

knowledge, and knew how Samuel Manassau came into possession of this horse.

The knowledge of that theft need not be such as one would acquire who had witnessed it; but it is sufficient if the circumstances were such accompanying the transaction as to make the respondent believe that the goods had been stolen.

Bishop on Crim. Law, section 1133.

It was held in the case of *People vs. Reynolds*, impleaded, etc., that an indictment for aiding in the concealment of any articles, money, goods, or property, knowing the same to be stolen, is supported by proof of acts of the aider which will assist the principal felon in converting it to the use of the thief, and which will aid him in preventing its recovery by the owner, and it is not necessary to prove that the property was actually hidden or secreted anywhere.

People vs. Reynolds, Impleaded, etc., 2 Mich., 422.

I submit that the evidence in this case was sufficient to warrant the jury to render such verdict as they did; and, unless this Court can say that there is a total and absolute want of any evidence to sustain this verdict, the judgment of the lower court should be affirmed.

A. A. ELLIS,
Attorney General

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STATE OF MICHIGAN,

IN THE

SUPREME COURT.

PEOPLE OF THE STATE OF MICHIGAN,

vs.

WILLIAM HODGSKINS,

Information for Bestialty.

RECORD.

J. B. HOUCK and MCGINLEY & DURNING,
Defendant's Counsel.

Sanilac Centre, Mich.,
REPUBLICAN STEAM PRINTING HOUSE,
1892.

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STATE OF MICHIGAN,

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RECORD.

J. B. HOUCK and MCGINLEY & DURNING,

Defendant's Counsel.

Sanilac Centre, Mich.,
REPUBLICAN STEAM PRINTING HOUSE,
1892.

At a general term of the Circuit Court for the County of Sanilac, and held at the Court House in the Village of Sanilac Centre, in said County, on Wednesday, the twenty-fourth day of September, A. D. 1890.

Present, HON. WATSON BEACH, Circuit Judge.

Court opened for business in due form.

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

INFORMATION FOR BESTIALTY.

The respondent in this cause being present in court and trial ordered, thereupon came a jury, to-wit:

Amasa Brown, Alfred E. Lenhard, George Stevenson, Hudson Farewell, Robert Barr, Terrance L. Denton, William Tucker, John Harding, Robert Irving, George Parker, Antone Heiling, John Patti, who were duly impannelled, tried and sworn well and truly to try and true deliverance make between the people of this state and the prisoner at the bar, whom they should have in charge according to the evidence and the laws of this state, and after hearing the proofs and allegations of the parties, argument of the Counsel and the charge of the Court, returned from the bar thereof under the charge of Thomas A. Balkwell, an officer of court duly sworn for the purpose, to consider of their verdict to be given, and after being absent for a time returned into Court and say upon their oath that they find the said William Hodgskin guilty in manner and form as the said people have in their information in this cause charged.

Whereupon Court adjourned until nine o'clock to-morrow morning.

Read, corrected and approved in open Court this 25th day of September, A. D. 1891.

WATSON BEACH,
Circuit Judge.

At a general term of the Circuit Court for the County of Sanilac, and held at the Court House in the Village of Sanilac Centre, in said County, on Tuesday, the 23d day of September, A. D. 1890.

Present, HON. WATSON BEACH, Circuit Judge.

Court opened for business in due form.

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

INFORMATION FOR BESTIALTY.

William Hodgskin, the respondent in this cause having been duly arraigned at the bar in open Court and the information being read to him by W. H. Burgess, Prosecuting Attorney, refused to plead thereto, whereupon a plea of "not guilty" is entered by order of the Court in his behalf.

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

Read, corrected and approved in open court this 24th day of September, A. D. 1890.

WATSON BEACH,
Circuit Judge.

The Circuit Court for the County of Sanilac.

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

At a session of the said Court held at the Court House in the village of Sanilac Centre on the 24th day of September, A. D. 1890.

Before the HON. WATSON BEACH, Judge of the said Circuit Court, and the issue being joined between the said People and the said respondent, and on an information filed against him as follows, to-wit:

State of Michigan. The Circuit Court for the County of Sanilac, of the September term in the year A. D. 1890.

County of Sanilac. ss.

William H. Burgess, prosecuting attorney in and for the County of Sanilac aforesaid, for and in behalf of the people of the State of Michigan, comes into said court in the September term thereof, in the year one thousand eight hundred and ninety, and gives the Court here to understand and be informed that William Hodgskin, late of Lexington township, in the county aforesaid, heretofore, to-wit:

7.

On the 27th day of June, in the year one thousand eight hundred and ninety, at the township of Lexington, in the aforesaid county of Sanilac, with force and arms with a certain mare, then and there being feloniously, wickedly and against the order of nature, had a venereal affair, and then and there feloniously, wickedly and against the order of nature, carnally knew the said mare, and then and there feloniously, wickedly and against the order of nature with the said mare, did commit and perpetrate that abominable and detestable crime of buggery, against the form of the statute in such case made and provided, and against the peace and dignity of the people of the state of Michigan.

And the said prosecuting attorney, who prosecutes as aforesaid, further gives the Court here to understand and be informed that William Hodgskin aforesaid, heretofore, to-wit:

On the 27th day of June, in the year A. D. 1890, with force and arms, at the township of Lexington, in the county of Sanilac aforesaid, with a certain mare then and there being, feloniously, wickedly and against the order of nature, did attempt to have a venereal affair, and then and there feloniously, wickedly and against the order of nature, did attempt to carnally know the said mare, and then and there feloniously, wickedly and against the order of nature, with the said mare did attempt to commit and perpetrate the abominable and detestable crime of buggery, against the form of the statute in such case made and provided, and against the peace and dignity of the people of the state of Michigan.

WILLIAM H. BURGESS.

STATE OF MICHIGAN, }
 County of Sanilac. } ss.

William H. Burgess, being duly sworn, deposes and says that he knows the contents of the above information by him subscribed, and that he has good reason to believe, and does believe the same to be true as therein set forth.

WM. H. BURGESS.

Subscribed and sworn to before me this 23d day
 September, A. D. 1890.

WATSON BEACH,
 Circuit Judge.

To which information the respondent did refuse to plead, and a plea of "not guilty" was then and there entered for him by the Clerk, by order of the Court.

