

A. Cultivated them all over.

Q. Did you go all over them?

A. I did.

Q. What time did you get through cultivating?

A. Well, I got through about noon, cultivating them

Q. What did you do in the afternoon?

A. Cultivated some ground where we had some mangles; mangles didn't come up good.

Q. How much ground was sown to mangles?

A. I don't know.

Q. Give us your best judgement.

A. Well, there was an acre of that if not more.

Q. Acre of that, also?

A. Yes, sir.

Q. Did you do any hoeing in the mangles, that day?

A. I didn't touch them.

Q. Did any of the rest of the family?

A. No, sir.

Q. Is that the field that Mudge was telling us about?

A. Well, there is two different fields of them.

Q. What?

A. The one that he had reference to was potatoes. I just went through with the cultivator.

Q. Were you in a different field that day?

A. I was in part of the time in a different field.

Q. You are friendly with Mudge?

A. I never hear tell of any trouble between us.

Q. You didn't answer him when he spoke to you that day?

A. No, I didn't.

And upon the trial of said cause for the said respondent in defense of said action, did then and there produce in his defense, one Mrs. Hodgskins, who was duly sworn in his behalf, and who did testify on her direct, cross and re-direct examination as follows, to-wit:

Mrs. Hodgskins sworn for Defendant:

Q. Where do you live?

A. Why, I live in Falcon.

Q. Have you a place there of your own?

A. Yes, we have a place of our own.

Q. This boy, the prisoner here, is your son?

A. Yes, sir.

Q. How many of them are there in your family?

A. Six children.

Q. This young lady here is your daughter?

A. Yes, sir.

Q. Yes.

Q. Do you remember working in a potatoe patch?

A. Yes, sir.

Q. Another of mangles; what do you call it?

A. Yes; I suppose that is what they call them.

Q. Do you recollect the day in question?

A. You are right I do.

Q. Will you state to the court and jury what you know about your boy on that day?

A. Yes, sir.

Q. What, if anything, can you say about it?

A. Well, I can just tell you; he hitched up the mare in the morning and went to cultivating them potatoes through, as he told you he did, and we were

across a little to the west; we cultivated amongst them mangles and some got out put in turnips went out a while we came back and he was done cultivating by noon and him and I went into the potatoe patch and went to hoeing, and his sister the three of us amongst the potatoes until about 4 o'clock; then she went and got supper and we went in and eat our supper.

Q. Who, "we;" who do you mean?

A. Her and him and me and his father.

Q. Where was his father working?

A. His father was down next to the house working; and him and I was up to the east working, hoeing, and we went in and eat our suppers and the girl, my daughter and him went out on the front stoop and got to playing there, and he started up the street up east, and her after him; he went right across the corner

Q. About what time was that?

A. Well, that would be pretty close to 5 o'clock he went across the corner to the post-office, to Mr. Lynn's.

Q. Did you see him?

A. I see him go across there myself; then he came back again to the old store.

Q. You just tell what you know yourself

A. Certainly; I aint going to tell anything I don't know; I am just going to tell you what I know.

Q. You saw him yourself did you?

A. Yes, sir; well, then he came back to the store and went up past Mr. Richardson's and around by McIntyre's, and I suppose by what is told

me he came right across right down to the grist mill; he wasn't gone a great while; he was back home again in about three-quarters of an hour at the outside.

Q. You know this man Lovell do you?

A. Yes, I know him by sight; had a little deal with him on my sewing machine.

Q. What kind of a deal did you have?

A. Well, I was to give him 50 cents for fixing my machine, and he didn't fix it; he got it so I couldn't do anything with it at all.

Q. Did you pay him the 50 cents?

A. No, sir, I didn't.

Q. Was this previous to the time this accusation was made against your boy here; before this?

A. Before this.

Q. Do you know of him asking for it?

A. He asked my husband for it

Q. You don't know that yourself?

A. I know that, yes, sir.

Q. You made arrangements whereby you were to give him the 50 cents?

A. Yes; gave it to him in wood.

Q. You did not give him any wood?

A. No, we didn't.

Q. This man was living there?

A. Yes.

Q. How long have you known him?

A. Well, I wont be certain; I think about a year and a half since I first knowed him.

Q. You bought your sewing machine somewhere else?

A. Yes, of a man in Lexington.

Q. He attempted to fix it?

A. Yes.

Q. He claimed it was not good for anything?

A. He allowed it would not last a great while.

Q. And attempted to fix it?

A. Yes, but it was only an attempt, I think.

Q. He didn't fix it?

A. No, he did not; I had to fix it over again.

Q. Do you know anything about Willie hiring out to some man?

A. Yes, I do.

Q. What do you know about it?

A. I know his mother came to me for him; the boy's mother that he hired to come to me for him.

Q. For Willie?

A. For Willie; the boy hired him first and then his mother came to me for him and I told him about it and he went to my brother's in Fremont; then went to his place on Sunday to go to work.

Q. During that day what can you say about being in Willie's company up to the time that he left the house the time he went out on the stoop there to play with his sister?

A. I seen him go away with the girl.

Q. Could he have gone down there——

A. Not much.

Q. Wait a moment; could he have gone down there to the place that is said here, and done anything like what he is accused of here?

A. Not much.

Q. Without your knowing it?

A. No.

Q. Did you lose sight of him?

A. I had sight of him until he went to the post-office door; while he was coming back I was standing out on the stoop looking for her to come back, and when he come back up as far as the corner I turned and went into the house.

