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JOYCE MURDER TRIAL.

SIXTEENTH DAY'S PROCEEDINGS.

ARGUMENT CONTINUED.

FRIDAY, March, 16th.

Capt. M. E Carter addressed the jury in behalf of the defense:

The time has now arrived when I must say the last word for the prisoners. I regret this task did not fall to others, for with the worry I have undergone, I am physically unable to do well the part assigned me. To consult my own feelings, I would be willing to allow this argument to stop here; you have doubtless reached a decision already. Yet this may not be so, and if one word or thought from me may tend to remove any doubt that may remain in your minds, it is my duty to add it.

I came to this case convinced a great and foul wrong has been done these men. I do not wish to mislead you, I could not mislead this intelligent jury.

You see this case enveloped in almost impenetrable clouds from the beginning. Since the very hour of the fire, the stream of circumstance and suspicion has been polluted.

How do they start? They go to the burning and instead of looking around the house, in the garden and mellow ground they go to the mountains, and laurel patch to hunt tracks; there they find tracks they run them until they are run in the ground and in confusion Why not look around the house for tracks and see if this was accident or murder. If they had weighed this matter as intelligent men, if in search of the guilty instead of Bill Jones and son, they would have given us great assistance. The State argues this as if we were defending the guilty man, and it was our duty to prove an accident. We do no such thing; we are authorized to do nothing of the kind. We admit for sake of argument, a grievous murder; it is the State's duty to prove these men are guilty. Had we admitted a case of murder, the court would still tell you, you must determine whether it was murder or accident. I hope it may prove to have been an accident, but whether it was or not, our views could have no effect. You must determine this upon the evidence offered by State.

Had you gone there to look for the truth, as honest citizens, without reward or hope of reward, or aid of detective hoping for big fees, you would have carefully examined the condition of affairs; would have weighed well all the attending circumstances; the reversed position of old man Joyce, the change of position of shovel, &c., and then have determined whether it was not the result of accident. If you had thought the old man died in a struggle, in defense of life, you, as honest men, would have looked for a reason and for the guilty. Col. Lusk argued the men went there to kill Mary Rice, and had to kill others; but as Mr. Douglas Carter says, they went with a determination to kill the whole family; if Bill Jones was so afraid of a prosecution, as to kill Mary Rice, he would have gone to kill her, and not expect to escapedetection by the Joyces. Can any one doubt he went there as Douglas Carter says, and I argue with him, to kill the whole family? True, a gigantic crime, but if they went to kill Rice, they went to kill the whole family. If they went to kill the family, wouldn't they have attacked the strongest first? Wouldn't they have killed old man Joyce first? After dispatching him, it would be easy to manage the others. Can there be any doubt here?

You may send any two criminals to commit any deed of violence, and first assault will be on stongest party attacked. State says the old man had a struggle, sezied the shovel, fought for dear life, and fell with his head where his feet ought to have been. Why that struggle? There was silver and gold in that household, Luther a witness, a few days before, paid him money. Dont let the Solicitor say the old man hid his money out and therefore it was not found in the ashes. No money found in the ashes, they were sifted: Dont you see a clue to this matter? Would'nt impartial investigation have thought the robbers watched around the old man to learn where was the money after getting it and in struggle killed him. Robbers could not afford to burn up the house first, that would defeat their object. Robbers had to arouse the old man, and in the struggle he was stricken down. If there is any reasonable hypothesis consistent with the innocense of these men you must take it and acquit. Robbery is reasonable, if so you must decide this case for prisoners. Col. D. argued that the shovel stood in the corner; the old man took his shovel and fought for his life. I concede for the sake of the argument there was a fight. It was a fight with the robbers who went there, aroused the old man, took his money, and then killed him.

