The Montana Post.

D. W. TILTON, BEN. R. DITTES

D. W. TILTON & CO.,
Publishers and Proprietors.

Office at the City Book Store, corner of Wallace and Jackson Streets, Virginia City.

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One copy, one year,	$8 00
do. six months,	5 00
do. three months,	3 50

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Trial of Prof. J. T Hodge.

Ter'y of Montana, vs. Prof. Jas. T. Hodge.

Had no agreement with Dumphy and Moore to resist taking of the wood by force; I enquired of Moore if he had my pistol because I wished to show Hodge's party we could not be run away from the wood; did not ask Moore for the pistol; Moore got the pistol in the cabin; did not have it on my person the day before; had the pistol at the cabin only a short time before the shooting; got it from Helena about two weeks before shooting occurred; I went to Helena to see if Hodge could take the wood I had cut, from me, by right; went to Mr. Bently's to find out; Bently is not particularly my legal adviser; Bently then had a suit pending with Hodge about the property in dispute; went to Bently because I knew him, and because I was living with him at the time.

Did not carry a pistol to use in any difficulty which might arise; had a borrowed pistol before we got the one from Helena, which was borrowed of —— Rodolf, some 3 or 4 weeks before, to kill a cat with; there was a short interval during which I had no pistol; when I saw Hodge and his men coming with guns' I thought he meant to frighten me; myself and Charles Dumphy make the firm of Dumphy & Co.

Moore had no interest whatever in the wood; he was keeping a lumber yard at that place, for Dumphy & Bently; only one of Hodge's teams drove up to the wood; none of my party did anything with the teams, I tried to lead a team out of the road, Moore said to let them drive where they please, as long as they don't take the wood. Moore said Hodge could not take the wood; I proposed to sell the wood to Hodge, if he got it all; think Moore's object in being with me was to aid in keeping the wood from being taken away; the reason why I turned the team aside was that I was afraid it would knock down the pile of wood.

Can't remember whether Hodge had sleighs or wagons; he had one sleigh; think there was one team of mules; the teams stopped themselves, near the wood; Prof. Hodge began tearing down the wood a little before the teams came up; Hodge and son both had guns in their hands; nothing said between myself, Dumphy and Moore before Hodge began taking the wood: I was at the pile when Hodge began taking the wood; was sitting down on it; said nothing to Prof. Hodge, he nothing to me, as he began taking the wood; I had an axe at that time, but was doing nothing with it: made no demonstration at any time during the affray, towards Hodge; did not have the axe for any particular reason or pupose that I know of; left the axe on the wood when the shooting occurred; don't know why, when or where I got the axe; was not going to work at that time; carried the axe without reason or cause; did not strike at Prof. Hodge when he attempted to take the wood; did not have the axe in my hand at the time Hodge began to take wood, he only got the stick part way off when I pulled it back.

He struck me over the head with his gun; I was sitting on the wood pile; Prof. Hodge directly in front of me; neither of us spoke; when Prof. H—— struck me Moore stepped between Prof. H., and myself.

While I was keeping Prof. H., from taking the wood, Moore and Dumphy were coming towards the pile; Moore pushed Prof. H., back with his right hand, one or two steps; Moore was so close tome I could touch him; I heard nothing said, I was excited; took good notice of what was going on; the parties remained stationary but a short time; It was about two minutes before the shooting that the teams came up.

Did not have the axe in my hand or use it after the firing commenced. Did not strike Prof. Hodge before he fired; when I got off the wood, Moore had passed between Prof. H. and me, and was running in a circle around Hodge to avoid the aim of his gun; if Prof. H. had not turned Moore would have been at his back; am certain Moore had no pistol in his hand at that time; only noticed one hand, Moore drew pistol from coat pocket with right hand about the time Prof. H., fired first shot; I am positive Moore had no pistol in his hands at the time he pushed Hodge back, and ran around him; Prof. Hodge was standing in the road about ten feet from where I was on the wood, when he fired.