This cause then came on to be tried by a jury of the said County of Sanilac, for that purpose duly impanelled, good and lawful men of the said county, at which day came there, as well, the people with the Prosecuting Attorney of said county, Wm. H. Burgess and their witnesses, and also the said Wm. Hodgkin, the said respondent, with his attorney, J. B. Houck, and McGinley & Durning; and the jurors of the jury aforesaid, to try the said cause, also came and were then and there each, and every one of them asked the question as to whether they were electors or citizens, and among the men who sat upon such pannel and tried said cause, was one Anthony Heileg, of Delaware township, county of Sanilac and state of Michigan, and to ascertain his true qualification to sit and try

said cause, the prosecuting attorney, Wm. H. Burgess and J. B. Houck, attorney for the respondent, propounded to him, the said Anthony Heileg, the following questions, which were answered as follows, to-wit:

C. H. McGinley, Esq.

FRIEND MCGINLEY:

I enclose you all the attorneys said to Anthony Heileg, as requested

Anthony Heileg sworn as to competency:

Q. You live in Delaware?

A. Yes, sir.

Q. You don't know this defendant?

A. No, sir.

Q. Are you a citizen?

A. Supposed to be.

Q. In what way?

A. By my father's coming to this country when I was quite young.

Q. Was your father born in this country?

A. No, sir.

Q. How did you become a citizen?

A. By his papers, I suppose.

Q. Where was he born?

A. He was born in the old country.

Q. Did you ever take out any papers, yourself?

A. Well, now you have got me puzzled; you see, he came into two states; two different states; he has taken out one in each state.

Q. Where did he take out the last papers?

A. Michigan.

Q. In this court?

A. I think he did; yes, sir.

Q. Were those taken out when you were old enough to understand?

A. I was seven or eight years old, I guess.

Q. You know the fact that he took out two sets of papers?

A. Well, I would not be positive, but it runs in my mind that he did.

Mr. Houck, for defense, followed same line of questions; same answers. No challenge.

C. H. McGinley, Esq.,

Minden City, Sanilac County, Mich.

This is all the examination that was made of Mr. Heileg's competency. Anything else I can do for you, write, and I will endeavor to be at your command.

Sincerely Yours,

W. REASON.

The said jury aforesaid, one of whom was the said Anthony Heileg, were then and there duly chosen and sworn to try the issue aforesaid, between the said people and the said William Hodgskin, and upon the trial of the said issue aforesaid, the prosecuting attorney, counsel for the people, to maintain and prove the said issue on its part, produced and offered in evidence as a witness, John Lovel, who, being duly sworn, deposes as follows, to-wit:

The Circuit Court for the County of Sanilac.

PEOPLE VS. HODGKIN.

John Lovel sworn for People:

Q. Where do you reside?

A. In Sheldon.

Q. This county?

A. Yes, sir.

Q. In this state?

A. Yes, sir.

Q. Do you remember seeing the defendant last June, towards the last of the month?

A. Yes, sir.

Q. Are you the person who made the complaint in this case?

A. I think so; yes, sir.

Q. Made it at my direction, didn't you?

A. Yes, sir.

Q. Now, will you tell us where you saw this man and what he was doing, and the circumstances of it?

A. Well, it was about a half a mile below where I live; I live right close to the Lapeer road; I should say it was about half a mile below that. I was on the east side of the river, hunting, and I saw this man, this prisoner here, on the other side of the river, and there was several horses around where he was, around where I saw the man, and he was rubbing one of them on the back. It was a mare; he was rubbing her on the back, over the back like, the first I saw him, and he coaxed her up into the corner of the fence there, towards the corner of the fence on the road, and then took her by the head and lead her a

little west, towards the corner of the fence.

Q. Corner of what?

A. Corner of the fence where the two fences come together. Then he left her and went over into the field and got a board and brought it over, and he put one end on the fence running towards the river, and left the other end down on the ground. He went then and got the mare, and leading her up into the corner of the fence, he picked up the end of the board and put it up on the other fence, and put one foot on the board and unbuttoned his pants and took out his ———

Q. What else?

A. Took out his penis and pulled the mare's tail aside with his right hand, and took his penis with his left hand and put it into the mare and started to shogging away.

Q. Did you see the defendant enter his person into the mare?

A. I did, sir. I was right straight across the river.

Q. Did you see him when he took his person from the mare?

A. Yes, when I yelled at him I see it come out and drop down, just as plain as could be.

Q. When you saw him in that shape, what did you do?

A. I cocked my gun and held it up like that, (witness illustrating,) aimed, and yelled at him.

Q. What did you say to him?

A. I says, you dirty son-of-a-bitch, I says; damn your soul, damn your dirty soul, I would give you what is in this gun for two pins, and with that he

jumped the fence and run. Started west as near as I could see, towards the road that goes down towards the cemetery.

Q. What did you do then?

A. I run back on the hill, back about four or six rods, and I could see him running towards the cemetery; and I run up on the other side of the river. I thought I would follow him to his home and tell his folks of it. When I got up there by the Lapeer road he was crossing by Tucker's hotel; he was crossing and making towards Crowell, and I run down to my own house.

Q. You came out on the Lapeer road where?

A. This side of the bridge; just east of the bridge, on the east side of the bridge.

Q. Which way did you take then?

A. I went up on the hill; crossed the bridge and went up on the hill.

Q. When you got up there you say you saw him crossing the Lapeer road at Tucker's?

A. Yes, sir.

Q. Going in what direction by the compass?

A. North, I should say.

Q. Did you go up there to that same corner.

A. No; I turned at the corner just west of the bridge.

Q. Then in what direction did you go?

A. I went towards my own home.

Q. And in what direction would that be by the compass?

A. That would be north. When I got to my gate I called to my wife, and I says, ———

Q. Never mind what you said to her.

A. I threw my gun inside of the fence, and my ammunition, and told my wife to take it in.

Q. What did you do then?

A. I saw him turning the corner there at McIntyre's

Q. In what direction from where you were?

A. North.

Q. On the same street?

A. On the same street.

Q. What did you do, and what did he do?

A. I followed him; he was going towards Crosswell and I followed until I got down to Flannery's and I says, "John", I says, "did you see that man with the blue overalls on?" and he says "yes, that's Billy Hodgkins;" and I says, "yes, I know it;" and I says, "I want to catch him," and I says "come with me;" and he came out and I told him what I caught him doing, and Flannery went with me.

Q. Followed him, did you, across the bridge; that is, the other bridge up to the village?

A. Yes, sir; we crossed the bridge up close to the village.

Q. Followed him where to?

A. Followed him into Stewarts & Thompson's mill, down into the engine-room.

Q. What part of the room?

A. Into the engine-room.

Q. What did you find there?

A. I saw Wilsey there, and I saw the prisoner there; he was just inside the door, or just inside the mill around behind the window; window close to the door.