I say if that be so, then Bill Jones and his son are not guilty. If you view this case from a reasonable standpoint, you will say that the parties who did the killing, went to kill all, and to rob. Is my theory reasonable? Col. Hoyt said that near the three chestnuts, there was evidence that the party had stopped he thought, to divide their booty? Will the State give away its case, and say that Bill Jones went there to rob? He was no pauper or beggar, owned a good farm, good house; not in need of money. Will any one, even among those who come here to laugh at unjust reflections upon the ladies of the stricken family, dare say that Bill Jones went there to rob for money? Why should Bill and Frank divide the booty? They lived at the same place, and, according to State, were going home together, and could divide afterwards. Testimony, however, is that from above three chestnuts, on the mountain, tracks divided, going down and up the mountain, down to Haywood, others elsewhere showing that the murderers belonged to different families. This accounts for division of booty just before their separation. Don't forget that whoever committed this murder, stole the money at the house and afterwards divided it; and say whether defendants could have been the guilty party. The Solicitor will argue, if these men could go and murder, they would rob; but he can not convince you that these men, raised as they were and have been one scarcely 21 years of age, could go and commit such a deed for robbery. New in crime, don't you know they were seized with indescribable terror, the very minute after committing the murder, if they did it; and seeing the blood dripping from their victims, can it be possible that they stopped to hunt for money or booty? that they stopped at chestnuts to look at the fire, or divide booty? Never, never If they had been steeped in crime since childhood, had been used to sight of blood and bloody victims, they might have hunted for money, but being unused to such, these men could not have stopped.

If you can find reasonable hypothises consistent with innocence of these men, your duty, as I have said is to acquit. Is not the view I have stated a reasonable and more than probable one? Think a moment. Suppose after these men are in their graves, some one back in the mountains in Haywood, or elsewhere, makes a dying confession of murdering Joyces, for their money, in connection with others, who also confess, and deliver up clothing and other property of the family. Would you feel that the confessions of these parties in the mountains were false? Could you say that the testimony of the jail birds, and others testifying in this case, had so firmly established the guilt of the defendants as to disprove the truth of the supposed confessions? Would you not realize that you had given to shadows of suspicion the weight and force of substantial proof? Heaven help you, gentlemen, to escape such an unhappy dilemma.

State charged that Bill Jones had a motive to commit this crime. Now as to motive: All acts follow motive. There must be motive for every piece of human conduct; sometimes acts are out of proportion to motive, owing to disordered minds &c., but whether motive be great or small, the act must be shown to have followed the motive, or proof of motive is worthless. State admits the weakness of this feature of the case. They say, Bill Jones was so aroused by the Rice matter, that he and Frank determined to kill her to prevent her testifying against his son. Testimony shows Jones had been satisfied with Rice matter long before the killing.

Col. Lusk asked if Jones was satisfied by Jonathan Morgan, why did he run to Tiny Howard, and others, while as a fact, he saw Tiny and others before his last talk with Morgan, when he became satisfied.

Douglass Carter says, no matter what nature of offense was, the question is, how did Jones regard it. I accept this. Col. Lusk said, offense was a penitentiary offense, but he does not tell you that Jones so knew or thought. The proof is, he did not. Then Jones must be treated as having regarded the matter a small affair.

Again; why should Jones destroy Mary Rice, who knew not the boy and could'nt identify him, and leave Jonathan Morgan who knew the fact, and Coller Morgan, who knew the boy? Jones could'nt have thought that to destroy this woman, would be to destroy the evidence. Is this not so? Jonathan swears, he told Jones that he, Jonathan, could not identify the boy, but did not tell him Collier could. No evidence, that Jones knew Collier could identify the boy; he never heard that Collier could, and consequently, when Jonathan Morgan assured him he could not and would not identify him, he was satisfied.