Moore got about one-fourth of a circle when he got first shot; he did not stop but kept on; I was standing at Prof. Hodge's side, he aimed in front; Moore was running and dodging between Prof. Hodge and his son; when Prof. Hodge first fired Moore's side was towards him. Moorehad not yet got between Prof. H. and son; when H. fired he fell between them; saw Moore when he reached for the pistol; he only ran two or three steps after the first shot was fired; had got nearly one-half the circle and nearly oposite me when he fell; at the time he fell I was busy using a club; knocked Prof. Hodge down but only struck him once; Prof. Hodge had just fired when I hit him with a stick of wood; Moore fired, about the time I was using the stick of wood at Russell Hodge; Russell was pointing his gun at Moore just as he was shot; Moore was hit when he fired at Russell Hodge; think Moore was on his knees when he fired; I had struck Prof. Hodge, passed him and was making for Russell Hodge when I saw Moore on his knees.

I stood near Moore, Russell H., stood nearly in front of Moore, that is, south from him, Prof. H., was lying right behind Moore, or north; Moore fired but once, Prof. H., but once; Russell H., stood about south of Prof. H., when Moore fired; Moore and Russell shot so near together I could scarcely distinguish between the two discharges; Russell shot at Moore.

Prof. H., was on higher ground than Moore, both higher than Russell; Russell hit Moore in the groin; don't know of my own knowledge, that Prof. H., was shot; don't know who shot him in the breast; there was a chance for one of the three shots, I saw fired, to hit Prof. H., in the breast.

Court adjourned until 9 o'clock to-morrow, Wednesday morning.

Cross Examination of Albert Small, continued.

The first pile where Hodge & Co. went is some four or five rods from the road; the second pile where the shooting occurred only some two rods from the road; I was sitting on the pile nearest the road when the shooting occurred; think the ball from Russell's gun passed through Moore and entered Hodges breast. If this was not the way Prof. Hodge was shot I cannot account for it; he must have been shot by some one whom I did not see fire; there were men of Prof. Hodge's cutting wood at the time on the hill when the shooting occurred. From the nature of the wound and the gun I determined that Prof. Hodge shot Moore; If Russells gun had been loaded with back shot and he had shot Moore it would be contrary to my theory; am quite positive that Prof. Hodges gun was loaded with buck shot and it was Prof. Hodge who shot Moore in the breast. The wound in Moores groin was very large; ranged upwards and passed out near the small of the back; Moore was facing Russell and nearly in front of him when Moore shot at Russell; Russell was not wounded until the time Moore shot; when I heard Moore and Russell fire I saw Russels gun drop; the parties were in range when Russell fired at Moore; Moore was on his knees; Prof. Hodge was farther up the hill behind Moore and some six or seven feet from him; the ball entered much lower than it went out. The hill fell abcut three feet in ten; Russell was standing in the road at the time he fired; at the time Russell fired I judge his head was lower than Moores; when I left Prof. Hodge after striking him with the stick he lay along the hill side upon his side or back, his head up hill. When Moore and Russell fired I was within three or four feet of Moore and some six feet from Russell; saw Prof. Hodge when he got up; think he lay on his left side, his head towards town; don't know that I have ever given a different account of the foregoing affair; never said I did not know who shot first; never said in Helena, Moore shot first; nobody asked me about the shooting affair in front of Mr. Shobers office in Helena; don't know any man named Woodward; think I saw him once when he had Prof. Hodge in charge; don't remember having any conversation with Bently about the matter; dont think I ever told him Prof. Hodge and Russell fired at the same time. Prof. Hodge was shot after he fell; don't know how many men were present at the time of the shooting; not positive as to any of their positions at the time.

Small re-examined in chief:

Prof. Hodge had two guns; gave one a carbine to Lambroux, who pointed to Moore at the time of shooting but did not fire. Pistol that Moore had exhibited and sworn to as the same. Mr. Dumphy took up the pistol when Moore had dropped it and took it to the cabin; the pistol is in the same condition it was when I first saw it after the shooting.

