

We found two empty shells in the dining room. The shotgun has a kind of heavy pulling trigger; it cocks itself thru the explosion of the shell and the empty shell is thrown out and another thrown in; there is a safety device in front of the trigger that you can fix so it won't shoot when you pull the trigger; but if the safety device is open and a man should feel for it and should think he had his finger on the trigger safety, but actually had it on the trigger, it would explode the shell. My conversation on April 6th was with Gardner and his wife in the house; he was very much put out about Irvine and said he had been persecuted more or less by him and he was getting damned tired of it.

On re-direct: The trigger on this gun pulled heavy; the safety device is the little catch in front of the trigger; the trigger must be pulled to discharge the shell.

R. H. GILES testified as follows: On April 15th 1922 I was at the Gardner farm near Welby when the defendant was under arrest and in Sheriff Emery's automobile, and when R. W. Morgan and I walked up to the car the defendant said to Mr Morgan "Mr Morgan, I told you I was going to do it."

On cross-examination: I was right by the side of the automobile when the defendant made that statement; I had seen defendant once or twice before that day, but was not personally acquainted.

FRANK S. EMERY testified in substance: Have been a deputy sheriff of Salt Lake County since January, 1921; on April 6th 1922 R. W. Morgan, R. H. Giles, Sam Howard and myself visited the Week farm near Welby, when I heard a conversation between the defendant and Mr Morgan, after Mr Gardner had been served with a search warrant; Mr Gardner then advised us that Mr Irvine had harassed him on several occasions in a financial way and caused him a lot of trouble and said he was damned sick and tired of it; he said "I will kill that God damned son of a bitch or any other son of a bitch that comes on this place and tries to take any property off of it;" I told him that was a wrong attitude for him to take; that if we came there as deputy sheriffs to serve a writ we were doing nothing but carrying out the mandate of the court which we were compelled to do, and that he had a right to go to the court in case of any dispute between him and Irvine," and I asked him who his attorney was, and he said Judge Darmer, and I advised him to take up the matter with Judge Darmer, that it would be capably handled and he would get justice. He told us then that the court was not a poor man's court; but it was for the rich man; I told him Judge Darmer would take care of him, he would be well taken care of, and that if Mr Irvine would be killed any time, on account of his having made that threat we would come to that place first and get him; that if he did kill Irvine or anyone he would only bring trouble upon himself and his wife. He said he had led a dog's life all the time he had been mixed up with Irvine and that it didn't seem to matter anyhow. I told him he would cause his wife a lot of trouble, and he said he would do it to protect his wife if he did kill Irvine and that his wife would be taken care of and Irvine couldn't take her property away from her. When we were ready to leave he said he thought what I advised him was the right attitude, that he was a fool to make that statement and he would see Judge Darmer.

On cross-examination: That conversation took place in Gardner's dining room; when we served the search warrant on Gardner he said "You won't find any booze here" and said he had his lesson; when we told him we would have to go thru the premises he said "Help yourself, go thru it; Mr Morgan and I went thru the cellar and the granary, and all the time he was telling us he had some other matters that he wanted to take up with us, but we told him we didn't want to take up anything more; we didn't find any booze; Mrs Gardner was present and was very much exercised over the attitude taken by Irvine and said they had planted the ground and prepared it and Irvine had taken the money and hadn't given them any.

May 10th 1922.

T. A. HERRINGER further testified on cross-examination: When we arrived at the porch of the house on April 15th Mrs Gardner was standing at the porch, then left and went towards the gate, where Irvine was; then Mrs Gardner talked to Irvine and called him names, and Irvine said to her "Don't shake your fingers in my face and call me names or I will slap you." She tried to chase him off the place; he went towards the barn, when Mrs Gardner said "I will brain that son of a bitch" and picked up two big rocks and ran towards the barn; I ran after her, but she got there before I did and threw the rocks at Irvine; then I got hold of her and led her back to the house.