State was surprised at Bill Jones' statement on the stand, admitting all it had been charged he had said to State's witnesses about this matter; that he was uneasy, was aroused angry, &c. Why surprised? Jones told the truth and it cannot hurt him. He heard from W G Candler, on the 27th February through Taylor, that ifthe boy could be identified, the case could be made out, and if got into court, it might ruin his (Jones') family. Could the boy be identified? That was the only question. The very next day he went to Jonathan Morgan and was solemnly assured that the boy could not be identified. This satisfied Jones and the trouble was at an end. I defy State to show that Jones ever said one word against this woman, after this last talk with Jonathan Morgan. It was some month from this last talk to the murder. Why should he be excited?. Gentleman, Jones told you the truth on the stand. Every word uttered by Jones, was between 18th and 28th of February; evidence of the family is Jones did not hear of this trouble for several days after the 18th. So that, you see, the whole difficulty was embraced within less than ten days. The truth is, the only fear Jones ever had was on the 27th when Taylor brought word from Candler and that was removed on the next day when he saw Jonathan Morgan. But, says the State, Jones was afraid the affair would bring disgrace on his family. Did he not know the disgrace had already befallen them? Rumor had carried it far and wide. Jones is accused of murder, but nobody accuses him of being a fool. All the disgrace was inflicted that could be; a trial would have vindicated his son, whom he believed innocent, Jones knew it; knew that killing Mary Rice would not help things.

But State says, week before deed, Jones said to Taylor, 'you need not be uneasy, don't think the case will have to go to court.' What else could he have said? He had information, that the way could not be identified; he could not have thought the case could go to court. He got a message though that very man that very day from Mary Rice that she would not carry the case to court; all she desired was that the boy should be corrected. She did not say what amount of correction, did not demand he should hang up and cowhide the boy, but such correction as he thought proper, —that was all she demanded. Yet, you are told that, rather than correct the boy, Jones would go and kill this whole family. It is not true, it cannot be true. It is contrary to all human experience. But they say he made threats. Did he mean to say to Joyce's son-in-law, Taylor, "I mean to kill Mary Rice?" Do men on murder bent, proclaim it to the world? It cannot be. Bill Jones made no threats; he only meant, in all that he said to Tiny Howard, James Rutherford and Taylor, that Mary Rice could not testify against his son, for that she had told stories on his family, and could not become a witness in court Perhaps he was not right as a matter of law, but that is what he thought. In saying that Mary Rice had a grudge against his family and told stories on them before, he wanted to break off the sharp edge of the report against his son, and thereby render it as harmless as possible. Was it not natural he should have desired to satisfy his neighbors of the malice and enmity of the woman who circulated the damaging reports against his son? He wanted to maintain the respect of his neighbors.

Law books don't place very great importance on threats. (Reads from Wharton on Homicide, chapter xx, paragraphs 531, 693.)

Witnesses who snatch fragments from conversations are not to be believed, unless they show the connection in which the fragments stand. What words mean, depends on their relation to other words used in the same conversation. Let me show you: Jones may have said "She shall never testify against me," but suppose he added, "because she is a liar, a bad character, and I can break down her testimony." The first words might, standing alone, mean something, but when they are seen in the light of the other words, they become harmless. A man makes a threat to-day, and repents to-morrow. Attach all the importance to threats you may, let them grow as large, as lofty as Pisgah, yet if Jones repented, for Heaven's sake, give him credit for it. Let not eloquence of counsel, clouds of suspicion, prevent him from having the benefit of his repentance. He tells the court and you, that after the conversations in which it is claimed he made threats, he saw Jonathan Morgan, and became satisfied, and never afterwards uttered one word that looked like a threat. Can he have no credit for this? Men may make threats, and afterwards not only repent, but do acts of kindness to those threatened. We see this every day. But poor Bill Jones can not be allowed to change his mind.

If Jones desired to kill the woman he would have sought a more favorable opportunity. Men unused to crime would not kill a whole family when they only had enmity against one. The human heart does not turn black in the twinkling of an eye. It grows corrupt by slower degrees. A man engaged in pursuits of honest endeavor, with most pleasant and elevating surroundings cannot at once bring himself to commit such a crime? And, even if a father could do this, could he go to a young and innocent son, whom he was led in the paths of virtue and rectitude—could he approach him, and persuade him to join in this bloody work? Imagination is flighty, it can go to bounds of universe and come back in a twinkling, but you cannot by any flight of your imaginations conceive how Jones would have looked, and talked to his son when asking him to join in such terrible work as this.