Charles Dumphy examination in chief:

Reside in Helena; am acquainted with the parties by sight and George Moore personally; am acqcainted with the particulars of the affray at head of Oro Fino gulch; when Prof. Hodge came to the cabin in the morning and said he was going to take away the wood Small forbid him doing so. I went out shortly after; Small went to where Hodge's men were loading wood, and found Small unloading it and having some difficulty with Hodges men; Small got on to the sled and threw the wood off as Battese who had the team was driving off; Small had the wood all off the sled by the time the team reached the road; went back to my cabin when the team and Hodges men started for the mill; Small came to the window and told me that Hodge was coming with two more teams and a party of men armed with guns. Moore said to me that I ought to go out and help Small keep them from taking the wood. I had a felon on my hand and could do but little to stop them, but said I would go and started; the revolver laid on the table, I took it and then Moore said, let me take that Charley, you have a sore hand and can't do much; I started out, having given the revolver to Moore who put it in his pocket behind and went with me. (Revolver given to Moore produced and identified.) We went to the road; Prof. Hodge, several men and the teams came to where we were; Hodge had two guns at the time, his son another; when Hodge started the teams towards the wood pile Small stepped up to lead off the teams when Hodge pointed his gun towards Small and said he would shoot any one who interfered with his teams or men. Hodge and Small got to the wood pile about the same time; Hodge caught hold of one end of a stick of wood, Small the other end and pulled it from Hodge; Hodge then struck Small with his gun; Moore interfered when Hodge pointed his gun at Moore and fired; Moore was jumping about when the gun was fired; Moore turned partly around and fell partly on his knees; just as Hodge fell, Moore and Russell fired at each other not more than one half minute after Prof. Hodge had fired; Small caught up Prof. Hodge's gun and fired it off; as soon as Russell and Moore fired, Moore fell and said he was shot. I went to Moore first and got hold of him; Small and one of Hodge's men carried him into the cabin. About this time, Prof. Hodge raised up and asked some of his men to carry him home; some men took Prof. Hodge and started for his house. I picked the pistol up first when Moore fell and found but one load fired; took it to the cabin; Small and I kept the pistol about three weeks, then gave it to the Clerk of the Court of Edgerton County; saw Prof. Hodge when he fired at Moore; saw Moore after he was shot; was some six or eight feet from Prof. Hodge when he fired at Moore; Moore about that distance from Prof. Hodge, nearer if any thing. The shooting was not more than three-fourths of an hour after Prof. Hodge was at the cabin in the morning. The wood when the shooting occurred had been cut about two weeks; taken from the top of an old tree. (Coroborated Small in most important particulars.)

Cross examined:

The wood where the affray occurred was about twenty rods from the cabin; nothing said by small or Hodge on the morning of the 30th when Hodge came to the cabin about the ownership of the wood. I got up after Prof. Hodge left and sat by the fire and Small went out of the cabin; went out shortly after Small did to the wood; Moore remained behind; when I got to the wood Small and Hodge's men were quarrelling; Hodge's men said they were sent for the wood and Small said they could not do so, for the wood belonged to him; I told Small not to let them take the wood away; the team started towards the road which was some seven or eight rods distant; Small got on the sled and threw wood off before the sled got to the road; Moore not arrived yet at the wood pile; think I am sure Moore had not been out of the cabin and up towards the wood; he might have come up near where I was without my seeing him; Small knew I was with him; he saw me when the difficulty occurred regarding the first load of wood; when the team turned back I went to the cabin; sat a few moments when Moore said Hodge's party were coming armed; revolver was not in a scabbard at the time; put the revolver on the table that morning myself; took it from the head of my bed; had no object in placing it npon the table; we had been shooting at a cat; the revolver was gotten for that purpose; the pistol came from Helena; don't recollect who brought it from there; the revolver belonged to Mr. Small, one of us got it from Mr. Bently; we had a pistol before, which we got of Mr. Rodolph; got both pistols to shoot at cat with; nothing was said about using the revolver by Moore or myself when he took it on the morning of the shooting. Wood about fifteen or twenty feet from the road towards which the team was going when Small tried to turn the team back; Small was at one end of the wood pile; had no axe there, but one at the pile above; dont think Small had an axe at the wood when the shooting occurred. Prof. H. went up towards the end of the pile and Small stepped towards the side of the pile; both were then standing near the pile, about equidistant; Moore was standing still at the time between Prof. H. Small and I; Moore said nothing when he stepped between the parties; Moore passed by Small and pushed Hodge away; I think with both hands; might have been with one; nothing said on either side that I heard. When Moore had pushed Prof. H. back and Hodge pointed his gun at Moore it was there I first saw Moore reach for his revolver as he was jumping about; am certain Moore drew his revolver after Prof. H. fired. Prof. H.'s gun was cocked, both barrells; when he aimed at Moore, Prof. H. cocked both barrells when Small attempted to turn his team from the road; Moore said nothing when Pror. H. shot; I don't think Moore fell so as to touch his knees to the ground when Prof. Hodge fired. When Moore stumbled he drew his revolver; he was going down hill towards Russell Hodge; Moore not more than three or four feet from Russell when he fired; both parties standing up; I I think Moore fired first; Moore stood up till after he fired at Russell and then fell; Small was doing nothing while Prof. H. was pointing his gun at Moore; when Prof. H. fired he, (Moore) stumbled three or four feet forward and fired at Russell H.; Prof. H. was struck by Small once with a stick of wood when he fell. When Prof. H. fell he was some five or six feet behind Moore; Prof. H. was down when Moore and Russell fell; he fell on his left side; I think his head was towards Helena.