Q. When you went in there, what did you do?

A. I turned to the prisoner here, and I says, you dirty devil; I says you are a nice thing to have around, aint you? I says, I never came so near shooting a man in my life; and he answered and he says, "What have I been doing?" He says, "I don't hardly understand you." And I says, you know what you have been doing, you dirty devil, and I says you skip right out of here if you dont want to be arrested. I says, I am going up to Mr. Burgess's office and have you arrested; and then I turned around and there was Mr. Wheeler and some more men standing there, and I told them again what I saw him doing. I think there was a man there by the name of Beagle, and John Flannery standing there, and I told them again what I caught him doing, and by that time the prisoner was going out of the back door of the mill.

Q. He got out?

A. Yes, sir.

Q. What sort of speed was he making when you saw him crossing towards the cemetery?

A. He was walking just as fast as he could walk.

Q. How was he going when you followed him across the bridge?

A. Just before he got to the bridge he looked around, and then he started to run until he got to the bridge, or very near the bridge, and then walked as fast as he could across and up to the mill.

Q. What was his appearance when you got into the mill where he was?

A. He was,—He looked very much excited when I got into the mill, and he turned white and pale.

Q. I would like to have you tell us again about that; you say he put the board on the fence, and how was that?

Q. Was it a worm fence where this act was done, committed?

A. No; it was a board fence that was running north and south, and it was part rail and part board that was coming up from the river; it was a sort of a—well there was a lot of old stuff piled up against the bottom of it, near the river; it was a sort of a made-up fence.

Q. So that it was right in the corner where these two fences met, that this occurred?

A. Yes, sir.

Q. You say that he put the board up, both ends up; both ends of the board in the fence?

A. Kind of fenced the mare in the corner.

Q. Then how did he do?

A. He stood with one foot on the board and one foot on the fence.

Q. About how far away were you at the time?

A. I could not say the exact distance, but I should say about 8 or 10 rods; just across the river.

Q. This was at the time you saw him commit the act?

A. Yes, sir.

Q. In plain view from where you stood?

A. Yes; nothing between us at all.

Q. What time in the month did that occur, if you can remember?

A. It was on the 27th of June.

Q. What time of day?

A. I should think that it would be about half

past 3 o'clock; it might have been more than 3; about the middle of the afternoon; about 3 or half past 3, somewhere along there.

Q. In what township was that?

A. Lexington.

Q. State?

A. Michigan.

CROSS-EXAMINATION.

Q. Where did you say this crime took place?

A. About half a mile or a little more below where I live.

Q. Half a mile below the Lapeer bridge?

A. Yes, sir.

Q. Where do you live?

A. I live right close to the Lapeer road.

Q. How far?

A. The road goes on to Lapeer; a little north of the Lapeer road.

Q. How far north?

A. About 15 rods.

Q. What did you say you were doing on that day?

A. Hunting.

Q. What time did you go hunting?

A. I started out about two o'clock.

Q. Did you go right straight to that place?

A. No, sir.

Q. Where did you go?

A. I went a little west.

Q. West?

A. Yes, of where the slaughter house is.

Q. Where is the slaughter house?

A. It is down in McCaffery's field.

Q. Where is McCaffery's field?

A. On the Lapeer road; the slaughter house is back in the back end of the field.

Q. How far from the Lapeer bridge?

A. I could not say just exactly how far it is.

Q. How far do you think it is?

A. Between $\frac{1}{4}$ and $\frac{1}{2}$ of a mile.

Q. And then where did you go?

A. Then I kind of strolled down the river.

Q. Which way is that slaughter house from the Lapeer bridge?

A. South.

Q. Then you strung along down the river?

A. Yes, sir.

Q. Which way does the water flow?

A. Runs north and south, pretty nearly.

Q. You say the slaughter house is south of the river; south of the bridge?

A. South of the—I think it is.

Q. Well, you say the water flows south; you must have gone down the river?

A. Well, that is what I said; I went down the river.

Q. Then you went to the road from down the river when you left the Lapeer bridge?

A. No; I went to the slaughter house and then a little east, and then went back up the river.

Q. How far east of there did you go?

A. About 20 rods.

Q. And then you went back the river?

A. Yes, sir.

Q. Then where did you go?

A. Then I went down the river.

Q. How far did you go down the river?

A. I was hunting around there in the bushes; around there quite a little while, about a quarter of a mile below the slaughter house.

Q. What did you do after you got through?

A. I sit down on a log and had a smoke.

Q. How long did you smoke there?

A. I could not say exactly how long, perhaps an hour; no, I don't think it was only half an hour.

Q. Where did you go then?

A. Then I went on a little further down the river, where I saw Hodgkins.

Q. Where was Hodgkins?

A. He was across the river, where I saw him first.

Q. How far from you?

A. 8 or 10 rods.

Q. How far across the river?

A. I should think it would be 8 or 10 rods.

Q. How far from the edge of the other side of the river?

A. Was Hodgkins?

Q. Yes.

A. Oh, about the middle of the road.

Q. How far?

A. When he was leading the mare up into the corner of the fence I was in the road close by, near the river.

Q. How far were you from the river?

A. About as far as I am from you now, when I saw him first.

Q. About two rods?

A. Oh, no; that is hardly 2 rods.

Q. How wide is the river in that place?

A. I never measured it; I took it to be about eight rods.

Q. 8 rods; perhaps less?

A. Yes, sir.

Q. Was you standing right on the edge of the river; was there an embankment?

A. When I saw him first?

Q. Any time you saw him?

A. Tell me——

Q. When you were walking around the river.

A. When I saw him first I was about as far from him as I am from you, to the river; when I saw him put the mare in the corner, and when he done that I stepped right out next to the river. There is a little bush out to the river, towards the river, to the river, and almost over the river, and I stepped right out there.

Q. How wide did you say it was; the river?

A. I did not say anything about the distance; I told you I did not measure it

Q. How wide is the river at that place?

A. I don't know; I say I did not measure it.

Q. Then you don't know how far it was to where you was; to where he was?

A. Not exactly; no, I don't know exactly

Q. Didn't you state a little while ago that it was 8 or 10 rods?

A. I said I took it to be that far I should think.

Q. Well, you better go and measure it then; you can tell us something about it. Now what did you say he was doing; what did you see him doing there first, did you say?

A. I saw him rubbing the mare on the back.

Q. How high was the mare?

A. Well, I could not tell you that.

Q. What color was she?

A. A bay.

Q. About how heavy was she?

A. I should think about 1,200.

Q. You could not tell us how high she was?

A. No, not exactly.

Q. You could see him?

A. Yes, saw him quite plainly.

Q. Tell who it was?

A. Yes, sir, I could.

Q. Can not tell how high the mare was?

A. No, sir.

Q. How far was the mare from the corner of the fence?

A. When I saw him first, about from here to the side of the court room, (it being about 15 or 20 feet.)

Q. You say he rubbed her on the back; was that all he done?

A. Yes, and went up towards her head, and got hold of her mane, and then he led her up towards the corner of the fence.

Q. What then?

A. He put the board in the fence corner; first he rubbed her, and then went and got the board and put one end upon the fence, or upon one of its rails, and then went and got the mare and fetched her up into the fence corner.