Without a motive, defendants could not have done much. His Honor will tell you a motive must be shown; and, proving that does not help to show the *corpus delicti*. That must be shown by independent proof.

The State starts out expecting to show: 1st, That the house was burned down and these people killed by violent means.

2d. The defendants had a sufficient motive to do it.

3d. That they had the opportunity to do it.

4th That they did it.

I have said but little as to the *corpus delicti*; that is not a matter of defense.—the burden is on the State. I have argued the view that the crime if any, was the work of robbers. I have argued to show there was not motive enough,—not enough even to take the life of a one-eyed, broken down horse.

I shall argue that these defendants had no opportunity to kill the deceased, and did not do it.

The State says that while it was raining and while everybody else was in doors, these men went to the mountains, ostensibly to work at boards, staid up there until dusk, slipped around ¾ mile to Joyce's killed the family and returned home by the board pile, through the bottom over the crooked path.

Judson Morgan worked all day, John Thrash traveled around all day. So this rainy day, business, their first link, to use their own poetic language, is "busted." Judson allowed to earn bread, but these men must not. Frank was at work at Rhodes' place until 12; it rained, and Frank started home. Wm. and others proposed to go and carry Frank's dinner and help him work, but they met him, and all returned. Do you believe there was any purpose before this to go to the board pile that day and commit murder? They all expected to work at Rhodes' place all day. Wm. and others started to join Frank, and but for the rain that brought Frank back before the others got to that place. they would not have seen the board pile that day at all. Bill Jones did not suggest going to board pile, it was not his matter, it was Frank's; and so Frank asked his father and Burgin to go with him and help get out the board timber. Do you believe there was any thought of murder before this, or up to this time? All idea of previous preparation or premeditation is exploded by these plain facts. All the family testify that Burgin was along and went to the board pile, yet State argues he was not along. Don't let any one say these ladies will not tell the truth, Because they are connected. Counsel's attempt to prove Burgin not along that day, utterly disregards and sets aside the testimony of these good women. Gentlemen may try to turn back time and deny us the benefit of our own honest evidence to establish our innocence, but in Heaven's name, they can not they shall not succeed. If we follow flights of oratory of counsel, listen to the diction and license of argument, we will get away from the merits of this case. This is a business case. They endeavor to prove Burgin was not there, because he said he went up 60 yards, and Frank said they went up 90 yards above board pile Burgin was not there, and therefore this *alibi* falls to the ground. Counsel could appeal to the Apostles to prove truth of discrepancies. but they give us no benefit of discrepancies. When they wish to reconcile and sustain perjuries and incorsistencies of jail birds, they marshal the four good apostles; but a discrepancy on our part, immaterial though it be, it is absolute proof of guilt. Burgin says he was there and was barefooted, witnesses say they saw no bare-foot tracks. They were not looking for bare-foot tracks; they had seen no bare-footed people at burning. Burgin says he handled maul, bolted some 15 cuts. Frank says bolted 8 or 10.

And on this discrepancy the truthfully inconsistent apostles are again sent to the rear; our witnesses must be mistaken, because was not reasonable for them to remember incidents of that particular evening. But for fact these views are argued by learned counsel, I would have treated this as all bosh. Burgin was there, all remembered it, went barefooted—he swore he had on no shoes.