Adjourned till 2 p. m.

WEDNESDAY, 2 o'clock P. M.

Cross examination of Chas. Dumphy.—Continued.—Don't know who shot accused, think accused was shot by his sons gun; the wound in deceased's groin was from a large bullet, I think; think Russell held his gun about two feet from the ground; did not know accused was shot, until some time after the affray; Russell was not over 12 feet from the accused; I was above the accused some 6 feet, and 4 or 5 feet from the wood pile; affray occurred between the wood pile and the road, little above the wood if anything; I went up to where the affray occurred, on morning of 30th, to see what was going on, and prevent the taking of the wood; Small told me, accused had said to him, that he, (accused) claimed the wood and land in question; had heard often that accused claimed the land and wood in question; had heard others claim it; first heard that accused claimed the wood and ranch a little over a year ago; began to cut wood some time in December; Mr. Bentley gave me leave to go there, and cut the wood; Bentley and Dumphy consented to let me go there, and cut what wood I wished, and I was to pay them nothing for it; think I have related the occurrences I have told here to-day to other parties than the Grand Jury; was in Helena the day before the affray; Mr. Small told me he had spoken to Mr. Bently about accused claiming the wood, and Bently had told him, to go back to cutting wood; did not hear Bently say anything about the wood to Small or any one else; I had often heard Bently and E. Dumphy claim the land and wood; did not go to the accused to see if he had any title to the ground or not; never made any effort to find out who owned the land and wood; first saw accused where the wood was on the morning of the shooting; understood Dumphy and Bently were having a controversy with the accused about the wood; might have said in Mr. Shobers office that I did not know who shot first; have often said things which might be untrue about the affair, because I did not think persons asking about it had any business to know; it depended upon who asked me, whether I told the truth or not; don't believe I ever told in the presence of Mr. Woodward, or any one else, while in Mr. Shobers office, that deceased shot first, or that I did not know who fired first; at the time of the shooting, I had rough feelings towards the accused, and don't feel very friendly now.

Re-examination in chief—If I ever said anything upon the subject as to who fired first, I must have meant that Moore fired before Russell H.

Dr. Maupin—Examination in chief—Was not acquainted with Moore. Know how he was wounded; went in as assistant with Dr. Glick, who was called in as principal; about six buck shot, in a half circle on the left breast, between the third and sixth ribs, made the wound in the breast; judging from the looks of the wound at the time I saw it, should judge it to be fatal without any other wound; attended him until his death; he died from hemorrhage, I should judge; the affray occurred in Edgerton county, M. T.

Cross examination—Don't know the boundaries of Edgerton county, and only know the affray occurred there by hearsay; the shots in Moore's breast were in the immediate region of the heart; in order to demonstrate the cause of death absolutely, a post mortem examination is necessary.