Q. How high do you think the mare was?

A. I have no idea, only she was an ordinarily sized horse.

Q. How high would that be?

A. I am not much judge of horses.

Q. I thought you were a horse jockey.

A. No, sir, I am not.

Q. How old, in your opinion, was the horse?

A. I don't know.

Q. You did not look at her teeth, did you?

A. No, sir. Was on the wrong side of the river.

Q. How high was the board?

A. One end of it was about three feet from the ground.

Q. What kind of a fence was it?

A. It was a board fence running north and south.

Q. East and west?

A. Partly board and partly rail, polls.

Q. Rails, polls and boards.

A. Yes; there was some boards there.

Q. Was there any rails?

A. There was polls; they call them rails.

Q. How many polls were there?

A. I don't know.

Q. How did he put the mare in the corner?

Q. Lead her there.

Q. Which way was she standing?

A. Standing with her head towards the south.

Q. Head to the south.

A. Yes, sir.

Q. Which way did you say the fence was running?

A. Running north and south; one of them run north and south and the other one run east and west.

Q. Did he stand in the centre of the board?

A. No, sir.

Q. Where did he stand on the board?

A. Stood with one foot on the fence running north and south, the other foot out on the board.

Q. Which side of the fence?

A. East side of the fence.

Q. Which side was the horse?

A. On the east side of the fence running east; no, north and south.

Q. He stood on the fence, did he?

A. Yes, sir; one foot on the fence and one on the board.

Q. How high was the fence?

A. About 5 feet, I should say.

Q. He stood on top of the fence?

A. No, stood as I say; one foot on the fence and one on the board.

Q. How far from the horse was the fence; the horse from the

A. The horse was right close to the fence.

Q. Did he have any bridle on her to lead her with?

A. No, sir.

Q. What did he lead her with?

A. Mane; foretop.

Q. Did he have anything to hold her with?

A. No, sir.

Q. How did he hold her then, at the time he was ravishing her?

A. She did not seem to want any holding.

Q. Do you know whether it was a colt or not?

A. Colt. No, a mare; there was a little colt following on after her.

Q. What did he do when he stood there on the board?

A. He unbuttoned his pants first, with his right hand.

Q. Then what did he do?

A. Took hold of the mare's tail with his right hand and pushed it one side; pushed it to the west

Q. He stood on the board with his penis; took his penis out with the left hand?

A. Yes, unbuttoned his pants first with his right hand.

Q. And then what did he do?

A. He took his penis in his left hand and put it up to the mare and pushed it into her

Q. How did he hold the mare?

A. The mare's head was up against the fence running east and west; she could not get any further; she could not get out of there without jumping the board that he put up.

Q. Wasn't there a place where the horse could jump the fence sideways, or jump sideways without jumping the fence?

A. No, sir.

Q. What became of the vacant space in the corner?

A. I suppose she could get a little to one side if she tried to, but she did not seem to try to appear to try.

Q. Could not get east or west?

A. No, sir.

Q. Why?

A. Because the fence run north and south; that was the fence he was standing on.

Q. Was there two fences there?

A. Yes, sir.

Q. I thought you said it was on the west side of the fence?

A. No, sir; I said it was on the east side of the fence running north and south, and on the north side of the fence running east and west.

Q. Which way did the other fence run?

A. Which fence?

Q. The two.

A. One was running north and south, and one east and west.

Q. She could not get east, nor she could not get west?

A. She could get to the east by jumping the board; she could get south by jumping the fence; but she did not appear to want to do either.

Q. Then she could get east, could she?

A. A little.

Q. Her head was right up in the corner of the fence?

A. Yes, sir.

Q. How could he get to her if her head was up in the corner of the fence?

A. By the fence running up from the east, the board was on this north fence, across in that shape, (illustrating) and her head was up in that corner; she could have swung a little east if she tried to.

Q. How long was the board?

A. I should think it to be about 14 feet long.

Q. One fence runs this way and the other one

runs south?

A. Yes, in this way, you see; (illustrating) one that way and one to the east.

Q. To the east?

A. Yes, sir.

Q. Runs right directly on the river, or does it go to the south?

A. Sways to the river.

Q. Did the board angle a little, or was it fast and straight?

A. No, I don't think it angled any.

Q. And about how long?

A. 14 feet.

Q. Have you seen the board since the examination in the justice court?

A. No answer.

Q. You changed your mind as to the length of the board, didn't you?

A. No, not materially.

Q. Did you not swear in Justice court that it was only 12 feet long?

A. No, sir.

Q. Did you state that it was between 12 and 14 feet long?

A. I would not be sure.

Q. How large was the board?

A. It was a board that was narrow at one end.

Q. Narrow at one end?

A. Yes, and had a piece split off on the end; a little piece.

Q. What kind of a board was it, a plank?

A. No, sir.

Q. 4-inch scantling?

A. Thin board.

Q. How wide was it at the widest place?

A. About 8 inches, I should say.

Q. Was it not a fence board?

A. It looked as if it had been.

Q. A fence board?

A. Yes, sir.

Q. How wide is a common fence board; 8 inches?

A. I have seen them more than that, and I have seen them less.

Q. Would you know the board if you seen it?

A. No, I don't think I would, but I would have a pretty good idea whether it was the same board or not, but—

Q. How wide was it in the narrowest place?

A. About 4 inches

Q. How long did you watch him, altogether?

A. Oh, I guess it was about ten minutes getting ready, and the whole business.

Q. How long was he getting the horse there?

A. Oh, not very long; just a little while leading her up to the corner the first and second time.

Q. What did you say he done when you hollowed at him?

A. He jumped the fence.

Q. Then where did he go?

A. Went west.

Q. How far?

A. He run until he got very near the road that the cemetery is on.

Q. Did you look to see his penis?

A. Yes; it looked to be 5 inches.

Q. 5 inches?

A. Yes, outside of his pants.

Q. Was the mare's private sunken in any?

A. No; she appeared to be, to look like a good healthy beast.

Q. Did you see any penetration?

A. Yes, sir.

Q. How did you see it?

A. I was right across the river from him.

Q. The mare was standing north and south?

A. Yes, sir.

Q. Was the fellow's back towards you?

A. No, sir.

Q. Was his face towards you?

A. No, he was sideways to me.

Q. Do you know whether the mare's privates were sunken in or not?

A. I don't think they were. I could see it as plain as could be

Q. How?

A. When he pulled her tail one side.

Q. Then her privates were away out to his penis.

A. No, sir.

Q. How could you see it then?

A. Quite plain, across the river.

Q. On which side of the fence?

A. On the south side; I could see him as plain as could be.

Q. Then you say when you hollered at him he jumped the fence and ran away.

A. Yes, sir.

Q. You did not see her privates before that?

A. Yes, I did.

Q. When?

A. When he had her up into the corner I could see them.

Q. But you did not see her privates at the time

he was pushing her, as you call it?