Q. Did you expect some mail from your daughter?

A. Yes, I did expect a letter from her.

Q. It was Willie's habit to go to the post-office and see if there was any letters for you, was it not?

A. Yes, sir, he often went to the post-office.

Q. To inquire from the family?

A. Yes, sir.

CROSS-EXAMINATION.

Q. Were you afraid he would lose the letter the reason you kept your eyes on him?

A. No.

Q. Were you afraid you would lose him?

A. No, I wasn't.

Q. Do you go out and stand every time he goes to the post-office?

A. No, I don't

Q. This was one of the times you had occasion to?

A. Yes, I just happened to.

And upon the trial of said cause counsel for the respondent, in defense of said action, did then and there produce in his defense one Miss Hodgskins, who was then and there duly sworn in behalf of said defendant, and who did testify on her direct, cross and re-direct examination as follows, to-wit:

Miss Hodgskins sworn for Defendant:

Q. What is your age?

A. I was 17 last February.

Q. You live at home with your people?

A. Sometimes, and sometimes I work out.

Q. Are you a sister of Willie, here?

A. Yes, sir.

Q. Do you recollect the day in question?

A. I do.

Q. Were you in Willie's company that day?

A. I were from 10 o'clock until 5 o'clock that day.

Q. Will you state to the jury just exactly what occurred during that day as near as you can recollect it now?

A. Yes.

Q. At the time between yourself and Willie?

A. I will; in the morning after we had breakfast he went out to harness up the mare and went in to the potatoes to cultivate them; him and pa, they had the cultivator there; it was pretty nigh noon and then went down to where the mangles were; there was some thrown out; they cultivated that piece and put turnips in and then we had dinner and I and him was hoeing potatoes and pa, that is he and pa was at one end and mamma and I at the other hoeing until 4 o'clock and I went to the house and I got supper and called them in to eat and they come in and eat, and then Willie and I went out on the front stoop; I went out and he got up and come out there too, and after he come out we was talking and he started to run up the road and I run after him and he went part way to the corner of the field and I went

with him part way to the corner, and he run across the corner of the field to the post-office, and I saw him go into the post office; well then I didn't see him, but it was no time, it was not anyway 4 minutes from the time I seen him go into the door there until I saw him again coming down from the post-office and he crossed right down in front of the brick store and I saw him pass Richardson's and I did not notice him from that on.

Q. You say you stayed with your brother in the field until 4 o'clock?

A. Yes, sir.

Q. And then went home and got supper?

A. Yes, sir.

Q. How do you identify the time?

A. Because I looked at the clock.

Q. How long did it take you to go from the field to the house; what time was it when you got to the house?

A. Half past four.

Q. How long did it take you to go from the house where you were?

A. It would not take me more than a minute.

Q. You went right straight did you?

A. Yes, sir.

Q. At that time it would not take you much more than a minute?

A. No, sir.

Q. During the whole of that day what can you say as to Willie's being in your company from the time you went out until you got through?

A. Why, he was.

Q. Did you leave him in the field when you went to get supper?

A. Yes, I left him with mamma and pa in the field, but pa was at this end though and ma was at the east end.

Q. These mangles are in different fields, or are they in one field?

A. No, they are a short distance apart.

Q. So you could see one from the other?

A. Yes.

Q. And then you left your father in one field and your mother and Willie in the other field?

A. Yes, sir.

Q. When you went to supper?

A. Yes, sir.

Q. How long after you went to get supper was it before Willie came to the house?

A. Well, it wasn't more than half an hour, anyway.

Q. What time was it when you got through supper?

A. Well, it was near 5 o'clock.

Q. It was after that then that you and he had the little scuffle?

A. Yes, sir.

Q. He ran away and you ran after him?

A. Yes, sir.

Q. And then you saw him go to the post-office?

A. Yes, sir.

Q. Do you know anything about a sewing machine agent?

A. I just know him by sight, that is all; heard him spoken of a few times, that is all.

Q. Where did you ever see him.

A. Well, I have seen him at Tucker's, and I have met him on the road.

Q. Do you know anything about his fixing a sewing machine for your mother?

A. Yes, he was in the house to fix a sewing machine, and after he went away set down to sew with it and could not do anything with it at all, and we had to have it fixed again.

Q. So that, instead of fixing the machine he left it so it would not work?

A. He fixed it but it would not work; fixed it so it would not work at all

Q. And then run the machine down, didn't he?

A. He said it would not last no time at all.

Q. Do you know anything about the expense of fixing it?

A. I heard them talking about 50 cents; they was to take him wood for the 50 cents.

Q. Is this man living with his wife?

A. Well, I hear she is away now.

Objected to.

Q. Is he living with her now to your knowledge?

A. She is not at home now.

Q. Been absent for some time?

A. Yes, sir.

Q. What's the report about their being separated?

Objected to.

CROSS-EXAMINATION.