Burgin was there. Had he gone to help kill the Joyces, his feet would have blooded from board pile the ground at every step over the rough land of those mountains. Had they left him at board pile while they were gone to the murder, he would have died in that hell of loneliness and darkness. Burgin would not have remained there for a thousand worlds, and had he gone with his father and Frank, their guilt would not now be a matter of doubt. You saw gentlemen, that Burgin is only removed a step from idiocy. He showed it in every look, and in every word; and yet, in his simplicity, you saw the evidence of his truthfulness. Bill Jones, intelligent, shrewed, experienced, would not have carried Burgin along if he had gone there to kill—never! He certainly carried him along; all swear it. If he did commit murder, and Burgin was with him, I would advise my clients to submit at once, and be hanged; for if acquitted now, Burgin will soon tell all he knows and convict the defendants in the near future when they shall be put on trial for killing the others. You know, gentlemen, these men are only on trial now, for the alleged murder of Mary Rice.

AFTERNOON SESSION.

Court met pursuant to recess.

Capt Carter resumed his argument in behalf of the defense:

I think I was at the board pile with Burgin Jones when we adjourned; the State was there without him I was urging that Burgin was there, skinning off his shoes; State says it too early to begin the skinning process. State insists the people at the board pile, went from the pile over to Joyce's, came back by the pile and went home. Does it not seem marvelously strange, if they determined to commit murder, they would go to the pile at all? Why go within ¾ miles of Joyce's, spend half day. Surely it would be found out they were there. Why go to the board pile? Why kill these people the day they were there; why be in vicinity; why go by Morgan's, where they would be seen by the whole Morgan family; why go with such publicity, &c., if cowardly, secret murder part of the purpose? Does it not seem if these people contemplated this, they would have gone up the public road, up the railroad on cross ties, turned up on hard ground and reached the house in this way? Is it not marvellously strange, if they had murder in their minds, they should have gone to the board pile at all? Why not have gone under cover of night? It would not harmonize with the theory worked up by the detective. He must have them there on a rainy day, have them at the board pile, have them going up; if not all these, their case falls; for if not every link is complete, the case fails. The first link is missing; that it was such a rainy day the people were not at work. Judson Morgan worked all day. They then must have them at the board pile, and carry them back to the pile; then absence of tracks would create another missing link. The detective felt necessity of having tracks leading from the board pile; without these, the case falls. I will show the detective forged tracks. Now what tracks were going from pile? Cling Starnes and James Miller, both good men, looked for tracks. Went from the gap to the pile, made a circle around; the only tracks they saw were the tracks of two men going up the hollow and returning the same way. Both witnesses swore some thing. How the counsel toiled to make witness say these tracks were going in direction of Joyce's, when in fact they were going almost directly South while Joyce's was almost West from the pile. These people went to work, and got home by dusk. The burden is not on us to show you we did not go from the pile, but burden on the State to show we did. The prisoners concede they were at the board pile, and admit making tracks going and returning, admit making tracks up the hollow to the tree from which the cuts were gotten. These tracks were made by these men in going after cuts; if not, why did not the State show it. If any doubt, why did not Cling Starnes go back and circle around again and see if these tracks went beyond the tree where they got the cuts If the State cannot show tracks made from the board pile to Joyce's the case falls. This status is a most important link in this chain; and then another link is gone, and this, all gone; the detective tried to put tracks on the soft hill-side, was one of the tricks of his trade he tried to apply. But they say tracks were seen at the Spring, at the chestnuts, at the gap, some going toward Haywod, others elsewhere, but no tracks from there. Tracks they found were not tracks they made. Same witness says the brogan track at the Spring was the larger of the two; after tracks got away from Spring, the brogan got shorter. They say Peter Miller run off on a cold trail; he took measure of the tracks he followed, gave Deaver a part of measure he took; and yet the State forgot to put Deaver on the stand to show Miller had lied. They may argue to you Miller lied, but would not put Deaver up to show it. Mr. Rutherford also had a measure, but when he was on the stand and asked where was his measure said it was at home, didn't know it was needed; of course he knew it was not needed. If Deaver thought that measure would help him, don't you know it would have been here? The prosecution, powerful enough to employ an able array of counsel, would have had the measure here if it could have helped the case. State ought to have had that measure here; it ought not to have withheld anything which might throw light; ought to have asked Mr. Curtis if tracks in sand resemble track at the spring. They preferred to ask Curtis if tracks he saw a month after wards resembled the tracks at the spring; why not ask him if tracks made in the sand resembled tracks at the spring? But they say the impressions of tracks made in sand and mud best agency to detect tracks by. This is pretty imagery ideal oratory, but not facts, not such facts as would justify the hanging of men upon.