A. Yes, I did.

Q. As plain as I can see you?

Q. Did it stick out beyond the penis?

A. No, sir.

Q. And you mean to say you could see all this from across the river?

A. I could see it as plain as could be; yes, sir.

Q. You could see the mare? Yes, but you could not see her privates.

A. I see it just the same.

Q. Saw it stick out beyond her privates?

A. I saw it just the same, as plain as I can see your eye from here.

Q. Yes, but you cannot see the back of my neck.

A. No answer.

Q. It was necessary to see the mare's privates, in order to see the penetration.

A. Well, I did.

COURT:—Well, the jury have the situation, and all the facts; they can draw their own inference from them.

Q. Where did he go when he left the fence?

A. He run straight west.

Q. How far?

A. Until he got almost to the road running to the cemetery, or by the cemetery, and then he turned and went up towards the cemetery, and got over the fence.

Q. Where was you all this time?

A. As soon as he jumped the fence and started to run west, I run up on the bank.

Q. Did you see him all the time he was running?

A. No, not when my back was towards him, going up on the hill.

Q. How far did you run after him?

A. I run 40 or 60 rods.

Q. Then where did you go?

A. I went up the hill and I turned around, and he was running on the road that leads by the cemetery.

Q. How far was the road from the river?

A. I could not say exactly.

Q. How far was he from the Lapeer road when you went up the hill?

A. Quite a ways. Maybe nearly half a mile.

Q. Where did he go then?

A. He turned in towards the Lapeer road.

Q. And you see him all the time he was running?

A. No; when he was near the cemetery I could not see him for the brush.

Q. How long did it take you to go from where you was to, from the top of the hill to the cemetery.

A. I should not think that it took me more than ten minutes.

Q. You pretended to say that you arrived there just at the same time that he arrived out on the road, do you?

A. No.

Q. When he had half a mile start of you?

A. When I got up on the Lapeer road, he was across there by Tucker's.

Q. Where is Tucker's?

A. It is on the road there, right close to where I live; on the Lapeer road.

Q. Was the crossing running north or south?

A. East and west.

Q. Then you arrived on the Lapeer road at the same time he did, when he had half a mile start of you?

A. No; he did not have half a mile start of me.

Q. What did you do with your gun all this time?

A. I had my gun in my hand until I got in the house.

Q. Then where did you go?

A. When I dropped my ammunition inside of the fence, I followed him.

Q. Inside of the fence where you arrived at the Lapeer road?

A. No, to my own home.

Q. Then what did you do?

A. I followed him.

Q. Could you see him?

A. Yes, sir.

Q. Where was he?

A. He turned the corner there as I dropped my gun and ammunition, there by Mr. McIntyre's; he turned there at that corner on the road running from the Lapeer road; right there towards Crowell.

Q. How far from the Lapeer road to Mr. McIntyre's?

A. About eighty rods.

Q. How far when you arrived at the Lapeer road? Out to Tucker's tavern to your place?

A. It is about half the distance.

Q. Of what?

A. Between Tucker's and the Lapeer road.

Q. How far from the Lapeer bridge to your place?

A. I could not say exactly.

Q. Quarter of a mile?

A. No, it is not.

Q. How far were you from the Lapeer bridge when you saw him at Tucker's tavern?

A. Just up on top of the hill. About four rods from the bridge, turning the corner there at the end store.

Q. Then you went north half a mile from him when he crossed the bridge; the road?

A. Oh, no, I was not; it is not more than - it is just a block.

Q. A block?

A. Yes, from the street

Q. Is there any streets west of the Lapeer road, west of the Lapeer bridge?

A. There is a street.

Q. You said you were west of the Lapeer bridge.

A. So I was; he was turning the corner on the road that I live on, and I was crossing the road there that Tucker lives on.

Q. Was you going out west of the Lapeer road; Lapeer bridge?

A. When I came out of the field?

Q. Yes

A. No; came out east of the bridge and crossed the bridge he did.

Q. How far, I ask you, were you from him when he crossed the Lapeer road?

A. I don't know how far he was from me then, because I did not see him at the time ———

Q. Which side of the river was you?

A. I was on the east side and he on the west side.

Q. You don't know how far it is?

A. No, I don't know the exact distance. I just told you that where I saw him cross the road to where he was turning the corner

Q. What corner was he turning when you came out on the road?

A. The road that I live on; turned off the Lapeer road; had crossed the bridge on the west side of the river.

Q. Then you live on the east side of the river?

A. Yes, sir.

Q. Is there a street running north and south at your place?

A. Yes, sir.

Q. Then there was the other streets on the east side of the river, there by the Lapeer bridge?

A. On the east side of the river?

Q. Yes.

A. Yes, there is two streets running north and south.

Q. There is?

A. Yes, sir.

Q. How many buildings is there, there?

A. On the east street that I live on?

Q. How many buildings where you live, upon the east side?

A. I do not live upon the east side of the river.

Q. A moment ago you said it was upon the east side of the river.

A. It was a slip of the tongue.

Q. I guess you don't know where you do live.

A. I know where I live alright enough.

Q. What corner did he turn?

A. He turned the corner by McIntyre's

Q. Well then, where did you go?

A. Followed him.

Q. Did you lose sight of him when you turned the corner?

A. Yes, for a minute at McIntyre's corners; I did after he got below the hill at Flannery's.

Q. Then where did he go?

A. He went down towards Croswell; saw him crossing the commons and I followed him right over, and when I got to Flannery's I called him out.

Q. What did you call to him?

A. I says, I want to catch that man.

Q. What for?

A. I told him what he had been doing.

Q. What did you want to catch him for?

A. Well, I thought it would do him good to tell him what I had caught him doing.

Q. Where did he go to when he crossed the river?

A. He went into the mill of Stewart & Thompson, into the engine room

Q. Did you see him go in there?

A. Yes, sir.

Q. Where was you when you saw him go in there?

A. I just turned the corner there by the mills.

Q. Did you see him go into the engine room?

A. Yes, sir.

Q. Where were you?

A. I was up to the mills.

Q. You saw him going into the engine room?

A. Yes; no, not just in the door; there was a pile of wood between him and the door, and I saw him going towards the door, and I thought he went in; that was where I found him.