M D Leadbeater: examination in chief—Reside in Helena, have seen Prof H, and was acquainted with George Moore; was with Moore from noon of the 30th till he died on Friday night; On the day he died I had a conversation with him about the shooting; he said first he knew he could not live, then told me about the affair.

Cross examination—Dr. Glick, and I think, Dr. Maupin, was with Moore on the day he made the declarations; Dr. Glick told me to keep up his courage and I told him he would recover; Moore said he knew he could not live; did not try to get that idea out of his head, save by telling him there was hope, and the like; he did not say regarding the time he would probably live.

Re-examination direct-- Moore told me that Russell H fired first and that he fired afterwards. (The most of Moore's declarations, being irrelevant were ruled out by the court.) Affray took place at the head of Oro Fino gulch, about 3½ miles from Helena city, Edgerton county; Don't remember that Moore said anything about the shooting with the elder Hodge.

Cross examination---Had had some difficulty with Prof H before the shooting affair, myself; told him once that if he wanted anything of me, he could get out of his wagon and get it; this difficulty occurred near the mouth of Oro Fino gulch; might have told Prof H I would have revenge, but don't think I did; waited upon Moore two and a half days before he died; heard no expressions of hostility towards Prof H or son as I remember.

J W Rhodes; examination direct---Reside on Silver creek, Edgerton county; have been county commissioner for a year or two past; know where Oro Fino gulch is; have examined the laws establishing the boundaries of Edgerton county, and from them should think Oro Fino gulch to be in that county. Prosecution rest their case.

Opened for defense by A M Woolfolk.

J G Sanders, sworn; examination in chief --I am the person named in a certain certificate of pre-emption presented to the court and offered as evidence in this case. (The certificate shown witness and examined and identified by him to be the same as that referred to.) Certificate is dated Aug. 29, 1865; know the place where the difficulty occurred and know that it was within the lines of my pre-emption; I deeded said property to J T Hodge and confirmed him in the possession of said premises for a valuable consideration; considered it valuable for the timber and mill sites there. (Deed of transfer to Prof Hodge exhibited, identified and proved the same as pre-emption certificate.) When I sold the property to Prof H, there was no adverse claim to mine that I know of. There was a shingle machine near there; I asked the men about the time of my pre-emption if they claimed the timber or ranch, they said not.

Cross examination --I claimed from date of my pre-emption, 29th of Aug., 1865. There was a stake at the southeast corner of Mr. Whitlatch's claim, from which my boundaries ran; never lived on the claim; don't know that I ever made any improvements upon it.

Think there has been mining done on the claim I made; know Dumphy and Bently, having a saw mill in the vicinity, but don't know which came first, they or Prof. Hodge; don't know how long before Dumphy & Bently put up a mill there, I filed my pre-emption claim; about a month I judge,

Re-Examination direct:

Never gave Dumphy & Beatly any privileges upon that property at all.

t All of Mr. sanders testimoney was taken under the protest of the Prosecution and the question not yet decided.

Court adjourned until Thursday morning at 9 o'clock.

THURSDAY, morning Nov. 14th.

For Defence—Dr. Maupin sworn. Examination in chief:

I was the surgeon who attended Prof. J. T. Hodge and son; I began attending them on Jan. 30th, 1867; was called on the morning of that day to go to Prof. Hodge's house. When I got there I saw several persons standing around; found Prof. Hodge and son both wounded: I first directed my attention to Russell Hodge who requested me to examine his father first; stripped Prof. Hodge and upon examination found he had received one wound in the right breast, breaking either the second or third rib just where it unites with the breast bone. On further examination I found a hole running around the outside of the rib and ending under the right shoulder. I then cut the wound open and found another one running upwards along the breast bone, still another hole running down, all of these being between the muscle and bone; further examination disclosed still another hole going directly through the cartilage of the rib into the lung; don't know where the ball went to; the wound had the appearance of having been made by one ball; I account for the holes up and down inside the wound either by concussion of air separating the muscles and fibers or from splinters of bone; think they were caused by concussion; examined the wound carefully but could not find the ball; probed the wound inside of the lungs as far as I was warranted in doing, and breathed through it; all wounds in the breast are considered serious when they penetrate a cavity; the wound had the appearance of having been made by a small ball; I judge of the size of a ball by the size of the wound and the holes in clothing perforated; looked at the holes through the clothing of Prof. Hodge. [Prof. Hodge's clothing, coat and vest, here exhibited and identified by witness to be the same as those worn by the Prof. at the time of shooting, and examined by the Dr. directly afterwards.]