Q. How long have you had that sewing machine?

A. About 4 years.

Q. About four years?

A. Yes, sir.

Q. And you say you got it at Lexington?

A. Yes, sir.

Q. White machine, I suppose?

A. Yes, sir.

Q. You said that you saw your brother go into the post-office; that you did not see him go in?

A. Yes, I saw him go in the post-office.

Q. On that very day?

A. Yes, sir.

Q. The 27th of June?

A. Yes, sir.

Q. How do you know it was on the 27th day of June?

A. Because I looked at the almanac.

Q. Did you look at it that day?

A. That evening we was talking about the potatoes.

Q. How came you to look at it that day?

A. Because we was talking about the potatoes; expected we would get them finished.

Q. On the 27th of June?

A. Yes, sir.

Q. What reason had you for wanting to have them finished on that particular day?

A. Because they was in on shares and Mr. Richardson, he was in a hurry for them

Q. Is that the reason you looked at the almanac?

A. Yes, certainly; it is natural for anybody almost to look at an almanac.

Q. You were in the potatoes one day before that?

A. Off and on.

Q. Did you look at the almanac to see what day it was?

A. I didn't look in to see, no.

Q. What did you look in for that day, then?

A. We was working on my sister's birthday

Q. How many days previous to that had you been at work in the potatoe field?

A. I could not remember; a number of days before.

Q. Several days before?

A. Yes, sir.

Q. Well, was it two days before?

A. Yes, two days before.

Q. On each of those days did you look in the almanac to see what day it was?

A. No, sir.

Q. Why didn't you?

A. I don't know; it didn't come to my mind, I guess; if we had been speaking about birthday maybe I would.

Q. What Richardson is that you spoke of?

A. Jim Richardson, talking about the potatoes not being clean, and we all went into them and worked.

Q. What day of the week was that?

A. Friday.

Q. Now, where was your brother that night?

A. Why, he went across the river.

Q. He was there the next morning in bed, was he?

A. Yes, he was when I got up.

Q. He was there all the next day, too?

A. No, he wasn't there the next day.

Q. Wasn't he there all the next day?

A. No, he wasn't there; he went out to my uncle's the next day.

Q. How long did he remain there before coming back home again?

A. Well, I don't know; I wasn't home when he came home.

Q. He wasn't back home again before he was arrested?

A. Yes, sir.

Q. Before you heard of him being up before the justice?

A. I will not swear to that because I went away the next day myself.

Q. Where did you go?

A. To my cousin's.

Q. When you went up to Tucker's did you see Mudge around there?

A. I didn't see Mudge at all.

Q. Did not see him at all?

A. No, sir.

Q. You said you lost sight of your brother after he went around by Richardson's?

A. After he passed Richardson's I did not look to see him any more.

Q. You could not see him any more, where he went?

A. No, sir.

Q. He had gone to the postoffice and came back again?

A. Yes.

Q. Now Tucker's is right across the street from the corner where your brother got over into the road is it not?

A. It is right straight east from the brick store.

Q. Just across the road isn't it? Just a road between Arnot's store and Tucker's hotel?

A. Yes, sir.

Q. Your brother got over the fence at that corner?

A. And went south-west to the postoffice.

Q. Now he got over the fence just back of the old store?

A. Just a little west of the old store.

Q. And crossed the Lapeer road diagonally and went to the postoffice?

A. Yes, sir.

Q. And walked along up and got over the fence?

A. No, sir, he kept right in the road and came right in along until he got to Tucker's.

Q. Did you see Mudge there?

A. No, sir, I didn't.

Q. Did you see him while you was around there at all?

A. Not to my knowledge.

Q. You watched your brother until he went down and went into the postoffice?

A. Yes, sir.

Q. Where did you stand while he was going down there?

A. I was going across the road while he was going to the postoffice. I stood there on Tucker's

stoop talking with Mrs. Tucker when he went in the postoffice.

Q. You stood right onto the stoop watching him go into the postoffice?

A. No, sir, I wasn't; I walked into the dining room and fetched a chair out and sit down in the chair.

Q. And watched him go into the postoffice?

A. I seen him go across the road.

Q. And back up to Tucker's?

A. He went on the other side of the road from Tucker's place.

Q. Which door did you sit in; south side of the building?

A. West side of the kitchen in the door.

Q. You were not in the front part of the house then?

A. No, sir, I wasn't.

Q. You watched him pass Richardson's?

A. Yes, I did.

Q. You didn't see Mr. Mudge near Tucker's, there upon the platform?

A. Mr. Tucker was around in the bar-room.

Q. Old gentleman Tucker?

A. Yes, sir.

Q. Two Tuckers there I believe?

A. Yes, and Mr. Mudge I didn't see him at all.

JUROR:—I would like to know whether that kitchen at the hotel sets east of the main part or not; whether a person could see south out of the kitchen door?

Q. Where is the kitchen?

A. The kitchen is at the northwest corner of the house and I set at the north side of the kitchen door; I could see south; I set right in the door; Mrs. Tucker and I set on the stoop there.

Q. JUROR:—Does the kitchen come out past the hotel?

A. Yes, it does.

Q. You were sitting outside of the door?

A. No, just in the door there.

Q. How many times have you talked over that fact of your brother going to the postoffice and you watching him until he came back?

A. I don't remember of talking it over any times.

Q. Have you ever talked with anybody?

A. No, sir; I spoke about it to Mr. Houck, that is all.

Q. Never told anybody about it?

A. No, sir.

Q. Did your brother talk with you about it that day?

A. After coming from over town?

Q. Yes.

A. No, sir, he didn't.

Q. You were watching him that evening when he came home?

A. Yes; I was going to bed; he came just as I was going to bed.

Q. What time of night was that?

A. Well, it must have been seven o'clock; between 7 and 8.

Q. Did he go to bed at 7, your brother?

- A. It was 'ter 7.
 Q. How long?
 A. It must have been half past 7.
 Q. The 27th of June you refer to do you?
 A. Yes, sir.
 Q. Was he in the habit of going to bed at half past 7 in the summer time?
 A. Yes, he most generally was.
 Q. Was it dark?
 A. It was just getting dusk.
 Q. Just getting dusk?
 A. Yes.
 Q. And he was just going to bed, or you were?
 A. No answer.
 Q. Was he in the habit of going in as early as that and going to bed?
 A. He most generally was in.
 Q. Well; did you have any talk with him before going to bed after he came in?
 A. No, sir, I didn't.
 Q. There was no great excitement in the house that night?
 A. No, sir, there was not.