What peculiarity in track at spring? No marked peculiarity at all—all swear this.—some wanted to make it appear one track looked like a long heeled boot, and a double-soled boot but you all know many people wear such boots. All this identity of tracks is the result of distorted vision No man ought to have attempted to swear to identity of tracks. Wrong to you to have done so.

The State do not want you to understand the track went to Haywood. Deaver forgot to have tracks pointing toward Haywood put down on this map. Hope you will rebuke such attempts of a detective, employed by the governor or others, who will not bring all the circumstances, for or against the parties charged, and act honest men. Why did not the State put Jim Rutherford up. He saw another track, and he proposed to Bill Jones to follow it; yet, he was not put up; if other tracks were shown looking suspicious it would be ruinous to this case. The counsel argued that Jones led Rutherford away from the track, but Rutherford said nothing of the kind, but the contrary. Let us have a fair thing about this, and let no effort be made to warp the evidence.

Having shown the resemblance of tracks, State then was compelled to have an early fire, if it cant get this, on this rainy day, all falls to the ground. They must have an early fire. There were fires in the Joyce cove, higher up, but they were log-heaps, which witnesses testify were burning that night. State introduce some witnesses to burning; but they lived miles away; one say the fire was at 7 o'clock and others at 8, &c.

They must have an early burning, or an important link falls out of the chain. Now we introduce 13 witnesses, all living within an average distance of two miles, and every one put the fire late in night. These near neighbors, double in number, can see as well as others living miles off, with ridges between. A link is missing. The State's counsel appeals to Deaver to help; Deaver does best he can—"can't you argue the link all right?" Therefore, they insist that the fire burned all night; but, this argument is unjust to State's witnesses who saw it earlier. Hominy witnesses and other, say they saw the bright burning at 9 o'clock, and if it had been the house, you know the house would have been consumed before our witnesses could have seen it. Tote fair with your witnesses, Deaver; accept the truth as it is, and say the fire was late at night. True, it will be conceded that the prisoners at the board pile, or Burgin with them, or Frank made tracks at furrow, are of no avail, and destroys the usefulness of an alibi. Gentlemen, come up and admit you can not get around the testimony of McElroy, Hampton, Luther and Mac Anderson. They say these parties may not have seen it until late. Col. Davidson appreciated this feature, and argued all the witnesses may have seen the fire. They have to show an early fire, to enable the men went from and to the board pile and home early. They are obliged to prove that the men at the board pile did this deed, for if they did not, the State's case falls. I am tired of the track business, am sorry a respectable gentleman came in here and swore tracks seen now resemble tracks seen months ago. When life is at state, men should be cautious in venturing odd opinions. Such might be permitted in a $5.75 or a $5.00 calf transaction, but not where human life is involved.

We say the fire occurred late at night, there are at least witnesses when men got home; but we will go home with them. If Mrs. Jones and family are to be believed, they got home by dusk. This crime had aroused the community, all were talking about it, and the people naturally had their minds fixed on current events. But the State says these people are mistaken, they "pig-track" each other. Now I would like for some one to patent some thing to change the expression. when dusk is meant. Mrs. Jones said dusk; all knew what that meant, and the family all simply use the simpliest word, to convey an idea of the time, the most familiar expression to designate it. Argument against this shows the poverty of the case. None dare to impeach the character of Mrs. Jones and daughters, who are known; but they endeavor to have them set aside, and because they are related, and upon testimony of jail birds. These ladies say these men got home at dusk, read the newspapers, went to bed, &c. If you believe their testimony you are bound to acquit.