Examined Russell Hodge's wound; it was just about one half inch above the wrist joint and carried away both bones and severed both arteries; the wound seemed to have been caused either by a large ball or a small one from a weapon held close to the arm when fired; the wrist was badly shattered, and burnt by powder; the powder stain extended about one half an inch around the wound; the ball went directly through the wrist, entering from the front; did not specially examine Moore's wounds; saw the buck shot wound mentioned by me yesterday, and a wound in the groin extending upwards at about an angle of 45o above the hip; it seemed to have been made by a large ball; have had considerable experience in gun shot and incised wounds; have been engaged in surgery for seven or eight years; the wound in Moore's groin was larger than that in the accused's breast—from one half to twice as large; I should think the wound in Moore's groin to have been made by a ball about this size (selecting a ball calibre 56); the ball which made the wound in the accused's breast could not have been as large even as this: (exhibiting a ball calibre 44); the slower a ball goes the larger hole is made in the object struck; the wound in Russell's arm was four times as large as that in accused's breast; should not think that the wound in accused's breast could have been made by the ball that went through Moore's groin; the wound through accused's breast was smooth, and not ragged till the ball had struck the rib. Conical balls it is supposed tear most; balls from smooth bore guns make the smallest holes generally, I think; if a ball went through something else before hitting a certain object that object would when hit have the larger hole for the velocity of the ball would be spent some what: if a ball should first be flattened before hitting an object the hole in that object when struck would be larger I should think, than if the ball was round.

Cross examination:

From the nature of the wound I should judge that the man who fired the shot that hit accused was standing partly in front of him when the wound was made; the rib was broken just where it unites with the cartilage; the wound extended in four directions; the original hole through the skin seemed to have been made by a round ball or buck shot; I could not get my finger into the wound till I cut it; I think a ball can produce four wounds upon a man like those in accused as deep as they or even deeper; a ball might hit some substance and be split in twain, but one piece could hardly make a round hole; it would depend some on how it struck; it is possible that two or three buck shot may enter the same hole and go out at the same place, but not probable; I have had good opportunity for examining gun shot wounds; I was never in but one battle in the army, but have been in the army hospitals, however; I don't swear anything positive about balls or people dying; don't think it possible that the wound in accused's breast could have been made by more than one ball or buck shot: the gun was so close to the arm of Russell Hodge that the powder did nearly as much tearing of the flesh in my opinion as the ball.

Re-examination direct:

I went to see Moore first, then came back to accused and waited till I had sent to Helena for my instruments and then amputated young Hodge's arm; could not get my little finger in the wound in accused's breast or I should not have cut it; should think I could have put my finger in the wound in Moore's groin, but did not try; the wound in Russell's arm and accused's breast might have been made by the same shot, but I don't think it probable or hardly possible.