Q. What did you do when you found him?

A. I told him you dirty devil.

Q. What did you tell him that for?

A. Well, I thought so or I would not have told it to him.

Q. Then you did not tell him what you had seen, or anything of that kind?

A. Yes, when I got to these men I told them that I caught this man down the river at a horse; at a mare.

Q. You caught him down to the river?

A. Yes, sir.

Q. You told them just the thing that you saw there?

A. I says, I caught him fucking a mare, down the river.

Q. You told the men that you thought that you caught him down the river at the mare, did you?

A. I did not say I thought, or anything of the kind.

Q. Well, what did you say?

A. I said that I caught him.

Q. And that is all that was said?

A. That is all I said.

Q. Where did you reside before you came to Croswell?

A. Port Huron.

Q. How long there?

A. One winter.

Q. What was your business?

A. Sewing machine business there.

Q. Where did you live before you came to Port Huron?

A. Toledo, Ohio.

Q. What business were you in there?

A. Sewing machine business.

Q. How long have you been in that business?

A. 10 years.

Q. How long did you live in Toledo, Ohio?

A. One summer.

Q. Where did you go from when you went to

Toledo?

A. Hamilton.

Q. Where?

A. Ontario.

Q. How long did you live there?

A. Seven years.

Q. What business there?

A. Sewing machine business.

Q. Where, before you went to Hamilton?

A. London.

Q. How long were you there?

A. Raised there, sir.

Q. You lived there, then, during that time?

A. Yes, sir.

Q. You were in the sewing machine business there at London?

A. I wasn't in the sewing machine business much; I worked in a shop there a while.

Q. Were you ever arrested?

A. No, sir.

Q. Never arrested?

A. No, sir.

Q. For any offense?

A. No, sir.

Q. How long have you lived in Croswell?

A. I have lived there upwards of two years.

Q. Did you have any trouble about selling any sewing machine to this boy's parents?

A. No.

Q. Did you have any business with them of that kind, at all?

A. I repaired a machine for them.

Q. You had some trouble didn't you, about that, with them?

A. No, sir.

Q. Did you have any words at all, about it?

A. No, sir, not a word.

Q. Not a word?

A. Not a word.

Q. Did you have any talk with them about repairing it afterwards?

A. No, sir.

Q. About the condition that you left it in?

A. No, sir.

Q. Did you take it apart?

A. Yes, sir.

Q. Did you leave it there?

A. Yes; no, sir.

Q. Did you put it together again?

A. Yes, sir.

Q. When did you put it together?

A. I put it together again, yes, sir.

Q. You did not make any threats or have any quarrel with them over that machine, did you?

A. Never mentioned it since

Q. Did you try to sell them a machine?

A. No.

Q. Did you ever try to trade or sell them a machine?

A. No, sir.

Q. Did you have any trouble with this boy?

A. No, sir; never a word.

Q. Do you know him by sight?

A. Yes, sir.

Q. By name?

A. Yes, sir.

Q. That summer you knew him when you saw him?

A. Yes, sir.

Q. Why did you ask Flannery who he was, when you saw him; why did you ask him that?

A. Simply because I wanted him to recognize him; I thought there might be——

Q. Never mind what you thought. Now did you have any trouble with that sewing machine company what you have been working for?

A. No, sir

Q. Never any trouble with them at all?

A. No, sir, not to my knowledge.

Q. Flannery, he recognized him too, did he?

A. Yes; he says, that is him.

Q. You drew your gun up to shoot him, did you?

A. I thought better.

Q. Yes, but you drew your gun up to do it, didn't you?

A. I says, I have a notion to.

Q. You followed him up to the mill?

A. Yes, sir.

Q. And took him by the neck?

A. Laid my hand on his shoulder.

Q. And said that you were going to kill him?

A. Never said anything of the kind.

Q. What did you say to him at that time?

A. He denied it.

Q. What?

A. He denied doing what I accused him of doing there.

Q. You said to him that you had a notion to kill him?

A. I said I never came so near shooting.

Q. You said he turned pale?

A. Yes, sir.

Q. You say you caught him by the neck?

A. I put my hand on him

Q. Where?

A. Somewhere on his shoulder, I think it was.

Q. What did you say to him when you put your hand on him?

A. I says, you dirty devil, don't you tell me.

Q. Now didn't you draw back to strike him?

A. No, I don't think so.

Q. Didn't you tell somebody that you did?

A. I might have held up my hand like that, and told him not to tell me that I didn't.

Q. You threw your gun and ammunition down in your yard; door-yard.

A. Yes, sir.

Q. Did you tell your wife what you were going

up there for?

A. Yes, sir,

Q How long did you talk with her there?

A. A minute or so.

Q. While you were talking with your wife there, a minute or so, how far did he go?

A. He was quite a ways.

Q. How far ahead of you?

A. I gained on him, though; as soon as I left my wife I run.

Q. With your gun?

A. No.

Q. Where did you go across the Lapeer, or across the river?

A. The Lapeer road.

COURT:—You have been over that ground.

Q Was this an open field where you saw this fellow?

A. It was a narrow strip of land running on the side of the river; running north and south on the west side of the river.

Q. It was clear?

A. Yes, where I was.

Q How far was it from the highway?

A. Oh, it was across one field.

Q. Public highway just across one field?

A. Yes, sir.

Q. How large was the field, again?

A. I could not say the width of the field there.

Q. About how far?

A. Oh, 40 rods; it may be more than that; I can not say.

Q Was there any houses on the road?

A. There was a house down south of where I was.

Q. How far was that house from there?

A. About 80 rods.

Q. Was there anybody living in the house?

A. I don't know, I am sure.

Q. You don't know?

A. No, sir.

Q If they had been looking out of the windows could they have seen this man there where he was?

A. I don't think they could.

Q. What makes you think they could not?

A. Because the house lays down like, on a sort of a flat.

Q. You could see the house from where you were?

A. No, I could not; I saw the house afterwards.

Q. But you say you ran on top of the hill

A. I ran across towards the road that goes by the cemetery.

Q. Now how far would it be across from the angle of one fence to the other angle?

A. Which fence?

Q. There where the board was that you claim was off.

A. I could not say.

Q What?

A. The board, it was about 14 feet.

Q. How much of the board stuck out on each side of the fence?

A. About 5 inches I should think; there was not a great deal.

Q. Was it a hemlock or pine board?

A. I don't know.

Q. Did you go down since?

A. No, I did not go down until the following Sunday.

Q. Did you go down alone again?

COURT:—You are getting on the same ground that has been covered.

RE-DIRECT-EXAMINATION.

