

read the affidavit to Mrs Gardner in the case of Joseph W. Irvine vs. Mrs. Martha Gerrans Gardner filed in the City Court of Salt Lake City April 14th 1922, and told her what we were there for, that we were officers and had to do our duty and take the stock; she said "I don't blame you; you are not to blame." We stood there a while, then walked over to the gate and stood there about 15 minutes; then Stuart and I walked back to the house and saw the defendant at the door, which was about 45 minutes from the time we first arrived at the farm. The defendant was alone then, Mrs Gardner then being at the barn. We were about 35 feet from the door when Gardner came out of the door; Stuart was acquainted with him and talked to him first; then I explained to him what we were there for and read the affidavit to him. I had before served the papers on Mrs Gardner; she was the defendant in the action. Gardner was not a party to the action. I explained it to him because I had been told that he had threatened to kill any deputy sheriff or anybody that came on the place after the stock, and I wanted to pacify them and try to prevent trouble. He said "Well, By God, you will not take any stock off this place." I was not acquainted with Gardner and there was nothing on me to indicate that I was an officer; I told him we were officers and had these papers. When Stuart saw the gun he made an effort to pull the door shut; he grabbed it, and he was on the inside of it a little, so that the door jerked against his arm just as the two shots were fired; then we both went out, I being ahead of Stuart. When Gardner fired he was inside the door 4 or 5 feet, and Stuart was about a foot from the end of the gun. The defendant shot the gun from his hip; he fired twice as quick as he could; I was about six feet from him at the time. Not a word was said by anyone just prior to the shooting. I carried a gun on me that day, and I think the other deputies did.

T. A. HERRINGER testified in substance as follows: I have been deputy sheriff of Salt Lake County eight months and on April 15th 1922 went with Deputy Mathews and others to the Gardner farm near Welby; first saw the defendant ~~xx~~ coming out of the kitchen door, backing Mathews and me off the place, after hearing two shots fired; Mathews and Stuart came out of the door ahead of Gardner; Stuart started to run as soon as he came out of the door and ran about 63 feet, then fell down; then Gardner said to Mathews "Back off, you sons of bitches, back off," when I was about 40 feet of Mathews; Mathews back off and I went to and stayed with Stuart, Gardner going around some shed; then Stuart commenced to vomit, and when he quit vomiting died; Don Gardner and Mathews took his body to Welby.

On cross-examination: We arrived at the Gardner ranch a little after 11 o'clock and I went at once up to the back porch, where I saw Mrs Gardner, Don Gardner and Stuart talking, and in about five minutes Mrs Gardner went to the gate; when he told Mathews to back off his face looked like he would murder us all if we didn't go back and he was moving south; after he passed me and the granary I didn't see where he went. I was leading Mrs Gardner to the house when I saw Gardner come out the back door with the gun, and when Stuart fell I let Mrs Gardner go and don't know where she went then.

R. W. MORGAN testified in substance as follows: I have been a deputy sheriff of Salt Lake County the last two years and on April 15th 1922 went to the Meek farm between 12 and one o'clock, after learning that Stuart was killed; went in the house and got the shotgun Exhibit D, which was recently fired and was then loaded, and two empty shells; there were two loaded cartridges left in the gun, and I found the two empty shells in the front room. On the previous April 6th I had a conversation with defendant on this farm; I had a search warrant to search his place for liquor, and we then talked over his troubles with Irvine, when he said to me that he would kill Irvine or any other son of a bitch that came on those premises to take any of his stuff away; I said "Now there is a better way than that to get at it; you have an attorney, haven't you?" and he says "Yes, it is Judge Darmer," and I said "Judge Darmer is a firstclass attorney; he ought to be able to handle this stuff without going to kill anybody." Then we walked out of the house; then he said "Well, Mr Morgan, I think you gave me good advice; that is the best way to get at it." About 2 o'clock on the afternoon of April 15th, after Stuart was shot, when the sheriff had Gardner handcuffed in his car, Mr Giles and I walked up to it on the farm there, and when the defendant saw me he said "Well, Mr Morgan, I told you I would do it."

On cross-examination: Then the sheriff told me to go and look over the house for the gun, which I did with Joe Smith, Mr Stroschell and his wife, and Frank Mathews, and we found the gun in the bed-room.