Joseph Lamaroux sworn, examination in chief.—On the 30th day of January last, I was at Mr. Hodge's mill; I was working in the mine; was boss of the hands; was present at the time of the difficulty between Prof. Hodge, Moore, and others. The night before, Prof. H. told me, I would have to get some one else in my place next day, while I went to get some wood. Next morning two men and myself started with an ox team; we went to one pile of wood and began loading; after we had about half a load on the sleigh, a man named Small came, and told us that he would not allow the wood to be taken away, I told him we were sent for the wood, and should try to have it; he jumped on the sleigh, and threw off most all the wood, when I told the teamster to start with the team. The team went two or three rods from where the wood was taken from the sleigh, and stopped, we went along also; when the team stopped we began to talk, I told Mr. Small, I should have no trouble with him, but would send for Mr. Hodge. As soon as the wood was thrown off, Moore came, I told Jim McLees to go for Mr. Hodge, when the talking began; I heard Moore say, "if Hodge comes here, shoot the old son of a b—h." Jim McLees went for Prof. Hodge, and Moore went down to his cabin; I saw Mr. Hodge coming with the guns, and Moore, coming from the cabin about the same time, met Prof. Hodge at the road where the team was; Mr. H. had two guns, and handed one to me, said, "here Jo take this gun," I told him, "I did not want to use it," he said, "take it any way." It was about this time, Moore met Mr. H. in the road; Mr. H. told Moore, "I am very surprised to see you here Mr. Moore, this morning;" Moore answered with some bad words to Mr. H., I don't know exactly what; Mr. H. then said, "the first one of you boys that touches my hands, I will shoot," and "come on boys," to his own men; he and his men then went towards the wood on ahead, I went along also; Moore was in front of Prof. H. all the time. As soon as they got to the wood pile, Mr. H. took hold of a stick and put it on the sleigh, Moore took the stick from the sleigh, and I don't know whether he put it on the pile or not; Prof. H. went to take another stick, when Small tried to hit him with an ax; Mr. Hodge was parrying the blows aimed at him by Small with the ax, with his gun barrel; I saw Moore pull his revolver at this time, and try to shoot the accused, and then the accused began shoving the muzzle of the revolver aside with his gun; deceased was nearly in front of the accused; deceased raised his revolver, lowered it, raised it again, and shot at the accused; accused was meanwhile trying to put aside the revolver with his gun; I saw the fire go out of the muzzle of deceased's pistol towards the accused; about the time deceased raised his revolver the second time, Russell Hodge, who was standing a few feet at his fathers left, stepped forwards and tried to get hold of deceased's revolver; just as Russell took hold of the revolver, deceased fired; accused took two or three steps back, and came near falling after the pistol went off; deceased raised his revolver and shot again; accused and Russell both fired after the second shot of deceased; they fired nearly together, if not quite so; I am positive, they did not fire until after the second shot fired by deceased; deceased fired his second shot at Russell. After the second shot of deceased, accused stood still, and Russell went back a few steps; Small went round the wood pile and team, and knocked accused down with a stick at the first blow, then he struck him again; deceased, soon after being shot, fell, and said, "I am a dead man;" he was taken to his cabin; I went to look after Russell. Deceased stepped forward a step or two after the first shot; Russell shot with one hand, for one arm was hurt and hanging down by his side; after he had fired, he stepped back, cocked his gun, raised his wounded arm and rested his gun across it towards some one, and stood watching; accused was at one corner of the wood pile, Small opposite, Small struck across the end of the pile at the accused; accused half cocked his gun in the road when he started for the wood; deceased did not stand two seconds after he was shot by Russell; heard deceased say, he wanted to be carried to his cabin; it was Small came out in the morning, and threw the wood of the sleigh; I saw Dumphy also in the morning; deceased said, that if accused came, he would shoot him; this as he was going to the cabin before the affray; the first time deceased came to the wood, he had no revolver, the second time he had one; I saw it as soon as he came into the road; he had his hand on or near the revolver all the time, he was close to the accused: the revolver was on his side; I think he drew the revolver near the wood, just after Small had tried to hit accused with the ax; I am positive accused did not shoot until after deceased did; at the time deceased shot, accused was attempting to push his revolver aside with his gun; I did not see the accused do anything else but this then; deceased looked pretty white when he drew his pistol, and seemed mad; I think Dumphy came out about the time I sent Jim McLees for the accused; when accused gave me the gun, he did not tell me he wanted me to shoot; I never heard him; make any threats towards deceased or Dumphy, accused said the night before, we might have a little scrape about getting the wood, but he did not think it would amount to much; accused had at the mill and mine at the time of the shooting some 40 or 50 men in his employ; only some five or six went down with the team the second time for wood.

Adjourned till 2 P. M.

Continued.

PEN AND SCISSORS.

The West.

The Cheyenne *Leader* thus discourses on pronunciation:—What's in a name? Oftentimes much. There is sufficient in the one in our mind's eye, to form the neucleus for a line on the linguel lineaments of the word Cheyenne. We think the commonly accepted pronunciation, "Shy Ann," is neither euphonious or desirable. Some nice orthographists. pronounce it "Shy-enn;" accent on last syllable, as in the first instance. Now we propose for your consideration the adoption of a uniformity of pronunciation. Placing the accent upon the first syllable, and making it Shy-an, we opine would make a better sounding word, as well as remind observers how we take the *shine* off all new towns of the west in the race for pre-eminent commercial greatness.