Q. You said you went down the following Sunday; did anybody go with you?

A. Mr. Mudge and Mr. Sherman went with me.

Q. Did you show them?

A. I showed them where the horse stood and where the board was; the board was lying there still.

And upon the trial of said issue the counsel for the said people in further maintainance of this said issue, offered in evidence and to prove by Alexander Mudge, who was then and there duly sworn, and who, on his direct, cross and re-direct examination testified as follows, to-wit:

Alexander Mudge sworn for People:

Q. Where do you live?

A. Falcon.

Q. Are you acquainted with this defendant?

A. Yes, sir.

Q. Do you remember the 27th of June last?

A. Yes.

Q. And that day?

A. I do.

Q. Do you recollect seeing this defendant on that occasion on that day?

A. I do; yes, sir.

Q. Where did you see him?

A. I saw him in the first place down at Lynn's, south of Tucker's corners, south of the Lapeer road, down towards the cemetery.

Q. What was he doing there?

A. He was coming north and came up until he got up just opposite of the post office, and then he crossed the road running north and south; he went over and went along up by the old store that is on the Lapeer road, where Arnot used to have a store; and he went north a short distance on the south side of the road, and then he came back to the east side of the road, over to a black-smith shop, and when he got over there I hollered at him and I says, there is some potatoes down there needs hoeing; he was walking very fast and he turned around and he looked back, and then started to run; started right on; he did not stop. He walked right on north until he came to the corners.

Q. Did he say anything in reply?

A. No, he did not say anything; just looked around when I hollered at him and he walked along until he came to the corners north of my place, there where I live now, and he turned and he went towards McIntyre's and he went around that corner there and that was the last I seen of him. He seemed to be walking very fast; did not look around at all; he did not look up at all until he passed.

Q. About what time in the day was this?

A. Between 3 and 4 o'clock; pretty well along in the afternoon.

Q. Where were you?

A. I had just been to get a drink of water up to Tucker's stoop, and was talking with the old man Tucker, there.

Q. On which side of the road is the post office that is spoken of?

A. On the east side of the road.

Q. Which direction from Tucker's hotel?

A. South of the Lapeer road.

Q. Which side of the road is the old store bottom; which side of the Lapeer road is it?

A. On the north side of the Lapeer road.

Q. Arnot's old store you spoke about there?

A. Yes, sir.

Q. He came up on the east side of the road on the south of the Lapeer road?

A. Yes, towards the cemetery.

Q. And you stood on the north side?

A. Yes, sir.

Q. Where was it he passed there by the old store bottom?

A. Right close there north of the post office; just north of the post office a few steps.

Q. Was it before he reached the Lapeer road?

A. Yes, before he reached the Lapeer road.

Q. Well, you look at this plat and see whether it does not give the exact distances and locations. (Plat shown witness.)

A. He was coming up on this side of the road.

Q. Mark this on the plat; S, this being south.

A. Well then, when he got to the post office he went the angling road; crossed the road over from Arnot's store.

Q. Yes.

A. And the store would be, if this was the Lapeer road, it would be over on this corner here, (witness pointing out on the plat,) right in here, and Mr. Tucker's is over there, and he crossed the corner, would be right there; he came right up in front of the store bottom, and he went up here until he got up above Tucker's a short distance, and then he got across the road again, over here, and went over and went along up that side of the road until he got next to the corner, and he turned down that road and he went toward's McIntyre's.

Q. Will you put a cross at the corner there he turned to go to McIntyre's?

A. Yes; that would be this corner here, I suppose. This would be next to the corner, right here, (pointing out on plat.) He went right round that corner, there.

Q. Place a cross there, "went"

A. Went south of McIntyre's; that would be over here again. He went down that road the last I seen of him.

Q. Turned that corner did he?

A. Yes, sir.

Q. What?

A. Yes, he went east on that road.

Q. Do you know the location of Flannery's place?

A. Well, that is the mill there, and that would make Flannery's place there, (pointing out on the plat.)

Q. McIntyre's place would be on that corner, would it?

A. Down on that corner, yes, sir; Fred Pomeroy's house would be on this corner, here; two lots there, house on one corner and blacksmith shop on the other. I went up to Tucker's to get a drink.

Q. Lovel's house would be perhaps about here?

A. Somewhere about there, yes.

MR. BURGESS:—I desire to offer this to show the position of the streets, the post office and Arnot's store, where Mr. Mudge stood, and the corner at McIntyre's.

Objected to as incompetent by defendant's counsel, C. H. McGinley. (Marked Ex. A.)

MR. BURGESS:—The witness has indicated it to be a reasonably fair description of the place.

COURT:—It may be taken; admitted, not as a correct plat, but simply showing the——

MR. BURGESS—Well, what I want to get at is the direction this man took.

COURT:—Directions and the streets.

MCGINLEY:—I submit it is improper for that purpose; it is not shown to be an exact plat, and consequently this testimony ought not to be received here at all or allowed to go to this jury, and we object to it.

COURT:—It may be received as to the directions and streets.

And to the allowance of said purported plat in evidence, the defendant, by his counsel, did then and there duly except.

Q. Do you recollect what kind of a hat he had on that day; what dress; what was his dressing?

A. He had on a straw hat and a kind of a grayish looking coat.

CROSS-EXAMINATION.

Q. Where did you first see this defendant that day?

A. It was up towards the cemetery; he was down about the post office when I first seen him.

Q. Which post office?

A. Falcon; Mr Lynn's

Q. About how fast was he coming when you saw him?

A. About as fast as he could walk handy; seemed to be in quite a hurry.

Q. Just walking a nice gait?

A. Yes, sir; walking as fast as he could, handy; as fast as I ever see him walk, anyway.

Q. Where did you say he went to?

A. He came up until he got just above the post office, a little north of the post office, and then he went kittering across the road; crossed the Lapeer road over to the old store bottom of Mr Arnot's, and then he went a little bit north and crossd back across the road again, on the east side of the road.

Q. Do you think he was going as fast as you would go if a man was following you with a double-barrel shot gun?

A. No, sir, I don't think he could go as fast.

Q. Where did you see Lovel that day?

A. He came to my shop where I was working.

Q. At what time was it that he came there to your shop where you were working, that day?

A. Well, along about, well, I guess it was pretty near 5 o'clock when he came there, and he said that he had just come back from over the river.

Q. About what time was it when you saw him?

A. Between 3 and 4 o'clock when I saw him; I would not be positive about the time; it was not far from 4 o'clock, I don't think.

Q. What means have you for telling the time?

A. I happened to be up to get a drink; had some work in the shop, and it was getting pretty well along in the day when I went up there.

Q. Drink of what?

A. Sir?

Q. Drink of what; tavern there?

A. Well, sir, there is a tavern there; I don't know whether they kept anything to drink there or not; I would not say; you would know best, you have been there; you are there as often as I be, pretty near (Laughter.)

