PROVO.

PROVO, UTAH, - SEPT. 25, 1894.

THE WESTWATER KILLING.

W. E. Davis Tells His Story of the Slaughter.

Says He Shot Brock, Dussel and Mueller to Save Himself from Being Killed by Them.

When the First district court opened yesterday, H. H. Jacobs was recalled for additional cross-examination. In reply to a question asked by Mr. Brown, witness said he did not remember telling Mr. Davis that the killing of Brock, Dussel and Mueller was justifiable homicide.

The prosecution rested.

Attorney Brown asked that the prosecution call as a witness Frank H. Grant, who witnessed the killing. Judge Judd said he did not know where Grant was, and would not introduce him if he had him here, as he considered him as great a criminal as Davis.

Judge King ruled that the prosecution was not compelled to introduce Grant as a witness.

Attorney Sutherland then made the opening statement for the defense.

Attorney Brown offered to read the testimony of witness Grant, given for the prosecution on the former trial. Judge Judd objected, but the testimony was admitted. It was to the effect that he (Grant) and Davis had gone near Brock's house on the evening of the 23rd. They had seen Brock and Dussel and Mueller roll out a wagon. They turned around and went to Mr. Davis's and stayed all night. He had a 44 Winchester rifle; Davis had a 45 six-shooter. At 4 o'clock on the morning of the 24th they returned to Brock's, on the way up Grant left his rifle under a bridge. When they were near the house they saw Brock leave the house and go towards the pasture. Davis said: "He is not going for the work team, he is going for the saddle horses; I will go and have a talk with those fellows and go home." Davis had then gone to the stable and Grant remained away. Dussel was outside of the door; a short time afterwards he heard Dussel curse Davis, Dussel had a club in his hand and struck at Davis with it; Davis backed off and Dussel struck again, and Davis fired over Dussel's head. About the time Davis fired, someone shot from the cabin. Davis then lowered his revolver and shot Dussel and Dussel fell. Davis jumped to the door and Grant heard a report of a gun. Grant started to his house when Davis ran to the door, and found Dussel with a stick in the left sleeve. Davis was standing in front of the house, taking the shells out of his gun. Davis said: "My God, ain't this awful?" Grant said: "What are you going to do?" Davis replied: "I think I have done enough, and I am going home." Davis went into the cabin and picked up a gun. Then Davis and Grant went toward home. They met Brock, who was on horseback and was leading a horse. A pair of chain hobbles were fastened to the horse's neck with a rope. Brock had hold of the hobbles. Davis asked Brock if he was healed; Brock replied, "I am always healed for such as—of b—as you." Davis said: "Get off your horse, I want to have a talk with you." Brock started to ride Davis down; Davis took hold of the horse's bridle, and Brock struck Davis with the hobbles. Brock's horse broke loose, and made a stride, and again came toward Davis. Brock said: "If I get to the house I will kill you." (The horse Brock was leading had broken away.) Davis called out to Brock not to advance further; but Brock continued to come towards him, and Davis fired one shot, which took effect in Brock's side. Brock continued to come towards him, and Davis fired a second shot, which took effect in Brock's head. Then Davis and Grant went to Davis's house. Witness considered Davis in danger from being run over, and from being struck with the hobbles.

The defendant was then called. He stated that his name was W. E. Davis and he was past 53 years of age. He first became acquainted with Brock in Grand Junction. Brock was in the county jail. Davis was then living in Fruita, he arranged with Brock to take charge of the latter's place, and if he came out to turn it over to him. Davis turned over the ranch as agreed. Witness then moved below Brock's place, where he bought another ranch and engaged in ranching. Brock worked for him a portion of the time. Met Mueller in Grand Junction about six months before the homicide, and Dussel came to his house about a month before the homicide. Mueller and Dussel both worked for him up to the 15th of August prior to the killing; on the morning of the 23rd Davis missed a lot of hay; a hired man and other witness. Saw tracks of three men who had carried the hay away; there was some marks of fire, which he charred the hay poles near his hay stack. He followed the men for some distance to and along the river road. Brock's house was in sight, with its gates about a foot above the ground on the north side. The windows were protected by vertical iron bars, and the wall had port holes commanding the field to the west and south. In front of the house was a large quantity of bridge timber about four and a half feet high. In tracking the men he saw several places where the hay had dripped on the road and railroad track. When near Brock's place he concluded that the hay had been taken by Brock and the other men. Davis went to Grant's place and got young Grant to take his (Davis's) place and go up the road to make some investigation. When Grant returned Davis went home and got his carbine; then he took two horses and went up towards Brock's place to watch Brock and the other men. He then thought they were going to leave and wanted to take them with his property in their possession, so that if they would not wait for him he could have them arrested. About noon he saw a white horse, a hundred yards of Brock's house. He saw three men there, who made themselves scarce when Davis came in view. They were Mueller, Dussel and Brock. Witness went down near Brock's cabin, and saw a wagon standing up in the road. The trackwalker came up and talked to Brock. When the trackwalker called, Mueller and Dussel ran away, and returned when the trackwalker left. Brock was with Mr. Davis at this time; he had a 45 Winchester rifle. The two returned home about 11 o'clock and in the morning went back to Brock's cabin. The object of their going was to see the men before they reached the state line between Utah and Colorado, in case they were going away. Grant left his gun some distance from the house, because Davis told him that if Brock and the others saw him with a gun they would think that had come for a row. When around 200 yards from the house Brock came out and made a fire, placed up a triple and started in the direction of Westwater; Dussel came out and talked to him: "Take the horses if you do, but be not in a hurry for me." Davis then mentioned Brock was not going after his working team, and said it looked that he would go and talk to Dussel and Mueller. Dussel was nervous; Dussel told Davis that he wanted to see him and Mueller. Dussel replied: "I know what you have come here for, and you can get it too."

Davis said he did not want any trouble but wanted to talk to them. Dussel struck him with the club and then fired over Dussel's head to frighten him. At that time a rifle shot was fired from the window and Dussel made another attempt to strike Davis. Davis then heard his pistol and shot Dussel. Witness then saw Mueller trying to stick his gun through the window, and he jumped past the window to the door. Mueller had the gun pointed towards the door and witness shot his head through the door and then shot Mueller. Grant came down and witness said: "Did this get you?" Grant said: "What are you going to do?" Davis replied: "I am going home." Then he went into the house and picked up Mueller's rifle and put it against the wall. Davis and Grant started home. On the way they met Brock, who was pale and excited. Davis said: "Good morning, Brock." After that Davis asked Brock to get off his horse; he wanted to tell him what had happened. Brock replied that he would not get off his horse for any ——— ———. Witness told Brock that he did not want any trouble, but did want to talk to him. Brock said: "What are you going to do about it if I did steal your hay?" You thick ——; I will kill you," and started to ride towards Davis, who grabbed the reins of the horse, when Brock struck witness over the head with the hobbles. The horse broke loose and Brock made a circle and again came towards Davis, calling him vile names and threatening to kill him. Davis fired, but did not know at that time how he fired. The first shot took effect in Brock's head. Then Davis and Grant went to Davis's house. Witness considered Davis in danger from being run over, and from being struck with the hobbles.

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