RE-DIRECT-EXAMINATION.

- Q. Willie was always a kind and good boy?
 A. Yes, sir.
 Q. Kind to you?
 A. Yes.
 Q. Kind to his mother and father?
 A. Yes, sir.
 Q. Never been other than a good boy, has he?
 A. No.

And upon the trial of said cause^{the} the said counsel for the said respondent in further defense of said action, did then and there produce in defendant's defense, one George W. Stevens, who was then and there duly sworn in behalf of said respondent as aforesaid, and who did testify on his direct, cross and re-direct examination as follows, to-wit:

George W. Stevens sworn for Defendant:

- Q Where do you live?
 A. Well; I stop in Crosswell at the present time.
 Q What is your occupation?
 A. Wagon maker.
 Q. You are used to measurements, are you not?
 A Well, yes.
 Q. Have you seen the place at which this accused is charged with having committed this crime?
 A. I suppose I have.

Objected to.

- Q. Who showed it to you?
 A. Mr. Hodskins.
 Q. Did you take the measurements of the place?
 A. I did

- Q. MR. BURGESS:—Mr Lovell showed it to you?
 A. No, sir
 Q MR. BURGESS—Mr. Mudge?
 A. No, sir.

Object to the testimony unless they can show it is the same place.

COURT:—He may describe the locality that he saw.

A. Well, the locality is: here is the fence running north, nearly north and south; runs near the river; there was 2 of them about 4 rods apart, and this here would be the first one.

Q. Did you take any measurements?

A. I did.

Q. Describe them.

A. Well, I found a fence there, I think 4 boards high and I think it was 7 feet from that corner back to the first post.

Q. You think, or do you know?

A. I know it is 7 feet

Q. How do you know?

A. Because I measured it.

Q. How far to the other one?

A. 9 feet or 10 feet; I forget the inches now.

Q. How long was the board?

A. The board was something over 11 feet; I forget the inches.

Q. When you went down there where was this board?

A. Laid on the ground.

Q. Had it been laying there very long?

A. Well, I could not say how long it had been there; it had been moved by the looks of the ground where it had been laying.

Q. How far was it from the corner?

A. Laid on the ground in the corner.

Q. How long was it; the board?

A. 'Bout 11 feet and 8 or 9 inches.

Q. What kind of a board was it; how thick was it?

A. It was an inch thick; 6 inches wide and at one end there was a piece off, split off one corner; which would leave it about 3 inches I should think at one end.

Q. How much space was there in the corner after laying up this board; taking the whole length?

A. It would be about 7 feet one way and about 8 the other way I should say.

MR. BURGESS:—That would almost let a horse in.

Q. What was the other side?

A. Just on an angle of about 45 degrees.

Q. What is the angle up in the corner?

A. The board lay just in the ends of one post to the other.

Q. How far did it project over?

A. About a foot; I don't know, it might have been more.

Q. After putting that board up there in that way the whole length, was there room in there for a horse?

A. Well, it would be a very small one

MR. BURGESS:—You said 7 feet from the corner from the post to the corner?

A. Yes.

Q. How many feet did you say it was on the other?

A. About 8 or 9 on this fence that runs down to the river.

Q In which direction does this fence run, both of them?

A. They run with the river, kind of angling this way

Q. Was it a square corner?

A. No, sir, a little that way.

Q. Would that make more room or less in the corner for a horse?

A. It would make less

Q. Why?

A. Because it would; because this fence that runs down the river runs a little this way, and the other one runs the other way; it makes more room one way, and another way it would not; but didn't make more by putting the board across; it made less room then.

CROSS-EXAMINATION.

Q. Suppose this to be the fence running north and south; the corner that you measured, was it on the east or west side of that fence?

A. On the west and north side.

Q. You measured on the west and north side?

A. The fence runs parallel north and south, runs a little southeast and northwest I should judge.

Q. The other one runs in what direction?

A. Runs a little this way.

Q. What direction would that be?

A. A little south of east.

Q. And then on the west side of this fence that runs northwest, southeast, you measured that corner?

A. Yes, sir.

Q Do you know how many days you were there after this offense was done?

A. The first Sunday I think, after he was arrested.

Q. You were on the west side of the river were you?

A. Yes, sir.

Q. The first Monday after he was arrested?

A. The first Sunday in the afternoon with Mr. Hodgskins.

Q. Which one of these fences is it that is 7 feet from the corner to the post?

A. The one that runs down to the water.

Q. The other one you say is how many feet?

A. 8 or 9 feet I should judge.

Q. The first post on the other is 7 feet?

A. Yes.

Q. Are you related to these people in any way?

A. No, sir

Q. How did you come to measure this place?

A. I have been acquainted with Mr. Hodgskins for the last 25 or 30 years.

Q. Visited there frequently, did you?

A. Yes.

Q. Go there every Sunday?

A. I use to visit there, yes, sir.

Q. That is, you would go down there?

A. Yes, sir.

RE-DIRECT-EXAMINATION.