The Owyhee *Bullion* says: Mr. Pickett, guide to Major Hunt in the expedition to rescue Mrs. Denoille, was in town a day or two since. He says that the Major has captured two squaws and killed one buck. The squaws report that Mrs. Denoille was taken to Stein's Mountain; that she is still alive and in good health, and that she will be given up for blankets, etc. Major Hunt has sent one of the squaws to the Indian camp with the proposition that he will give them anything in exchange for Mrs. D. except ammunition. We hope that no means will be spared to get the unfortunate lady out of the hands of the brutal savages.

The proposition of the Cheyenne people to have a new Territory, formed from a portion of Dakotah and a slice off Colorado, is creating some alarm in the latter Territory. The Denver *News* proposes to gratify the Cheyennites in their desire for a territorial organization by taking into Colorado the slice of Dakota in which Cheyenne is situated.

Goldrick writes from Santa Fe:—"This is the best place we know of to start a 'Young Men's Christian Union.' Boys of twenty-one appear ripe for reconstruction, as many of 'em show streaks of shining piety whenever the hats are off their heads."

The Virginia (Nev.) *Enterprise* of Nov. 9th, says: The following is a statement of the amount of bullion shipped during the past week: From the office of Wells, Fargo & Co., in this city, there were shipped 4,625 pounds of assayed bullion, valued at $111,246 99; from their office in Gold Hill, 3,784 pounds, valued at $103,683 59.

The *Vedette* says Sam Pite, a negro was hung by the citizens of Malad, for having been caught "*flagrante delicto*" with a "female woman' of that locality. She is the same woman for whom "Nigger Tom" was put under ground.

They appear to want a Registry law in Colorado. The *Register* says:—The *News* demands a registry law. The *Tribune* demands a registry law. The REGISTER demands a registry law. Finally, the *Gazette* demands a registry law. We hope the Honorable Assembly men will take notice.

The Denver *Gazette* editorially says:—"We have all confidence in the wisdom of Congress." What does the Helena *Gazette* think of it?

The *Mountaineer*, (Oregon,) publishes entire, the "Vigilante Letter" of Col McClure to the New York *Tribune*.

The Cheyenne *Leader* says:—Don't break your necks in rushing to Cheyenne "gold fields." They are pretty much of a myth, as yet, a simple showing of gold having been found and no paying diggings here, although gold bearing lodes unquestionably exists in the Black Hills.

A fire in St Soseph, Mo., on the night of Oct. 31st, destroyed the residence of Mrs. Holman, on the corner of Francis and Charles streets, a house adjoining, owned by John Angel, and McAleer's livery stable. Twenty-five horses were burned. Mr. James T. Churchhill, Mr. McAleer and Mr. William Fuller were injured.

The corner stone of the monument to the union soldiers who fell at Valverde and Apache Canyon, in 1862, was laid at Sante Fe, Oct. 24th, 1867, by the Masonic society. Gov. Mitchell, Gov. Evans and many other distinguished gentlemen were present

The Lewiston *Journal*, of October 31st, contains the valedictory of A. Leland, editor and publisher. His successor is warmly commended, but not named.

The compositors in the offices of the Omaha *Herald* and *Republican* have struck for higher wages,

Jim Brady, pedestrian, and "Unknown Novice," were to commence a walk of one hundred consecutive hours, at Smith's saloon, in Idaho City, Nov. 20, for a stake of $500.

The San Francisco *Times* has already sunk $150,000 in establishing itself.

The Sacramento *Record* suggests to the Democracy that they had better elect James C. Goods, of Sacramento, U. S. Senator.

The Reese River *Reveille* improves the POST'S report of the prize Fight at Nevada. We throw up the sponge.

Yesterday morning, a pre-arranged advance in the rates of board was made in most of the hotels of town. The advance was from twelve dollars to fourteen per week.

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