Q. Do you think it was nearer 5 o'clock than it was 3?

A. No, sir, it was not 4 o'clock.

Q. About how far from 4 o'clock would you say it was?

A. Between 3 and 4; it was not 4; I know it was not

Q. When did you look at a time-piece before; when had you?

A. I don't carry a watch.

Q. When had you looked at a time-piece before, of any kind, before you had seen the boy?

A. I had been over to the house about an hour before.

Q. What had you done since you were in the house?

A. Well, I had done a few little chores there in the shop.

Q. How many chores did you do?

A. Well, can't tell you exactly.

Q. You don't know how much work you did do?

A. I don't do a great deal, I know that; I never do much, you know.

Q. Then you are not a man that labors?

A. No, not a great deal

Q. How was it you came to ask him about the potatoes?

A. I didn't ask him about them.

Q. What was it you said about them?

A. I told him there was some potatoes over in the field there, that needed hoeing, and he just looked around at me and traveled on.

Q. Was the fellow working for you?

A. No, sir.

Q. Were they your potatoes?

A. No, sir; supposed to be his father's; his father put them in.

Q. How do you know they needed hoeing?

A. I could tell by the looks of them.

Q. See weeds in them?

A. Well, weeds a little I guess; looked like it.

Q. How long did they remain in that condition after that day?

A. I don't know.

Objected to as immaterial.

A. I don't know whether he has touched them yet or not; don't look like it, anyway.

Q. As a matter of fact you don't know whether they were hoed or not?

A. Don't look like it, anyway.

Q. They didn't look like it?

A. No.

Q. Have you seen them since that time?

A. Yes, sir.

Q. How often?

A. Not very often for I don't go that way to see.

Q. How long prior to that time was the first you seen them?

A. No answer.

Q. Repeated

COURT:—Seen the respondent?

A. No, the potatoes.

A. There was so many weeds you could not see the potatoes in sight.

Q. You don't know whether there was any potatoes there or not?

A. I know there was some since; whether they was little potatoes or not, I can't tell you.

Q. How high were those weeds?

A. Some of them pretty high; high as the fence some of them.

Q. How high were the potatoe stalks?

A. I could not say.

Q. Did you ever go over into the field and examine them?

A. No.

Q. How do you know there was any potatoes there?

A. I don't know whether there was any potatoes there or not; you could not see them above the weeds.

Q. You could not see them above the weeds?

A. No, you could not see them for the weeds.

RE-DIRECT-EXAMINATION.

Q. Did you go down to this place where this mare is said to have been ravished?

A. Yes; I went down there with Lovel on the following Sunday.

Q. Will you describe the place? Did you see the footprints of a horse there at that place?

A. I seen the tracks of a horse, mare or something.

Objected to as being incompetent and immaterial.

Q. Tracks of the boy?

Objected to as improper

COURT:—Take it.

Exceptions for defendant were then and there duly taken to the rulings of said Court.

Q. Just tell us what you saw there?

A. You want me to tell it?

Q Yes.

McGINLEY:—Wait a moment. It is asking for a conversation.

COURT:—He is not asking for a conversation; asking for what he saw.

A. He showed me the place where the mare stood, and the board that he said that he stood on; one end laid on the ground and the other on the fence.

Objected to as incompetent and secondary, and ask to have it stricken out by defendant's counsel.

COURT:—It may remain.

Exception for defendant.

Q. You say you saw the board; was the end of it clear on top of the fence?

A. No, sir, it was not.

Q. How far?

A. About half way up the fence; one end lay upon the fence running towards the river, and the other end lay on the ground. One fence runs towards the river, the other fence runs right square across north, square across on the river; it makes just about a square corner there; the board was laying on the fence that runs towards the river, and running kittering up that way; up stream.

Q. What about the footprints?

A. The tracks of the horse headed, looked as if it headed to the south.

Q. Was there any footprints of human being there?

A. Yes.

Q. That you saw?

A. Yes, sir, I did.

Q. On which side of the river?

A. On the west side.

Q. Which side of the board fence?

A. East side of the board fence.

Q. Where did the horse, the mare appear to stand?

A. Just on the north side of the fence running from the river, in the corner there.

McGINLEY:—We move to strike that out; all of that testimony.

COURT:—It may remain.

Exception for defendant was then and there, by his counsel, C. H. McGinley, taken to the opinion and rulings of the said court

RE-CROSS-EXAMINATION.

Q. After you saw this young man going up by there that day, where did he go?

A. He went to the first corner that turns east; The road that leads east from Tucker's corners.

Q. Where did you keep watch of him?

A. I watched him; I was standing talking with the old man Tucker on the stoop there; I seen him when he turned the corner.

Q. When did you see this man Lovel?

A. I saw him in the evening about 5 o'clock.

Q. You didn't see him again that Sunday?

A. I did not.

Q. You didn't see him go by?

A. No, sir.

Q. At 5 o'clock you said you saw Lovell and he said he came back from over the river; what else did he say?

A. He said he had been following a young Hodskins there.

Q. With Lovell?

A. No.

Q. What did he say to you?

A. I don't know that I can repeat the whole of it.

Q. Well as near as you can?

A. He says to me, says he, "did you hear about that young Hodskin?" Says I, no; what about him? "Why," says he; "he has been screwing a mare down the river." That is just the way he said it and says he; "I followed him over the river and overhauled him in the engine room across at the mill" and says he; "I told him what I thought of him.

Q. What did he say he told him?

A. He did not say what he told him, that I remember of.

Q. Did you and he talk the matter over?

A. We did'nt have a great deal to say about it.

Q. What did you say in answer to what he said to you?

A. Says I, I don't just know exactly what I said but I said something like this: Mr. Lovell that is a pretty hard story. I said if I saw a man doing any-

thing like that I would not say a word but I would have him arrested.

Q. What did he say?

A. He didn't say much more about it.

Q. Did he tell you that he told this fellow that he had better leave the country?

A. That I can't say. I don't remember about that

Q. You did not hear him say that?

A. Not to me he didn't say that; not that I remember of now; I don't think he said that at all, Sir.

Q. This was about 5 o'clock?

A. Along in the afternoon, yes.

Q. How long did he stay there; Lovell?

A. Well, he is living right close by; just went over to his house.

Q. When Lovell was going towards his house, how came he to go in another direction from the direction of the place?

A. He would go across the bridge.

Q. Did he go across there?

A. I can not say whether he did or not.

Q. Couldn't he go across here and go around the other side?

A. he could go across there and then go right up to his house.

Q. If he did how far away from this young man would he be, if he was crossing there?

A. 20 rods; I should judge about that.

Q. Was the young fellow looking behind as though he was scared?

A. I did not notice him looking behind.

Q. As a matter of fact—