally?

All these facts are to be examined in the light of the previous relations between the parties as shown in the proofs, with the view to ascertain the real and apparent purpose of the deceased in approaching the prisoner as he did, and when I say *apparent* purpose I mean what *would be apparent* to a man of ordinary sagacity who was fully acquainted with the relations between the parties, and saw the deceased approach as he did approach. What then were these relations and what is to be inferred from them as to his purpose in approaching the prisoner, or from the threats which he is proved to have uttered?

There seems to be no serious conflict in the testimony that a difficulty existed between them growing out of the attachment by Prescott & Williams of a quantity of peg wood. But the nature of the feelings that it caused, and the purposes engendered in the mind of the deceased, is the ques-



tion—and so it is a proper matter of inquiry as respects the state of the *prisoner's* mind and purposes. On this point we are now considering, viz. the nature of the provocation under which the prisoner acted, the previous state of mind and the threats of the deceased, if any are proved, have a bearing—and the inquiry is what have been proved, and what do they indicate in respect to his purpose in approaching Williams?

Do these threats indicate to your minds a purpose to commit an ordinary assault and battery upon the prisoner? or do they indicate the purpose to make a felonious assault upon him, such as to endanger life, limb, or cause other great bodily harm?

Consider these threats—the frequency of them—their nature, the time and manner of them, how far in earnest or otherwise. The significance given to them by the assault at the car, including his statement of what he would have done had Swain not interfered—as to kicking him in the face—throwing him over the bank—the remark that this was but a drop in the bucket.

If such is proved, consider also the evidence of subsequent attempts to fall in with Williams in the morning while driving his cow—morning of July 3, 1860—running him into Prescott's, going through Knapp's shed so that Williams should not see him, and saying if he had got hold of him he would have taken off his hide—his threat to Adoniram Whitcher to whip him July 27th, the day of the court and the day of affray—the assertion that if Williams prosecuted him he would knock him in court—knocking out his teeth down his throat—did not care for prosecutions, enough stood ready to pay the costs—offers of Pillsbury, Eastman, Fifield and Weeks to contribute in presence of Wyatt—remark about not interfering—and going behind shop so as not to see him. So in regard to whipping him twelve times.

I don't pretend to detail all the evidence of the threats, but to call your attention to their general nature, without undertaking to repeat the precise words, or describe the manner.

It will be for *you* to deduce from all the testimony the *real* purpose of Wyatt. Whether it was the empty boasting and threats of a loose man, and not springing from a serious and fixed purpose to inflict great bodily injury upon Williams, or whether his purpose was real and earnest to make a serious and dangerous assault upon Williams. And in deciding on this question you may properly consider Wyatt's own understanding of the effect of his threats upon

Williams, as is stated by Ezra Libbey, in causing him to keep at his own house, and so it may be proper to consider whether he was acting in concert with others for any purpose, and if so, what that purpose was.

This is peculiarly a question for your consideration, and it is not the duty of the Court to form or express any opinion upon it—the province of the jury and the Court being entirely distinct.

Does this evidence then, all considered, satisfy your minds that Wyatt intended to assault Williams? If so, what was the nature of the assault which he meditated? Was it such as to endanger life, or limb, or to cause great bodily injury—or was it slight and not serious? The conclusion to be drawn from this evidence of threats, is material on account of its bearing upon the intent of Wyatt in approaching the prisoner at the time of the fatal affray—and if this evidence of threats was communicated to the prisoner, then it would *also* be material in enabling you to determine what Williams had cause to fear, and what he actually did fear, both when he provided himself with a deadly weapon, and when he used it—the question really being what had Williams reason to fear and what did he fear from Wyatt on his approach towards him?

If at the time of Wyatt's approach, Williams had no cause to fear an assault, *then* and *there*, or no assault that was serious such as I have described, and Williams did not in fact fear it, then he would be without justification or excuse for slaying Wyatt. Had he then reasonable cause to fear the loss of life, or great bodily harm, and did he fear it and use his weapon in necessary self defence?

On this point consider the rapidity of Wyatt's approach—the character of the stick he carried—his disregard of the warning he received if he heard it—the nearness of his approach to Williams at the instant of firing—the comparative strength of the two—all in the light of the previous threats, assault, &c. On the other hand consider the presence of Clement—whether he could rely on him for protection—Pillsbury's statement—the locality a public street—the time in day—the evidence of former declarations that Wyatt did not hurt him—that he thought he would not renew it—and determine *what* he had cause to fear—and we are of opinion that if the purpose of Wyatt was manifestly to assault Williams with the view of taking his life or doing him some enormous bodily harm, and he was advancing to execute that purpose, it was not necessary that Williams should wait until a blow was actually struck, or his person seized. It



would be sufficient that he did all he could to avoid such attack, and then only used his weapon in the last resort, when further delay would have placed him at the mercy of the assailant.

In regard to the threats of violence it is not necessary to the justification, that they should have been uttered at *that* time, but if previously made, and they were in their nature indicative of a purpose to use violence upon the first opportunity, you may consider whether or not they would reasonably give a character to Wyatt's approach, and convert what would otherwise appear harmless into a menacing act. This is for you, gentlemen, to determine, and upon it the defence must greatly depend. In the light of all the evidence was Wyatt advancing with the purpose of great personal violence, or had Williams reason so to suppose? And this is a mere question of fact, and not embarrassed by any technicality—as it bears directly upon the condition of the prisoner's mind at the time he fired—whether he did it from motives of self defence merely, in good faith—or from motives of malice and revenge.