I am not begging for them on reasonable doubt. I declare to you the only thing on earth in this case is bare suspicion. True, they bring in Mrs Jones remark to Mrs Morgan, and the remark of Miss Lula to McAfee, brought in here un gallantly, and these idle remarks and expected to break down their solemn statements under oath. If Jones committed this deed, they did it late in night. They could not have done it and gone three miles and gotten home at the time proven they did. What are the suspicions against the Jones? only that Jones had an unpleasantness with Mary Rice some time before this.

The State relies on the fact that Frank was seen going over and trying to put out the tracks. Too much importance is attached to the efforts of a timid man to do that which may remove circumstances which might direct suspicion to them. Innocent people often leave home because some circumstances point to to them, are suspicious and fear charges. (Refers to Boone. Briggs and Metcalf.) Who knows what motives Frank, a young man of good character, and knowing Jud Morgan, an enemy, was on his track, had? and he may have acted the fool and gone and tried to put out his tracks; but I don't believe it. I deny that he did it, the evidence proves he did not. The books are full of instances I have discribed: (Reads Wharton on Homicides—Chapter 20) What I have read may apply with special force to the conduct of W. H. and Frank Jones, the law books treat such circumstances almost with contempt; yet in all this case, all suspicion against them is involved in the circumstances of rubbing hands, and sighing, &c., which some thought suspicious, others not cited as usual habits. And these things are brought in here seriously, as most important evidence of guilt. I reject it all with contempt, and believe you will.

If this fire took place late at night, it makes no difference about those tracks. Had Frank been guilty, and his counsel the able engineers we were said to be he could have come in, said, "yes, I did go up there; I started to Joyce's, then concluded to return home; I made those tracks Monday morning." How easily for him to have said this, and sustained himself? But not having been there, he preferred to stand upon the truth, while in his innocence, knowing it would be charged. We put witnesses on stand showing parties could not be recognized at distance, and showed it by respectable gentlemen; but the counsel for the State showed unfairness in saying they recognized "old man Enoch," some 600 yards off. No witness said anything of the sort, said nothing about 600 yards. I read Walton's testimony which shows they were near footing instead of at railroad when recognized Enoch Morgan. The counsel in their zeal fail in testimony not given by witnesses, and you have to be careful in remembering what witnesses testify. Jud and Sallie said they saw Frank but they were just mistaken. If they don't see all things, it throws suspicion on what they process to see. Bill Jones went to Joyce's Saturday morning by way of the bottom and furrow. Jud went along Saturday before Joyces did, saw them Sunday, but saw no disturbance in the tracks between Saturday and Sunday, but between Sunday and Monday. Jud did not see Jones' tracks made on Saturday, but he had said Frank made some, therefore he was there Monday. Now if Bill was there Saturday, Frank went there Monday; vice versa; or Jud has told a story.

If Jud is so near-sighted and interested he could not see Bill Jone's track made on Saturday, when you see him and his conduct on stand and otherwise, notwithstanding his personal good character, his testimony, where life and death is involved must be taken with many grains of allowance.

Jack Mintz started out to swear a lie, but had not the courage to stick to it. Who put him up to it? He lives with Jud Morgan; Jud had to be sustained; and Jack had to be put up to swear a lie. A man who would put a man up to do such work, I care not how good a character he can prove, is base enough to swear twenty-five lies. Now who put Mintz up to do this swearing? This throws suspicion upon all such testimony.

If our testimony that people could not recognize others at that distance, is not true, why did not the State send and have this tried again, and say that people could recognize another from Morgan to bottom. The shrewd detective knew much better than to do this; he knew such testimony could be gotten from honest men. They say Rice recognized Bill Jones going across the bottom at a long distance. Rice saw Jones leave his house go all along from his house to the bottom, and know him

Take all these doubtful circumstances, discrepancies in testimony, and see if you cannot find a reasonable doubt.

State has much to say about early break-

[CONTINUED ON FOURTH PAGE.]