On the part of the defense:

at the time of the killing of the deceased, that is, on or about the 3rd day of July—and the day of the killing is not in question— the respondent was sheriff of the county of Cache in this Territory; that by virtue of a warrant of arrest, charging the deceased with a crime amounting to a felony, the respondent as such sheriff had arrested the deceased and held him in custody rending further proceedings. tody pending further proceedings for the crime charged against him; that he came to his death by the

to make his escape; that there was no other way left to the respondent to prevent it but by disabling him, and in so doing the fatal wound was given, then, under the law, the respondent was justified and your verdict should be not guilty; but it should be shown that this absolute

should be shown that this absolute necessity existed. A man may act in his own defence upon what he had reasonable ground to consider was imminent danger or urgent necessity, and he will be justified, although his apprehensions were in reality mistakes. But in taking life to prevent the commission of crime upon another, or to prevent the escape or effect the arrest of a person accused of crime, there must be actual necessity of such homicide, and not merely reasonable grounds to suppose that it was necessary; and this must be shown to the jury. In the language of the books, "One having custody of an arrested person should treat him kindly; but he may even inflict death to prevent his ascape, when no other means are available," and you must inquire and determine from the evidence before you whether this necessity existed or not.

[TO BE CONTINUED]

A. MINDR, Attorney and Counselor
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