Q. How long have you known this boy?

A. Ever since he was born, I guess.

Q. As far as you know anything about him,

what kind of a boy is he?

Objected to.

COURT:—If he knows his reputation.

Q. Do you know his reputation?

A. Well, I never heard anything against the boy at all.

CROSS-EXAMINATION.

Q. How long have you lived down there this last time?

A. I have lived there since last day of last March.

Q. How many years previous to that had you lived down there?

A. Six years.

Q. During this six years have you kept your eye on this boy?

A. No, sir. I don't know anything about him.

Q. Did you know anything about him during this 6 years?

A. No, sir.

And upon the trial of said cause the said counsel for the said respondent in further defense of said cause did then and there produce in the respondent's defense, one William Hodgskins, Sr., who was then and there duly sworn in his said behalf, and who did testify on his direct, cross and re-direct, examination as follows, to-wit:

Mr. Hodgskins sworn:

Q. You are the father of this boy?

A. Yes, sir.

Q. Where do you live?

A. Falcon.

Q. Do you recollect the time Willie was charged with having committed this offense?

A. Yes, sir.

Q. Now what can you say about Willie being with you and your family during that day.

A. He was there all the time; he was cultivating mangles and potatoes with the horse. I wasn't all the time with him in the forenoon, in the afternoon I was with him.

Q. In the forenoon?

A. Yes, he was there all the forenoon.

Q. Was he present at the dinner time?

A. We was all present at the dinner and supper.

Q. All, who do you mean?

A. My wife and him and his sister and I have two smaller girls, one 13 and the other 9.

Q. They were present too, were they?

A. Yes.

Q. Were they all working in the field until noon?

A. Yes, hoeing potatoes.

Q. Who are they?

A. Willie and my wife and the girl.

Q. Was Willie where you could see him all the time during the forenoon?

A. Yes, sir; if I looked I could see him.

Q. What could you say as to his being in that field on the afternoon?

A. Up to about 3 o'clock I was in the mangles

and after that time I went to the house to get a drink and then I went and helped them in the potatoes.

Q. How long did you help them there?

A. Until supper was ready.

Q. How far is it from the house to the potatoes?

A. Well, the potatoes were there all around the house.

Q. How long was it from the time you went to get a drink until you got back again?

A. Oh, might have been 5 minutes or might have been 15.

Q. Could Willie have left the potatoe field and gone down where they said he was and committed the crime they charged him with having committed here, without you knowing he was absent?

A. Oh, no, no!

Q. Could he have gone anywhere from 3 to half past 3 without you missing him?

A. No, sir.

Q. He was there all the time?

A. Yes, he was with us until, I could not say whether it was half-past 4 or 5 o'clock we had our supper; Willie went to supper with us.

Q. How about the girl?

A. She had gone to get supper for us and called us.

Q. You ate your supper then together as usual, did you?

A. Yes, sir.

Q. Did you notice any difference in Willie's demeanor or actions then from any other time?

A. No, sir.

Q. After supper what did he do?

A. After supper I could not say what he done from about 5 o'clock until it was about 6; he came in where I was about 6 and helped me a little. I don't think he helped me more than 10 or 15 minutes.

Q. What about this board?

A. That board, I got Mr. Mudge and Lovell to show me the place and the board; I got Mr. Mudge to show it to me, the place.

Q. What can you say as to what was said when you got there?

A. He says, "here's the board," and I took and measured it.

Q. Here's the board. What do you mean, that that was the board that Lovell said—

A. Yes.

Q. What did he say about that, if anything?

A. He says, "here's the board that they had described in justice court. There was a pole that laid on the fence, it was down then; it had laid on the fence; it was down then; it had laid on the fence, but was down then, and afterwards Mr. Mudge picked that pole up and tried to press it on top of this fence that runs east; he could spring it there but he could not make the pole stay there; it would back again, and after a few days I was working for Mr. Allen and he said put the board—

Objected to. What Mr. Allen said, I object to.

MR. BURGESS:—Tell what you saw there.

A. Well, sir, I saw a pole lying there.

Q. About how large was that space?

A. About 18 inches.

Q. Where did you find that board when you

saw it?

A. Found it laying on the ground there.

Q. What kind of a boy has Willie been all the time?

A. He is a kind disposition boy—good boy.

Q. Usually get home in good season evenings?

A. Yes, sometimes he would be out late.

Q. What can you say about this Lloyd Lovell here, have you seen him?

A. Yes, I have seen him.

Q. What is his business, do you know?

A. Peddling sewing machines.

Q. Did you ever have any business transactions with this man in regard to fixing a machine, if so, what was it?

A. Yes, he undertook to fix a machine of ours and agreed to take it in wood.

Q. Well, did he get any wood?

A. No.

Q. Did he ask for it?

A. Yes, sir.

Q. Did you refuse to give it to him?

A. I did, because he did not fix the machine.

Q. Well, was he mad?

A. He looked mad, I simply told him he could not have any wood from me; he did not fix the machine.

Q. This was before this thing occurred?

A. Yes, sir, it was along probably in May.

Q. Now do you know anything about the location of that ground, in regard to the position where this man Lovell claims he was and where the boy was, where he claims the boy was?