In deciding upon the reasonableness or existence of such fear in the prisoner's mind, you will of course consider the strength and the means of the deceased to destroy the life or work enormous bodily harm upon Williams, and also all other means of protection that existed independent of the weapon he carried—such as the presence of Clement and the vicinity of others. If you find there was reason to fear such violence, was it of such an imminent character and so close upon the prisoner as to justify him in the use of a weapon so deadly, at the time and in the manner he did, or was this fear as contended by the State's counsel, but a pretext to enable the prisoner to wreak his vengeance upon the deceased? This, gentlemen, is also a question of fact purely, and you are called upon to examine the evidence, see whether it shows malice, the purpose of murder in the heart of the prisoner, instead of the motive of self defence. Consider then the previous state of the prisoner's mind towards Wyatt—his arming with a deadly weapon—the avowed purpose—the advice of friends—and the evidence of his making public the fact that he was armed—and the purpose of it, and whether it came to Wyatt's knowledge, and in accordance with Williams' intentions—whether after arming himself he sought an affray with Wyatt? or whether he continued to avoid him as before? His conduct at the final scene, as he and Clement walked along—what did it indicate? is it all stated? did he avoid him as long as he safely

could? did he give Wyatt warning in good faith, and was it to prevent collision? did he withhold his shot as long as he safely could? did he shoot with a deadly aim and a fatal purpose, or was its direction in any degree matter of chance? Consider also his conduct after the shot—the remark of Wyatt and the reply of prisoner. So his subsequent conduct as to any attempt to escape—his remark to Ezra Libbey about getting a pistol to avoid being pounded.

If you find the homicide not to be murder in either degree, upon the ground that malice is not proved, you may then consider whether it be manslaughter or not. If, however, you are of opinion that the killing was excusable upon the principles we have stated, it will not be necessary for you to enquire farther, and your verdict should be, not guilty—otherwise it will be necessary to consider whether he be guilty of manslaughter. Between manslaughter and homicide excusable, the boundaries in cases actually arising are not always distinctly discernable. In this case, if the killing was in necessary self defence against an attack that menaced the loss of life, or enormous bodily harm, it is excusable. If the violence menaced was of a slight character, such as an attempt to strike with the open hand, pulling the nose, or spitting in the face, and in the sudden heat of the passions, and without premeditation the respondent had killed the assailant, it would be manslaughter only—the ingredient of malice being wanting. Should you find, therefore, that there were threats of bodily harm, and that Wyatt was advancing upon the prisoner with the manifest purpose of putting those threats into immediate execution, but the purpose was not to destroy life or do enormous bodily harm, but a lesser injury—and it was so understood by the prisoner—then if in the heat of passion, and without malice, he put him to death, it is manslaughter, and such should be your verdict. You will enquire, then, as before, whether the deceased advanced upon Williams to execute on the spot antecedent menaces of such violence. Whether this was manifestly his purpose, and so understood by the prisoner. Whether the prisoner killed him in the heat of passion and not with deliberate malice. If such is the finding, it is manslaughter, and should you find that the killing is not murder in either degree, then whether it be manslaughter or excusable homicide, will deserve and no doubt receive your careful consideration, remembering that excusable homicide is the killing in necessary self defence, and manslaughter the killing without such necessity, but in the heat of passion caused by the violence of another. If the killing was malicious, and



was wilful and deliberate, that is if he intended to kill, it is murder in the first degree. If malicious but the intention to kill is wanting, the prisoner intending to commit a felony upon the deceased short of taking life, it is murder in the second degree. If the deceased was advancing upon the prisoner with the manifest purpose of immediate personal violence, though not to take life or do great bodily harm, and the prisoner so understood it and killed him in the heat of passion, it is manslaughter.

If the purpose was to take life or do enormous bodily harm, and the prisoner killed him in necessary self defence, the homicide is excusable. If the prisoner is found guilty it will be returned in open Court, and verbally, and at the same time you will return whether it be murder in the first or second degree, or manslaughter.

If acquitted it will be simply not guilty.

The case is now before you, and the responsibility must be painful. The testimony, however, has been very deliberately given, and you have had the benefit of very able arguments of counsel on both sides, and we trust that you may be able to arrive at a conclusion that shall fully satisfy your consciences, and at the same time do justice to the prisoner and the public—remembering that the highest obligation that is upon you, is that your verdict should speak, just what the term implies, the exact truth, without favor and without passion.

---

The Jury were unable to agree, it being understood that nine were for acquittal, and three for finding the respondent guilty of manslaughter, all being agreed that he was not guilty of murder, and two of the three would have agreed to a verdict of not guilty if the other would agree also.

The case was continued from term to term until May term, 1862, Judge Nesmith presiding, when the counsel for the respondent moved the Court to order the indictment *nol. pros'd.* and Williams discharged, which motion was briefly argued by Messrs. Quincy and Hibbard for the respondent, and by Mr. Blair for the State.

The Court asked Mr. Blair if any new evidence had been obtained since the trial, and whether the State expected to make out any different case than on the former trial?

Mr. Blair said that no new evidence had been discovered,

and that the case would be substantially the same as on the trial.

The Court granted the motion.

---

NOTE.—The foregoing testimony and Charge to the Jury were taken from the original minutes of Judge Bellows, and are by him certified to be correct.