A. I know as far as Mr. Mudge showed me.

Q. What can you say as to his being on a lower or higher piece of ground from where the boy was?

A. He was on a lower.

Objected to

Q. Lower?

A. Yes, sir.

Q. From the position where he was could he have seen the horse?

A. No, he could not have.

Q. What do you say as to this board reaching from this place that they claim the horse stood in to the other place there, about being large enough space for a horse to be in?

A. I don't think it would be; I don't think the smallest horse would fit into that place.

Q. Would it not be almost impossible in your opinion.

A. I think it would be, yes, sir.

CROSS-EXAMINATION.

Q. Do you swear that you are the father of this boy?

A. Yes, so said to be by his mother.

Q. Now—the day that this is said to have taken place, that he was in the potatoe field and mangle field:

A. Yes, sir.

Q. From early morning until night?

A. No, not early in the morning; it must have been as much as 8 or 9 o'clock.

Q. You worked until about 6 at night?

A. Yes.

Q. You all quit together.

A. Yes, sir.

Q. Willie with rest?

A. Yes. No, we didn't all quit together.

Q. The girl quit first and went to get supper?

A. Yes, sir.

Q. Willie and you were out after supper until 6 o'clock.

A. I told you that he came back after supper and worked with me about 15 minutes and him and me went into the house together.

Q. You quit at 6 o'clock?

A. Yes, sir.

Q. Now, you don't swear that that is the board that the fellow actually stood on do you?

A. That is the board they showed me.

Q. Who?

A. Mudge.

Q. Did Mudge tell you that he would swear that it was the very board?

A. No.

Q. You don't know anything about it, that is what you thought. Now you went down there you say after the justice court trial?

A. Yes, sir.

Q. And that was the first time that you went to look at the board, was after the justice court trial, wasn't it?

A. No.

Q. What?

A. I didn't go to look after the board.

Q. Well, you told us that you went down there

after the justice court trial with Mudge?

A. Yes, sir.

Q. You didn't go down before?

A. I didn't say the first time I had been down.

Q. Now do you say that you went to look at this place before Mudge went with you?

A. I went and looked, yes, sir.

Q. Before Mudge went with you?

A. Yes, sir.

Q. How soon after the boy did this did you go down there?

A. I don't think he did it at all.

Q. How soon after that; after he was chased out of town with a warrant?

A. He wasn't chased out with a warrant

Q. He wasn't?

A. No, he was out to work at Neustead's

Q. Tell us how soon after you heard this you went down there?

A. Well, I don't think——

Q. Well, I asked you how soon it was before you went down there?

A. The Sunday after the 9th.

Q. The Sunday after, what month?

A. Of July.

Q. How long was that after he committed the crime?

A. Why I really don't know.

Q. You know it was after Lovell said it was done, don't you?

A. I could not tell.

Q. Was it the 27th of July?

A. No

Q. What month?

A. June.

Q. How long after the arrest was made, you say the arrest was July 9th?

A. I think it was.

Q. You went down there after that with Mudge and he showed you about it?

A. Yes, sir.

Q. Didn't he tell you that things were not as they were when he was there with Lovell before?

A. No, he didn't.

Q. Didn't he tell you that the pole was not where it was when Lovell was down there with him?

A. He said it was knocked down. He put it on the fence and tried to show me how that pole was in the first place.

Q. Did you see the pole after the time that Mudge was there?

A. Yes.

Q. How much did it measure?

A. It measured 11 feet I think and 10 inches.

Q. Had you been down there to look at the place before Mudge went with you?

A. I didn't know the place, Mudge showed me the right place.

Q. You had been down looking after it?

A. I had been along the river.

Q. You had been along looking after it?

A. Yes, sir.

JUROR:—What kind of clothing did the boy wear the day he was working in the potatoe field?

A. I don't think he had anything more than a shirt and a blue pair of pants; I think he had on blue overalls.

Q. What sort of a hat did he wear that day?

A. Well, it was a straw hat.

Q. Did he wear a coat that day?

A. It was not necessary.

Q. What?

A. It was not necessary.

Defendant rests.

And thereupon the said People to further maintain and rebut the evidence of the defense, did then and there on behalf of said People, re-call the said Alexander Mudge to testify as follows, to wit:

Mr. Mudge Re-called for People:

Q. You heard these people testify about this boy going into the postoffice; what can you say about that?

A. I did not see him go in there at all.

Q. Well did you see him before he came up to the postoffice?

A. I did, I see him when he passed the postoffice.

Q. Whether or not he went in as he went by.

A. He didn't.

Q. He didn't?

A. No, sir.

Q. You went down the river, I think you said with Mr. Hodgkiss?

A. I did, about a couple of weeks after I had been down there with Mr. Lovell.

Q. He says there was a pole there and you went to spring it back and it would not stay:

A. There was a pole and I went to spring it back and he says "hold on let it alone right up where it is" and I says all right, if you don't want me to show you where the pole lay why I went and I left the pole lay right where it was. At the time we seen it there it was not where I had seen it before.

Q. Did you show him the exact board at the time you were down there?

A. I showed him a board laying on the ground, and I told him I would not swear it was the same board; I could not swear to that because I didn't pay enough attention to it to tell sure; I says, here is a board laying here; it looks like the one but I would not swear it was the same one; that is what I said to the man. He says, I will measure the board; and he took his rule out of his pocket and measured it and he said it was 11 feet and 10 inches.

Q. This was after the examination in justice court?

A. Yes.

JUROR:—Is this the same board that you saw that day?

A. I think that is the same board Mr. Hodgkins brought away, but I would not say whether that is the same board or not.

Q. Did he not carry the board away with him?

A. Yes, he did, that was about two——after I had been down there with Lovell.

And thereupon the said people to further maintain and rebut the evidence on behalf of said respondent, did then and there on behalf of said people, re-

call the said William Wheeler, who did testify on his direct and cross examination as follows, to-wit:

Wheeler re called:

Q. This boy had what kind of clothes on?

A. A grayish coat and blue overalls.

Q. What time of day was it?

A. It was in the neighborhood of 4 o'clock.

Q. When he came in the engine-house-room?

A. Yes, sir.

CROSS-EXAMINATION.

Q. You swear positively as to the time?

A. I would not, sir.

This constitutes all the evidence of either side.

Mr. McGinley of counsel for defendant after the testimony on both sides closed, moved the court as follows, to-wit:

We ask that the case be taken from the Jury on the ground that there is no proof of emission which is necessary in this case and has not been proven by the people.

Motion over-ruled and exception for defendant to such ruling of the court was then and there by defendant's counsel duly taken.

Testimony closed.

And thereupon the said defendant requested the said Circuit Judge to charge the said jury in behalf of said respondent as follows, to wit:

The Circuit Court for the County of Sanilac:

Defendants 1st, 2d, 3d, and 4th requests to charge.

1st Request. That the defense of an alibi, as it is called, is as legitimate a defense as any other defense. You are to give the same credit to witnesses who testify concerning it as to those who testify to anything else. If in your own mind there is a reasonable doubt that defendant was not there at the place and at the time the people claims this crime to have been committed, then you are bound to acquit him.

Sec. 24, W. W., 1850, Note.

Which said first request was wholly refused and disallowed by the said circuit judge, and each and every part thereof, and to which such refusal the defendant, by his counsel, did then and there in behalf of said respondent, except.

And thereupon the said defendant requested the said circuit judge to further charge the said jury in his said second request as follows, to-wit:

2d. If you find that the witnesses for the people vary in the location of the place where, or in the time when this crime was committed, then you are to acquit the prisoner.

Which said second request of defendant's to charge the said jury was wholly refused by the said

circuit judge and to which refusal and every part thereof, the said defendant by his said counsel, did then and there except.

And whereupon the said defendant requested the said circuit judge to charge the said jury in behalf of said defendant as follows, to wit:

3d. I charge you that the evidence of good character is very material evidence in such cases as this, and that evidence of the most clear and convincing kind have often been satisfactorily rebutted by it, and that proof of a life of unblemished integrity is a complete shield to the most skilful web that cunning is able to weave.

That if you find that this defendant has established evidence enough to convince you that this defendant has heretofore, up to the time of his arrest, borne a good character, then it is your duty to acquit him.

Which said 3d request of defendant's to charge the jury, was then and there wholly refused by the said circuit judge, and to which refusal and every part thereof the said defendant by his said counsel did then and there on behalf of defendant except.

4th. That this offense is of so dark a nature, so easily charged and the negative so difficult to be proved, that the accusation should be made out by the most undoubted proof of guilt.

And thereupon the said defendant requested the said circuit judge to further charge the said jury in his behalf by his fifth request, as follows, to wit:

Defendant's 5th request to charge.

That you shall not take into consideration any testimony of horses tracks being at the place where this crime is claimed by the people to be committed unless they identify that they were tracks by the mare upon which this crime was committed.

Which said fifth request of defendant's to so charge the said jury was wholly refused by the said circuit judge and to which refusal and every part thereof, the said defendant by his said counsel, did then and there except.

And thereupon the said circuit judge charged the said jury in the following words and language, to-wit:

The Circuit Court for the County of Sanilac.

The People of the State of Michigan }
vs
William Hodgskin. }

Gentlemen of the jury, the respondent in this case is charged with a serious crime.

The respondent comes to the trial of the case with presumption of innocence, and such presumption attends all through the trial until overcome in your minds by evidence which satisfies you beyond reasonable doubt of his guilt.

The burden is on the prosecution in this case, to satisfy you beyond reasonable doubt of respondent's guilt.

A reasonable doubt is a fair doubt, honestly entertained. The offense charged in the information in this case is of so foul and dark a nature, so easily charged and the negative so difficult to be proved, that the accusation should be made out by the most undoubted proof of guilt. You must be satisfied beyond reasonable doubt of the fact of penetration before you can convict.

The respondent has offered evidence tending to show what is known as an alibi, that is that he was not at the place charged at the time alleged.

If this evidence in relation to his whereabouts creates a reasonable doubt as to his being at the place charged at the time charged, or if, when considered with

all the other testimony, there is a reasonable doubt of guilt left in your minds you should acquit the prisoner.

Evidence has also been given to show the good character of the accused, and I say to you that if such evidence establishes good character in your minds, such fact is entitled to your careful consideration in determining the guilt or innocence of respondent on trial.

If such evidence creates a reasonable doubt in your minds or leaves a reasonable doubt in your minds, considered with all the other evidence in the case, you should acquit, but if you are satisfied beyond a reasonable doubt, of his guilt, this good character alone will not entitle respondent to an acquittal.

The credit to be given to the witnesses on either side, is for your consideration alone; you should weigh the testimony of each and apply all reasonable tests to determine the credit to be given it. The witness Lovell is the only direct witness as to the actual commission of the crime; his evidence should be carefully scrutinized to determine whether it is credible or whether he is mistaken in any respect, or whether the charge was made from a bad motive or not.

The evidence of the parents and sister of the accused should also be weighed in the light of the fact that they are naturally interested, and it is for you to determine whether their testimony is biased by such interest or not. It is all for your careful consideration.

Under the evidence in this case there is no room for a charge of an attempt to commit crime; the information contains two counts; one of them charging the commission of the full offense completed crime; the other an attempt to commit it, and you are only to consider whether the evidence warrants a conviction or not of the completed crime as charged in the first count. If the evidence satisfies you beyond a reasonable doubt, of guilt, you should say so without fear; if it does not satisfy you beyond a reasonable doubt, you should not hesitate in acquitting the prisoner.

And among other things mentioned by the said circuit judge in his said charge to the jury, he made use of and did charge them in the following words and language, to wit:

"Lovell is the only direct witness as to the actual commission of the crime."

And to which words and language so charged by the said circuit judge, and to each and every word, sentence and paragraph thereof, so charged, the defendant by his said counsel, in his behalf, did then and there duly except.

And among other things mentioned by the said circuit judge in his said charge to the jury aforesaid, he made use of and did charge them in the following words and language, to wit.

"Under the evidence in this case, there is no room for a charge of an attempt to commit crime; the information contains two counts; one charging the commission of the full offense, completed crime; the other an attempt to commit it, and you are only to consider whether the evidence warrants a conviction or not of the complete crime as charged in the first count."

And to which words and language so charged by the said circuit judge, and to each and every word, sentence and paragraph thereof, so charged, the defendant by his said counsel in his behalf, then and there duly except.

And to the said charge of the said circuit judge so given to the said jury and to each and every part and section, the defendant by his said counsel, did then and there in behalf of the defendant except.

And among other things mentioned by the said circuit judge in his said charge to the jury, he made use of and did charge them in the following words and language, to wit:

"The evidence of the parents and the sister of the accused should be weighed in the light of the fact that they are naturally interested, and it is for you to determine whether their testimony is biased by such interest or not; it is all for your careful consideration."

And to which words and language, so charged, and to each and every word, sentence and paragraph thereof so charged by the said circuit judge, the de-

fendant by his counsel, C. H. McGinley, in his behalf, did then and there duly except.

The jury thereupon retired to their jury room under the care of an officer, duly sworn, and remained out about three hours in deliberation upon their verdict, when they were brought into court upon the request of the jury and asked by the court if they had agreed upon their verdict. They answered and said they had not. The court thereupon asked them if they were granted longer time, would they be likely to agree, and was it a question of law or fact, and they answered and said it was a question of fact, and we do not think it possible to agree, your honor.

Thereupon the court sent them back into their jury room for further deliberation.

The defendant, by his counsel, C. H. McGinley, then and there took exceptions to the said actions of the said circuit judge in behalf of said defendant, because the jury, on declaring there was no probability of their agreeing, should have then and there been discharged from further consideration of the same by the said court.

Whereupon the said jury did then and there return to their jury room, under the said instructions of the said court, in charge of the officer aforesaid and against the protest of defendant's counsel, C. H. McGinley.

And whereupon, after further deliberation of said cause, the said jury again came into court and in the presence of the judge of said court and the

said respondent, and their having answered to their names, they then and there did render a verdict of guilty in manner and form as charged in the said information against the said defendant by the said people.

Thereupon C H. McGinley, of counsel for the said respondent, moved the court in the following language, to wit:

MR. MCGINLEY:—I make a motion that the verdict of the jury be set aside as being contrary to the evidence and the charge of the court.

COURT:—The court denies the motion for the reason that he is satisfied that any exceptions that could be alleged upon this record would be frivolous and immaterial.

Whereupon exceptions for the defendant were then and there, by his said counsel, in his behalf duly taken to the over-ruling of said motion by the said circuit judge.

Whereupon on the day following such conviction by the said jury as aforesaid, the said respondent was brought before the bar of the court in charge of an officer, and on motion of Wm. H. Burgess, prosecuting attorney, a motion was made on behalf of the said people, that sentence be passed upon said respondent. The circuit judge thereupon asked the respondent if he had anything to say why sentence should not now be passed upon him, and no reason being alleged by the respondent why said sentence should not be passed upon him by the court, the

court thereupon sentenced the said respondent in the following form and manner, to wit:

At a general term of the circuit court for the county of Sanilac, in the state of Michigan, held at the court house in the village of Sanilac Centre, in said county, on Friday, the 26th day of September, A D., 1891

Present, HON. WATSON BEACH, Circuit Judge.

The People of the State of Michigan }
 vs
William Hodgskin. }
Information for Bestialty.

William Hodgskins, the respondent above named, having been, by the verdict of the jury heretofore impanelled and sworn, in this cause, duly convicted of the abominable and destesible crime, against nature with a beast, as appears by the record thereof, and having been, on motion of the prosecuting attorney, brought to the bar of the court for sentence, and having been asked by the court if he had anything to say why judgement should not be pronounced against him, and alleging no reason to the contrary.

Therefore, it is ordered and adjudged by the said court, now here, that the said William Hodgskins be confined in the State House of Correction and Reformatory at Ionia, for the period of three years from and including this day.

WATSON BEACH, Circuit Judge.

Thereupon the said respondent by his said counsel, at the following term and preceeding the formal