

THE STATE RESTS.

FRED STROSHELL called by the defense testified in substance: I am a merchant residing at Welby; have known the defendant about eighteen months and visited him at his ranch many times, and he visited my store and traded there; the shotgun Exhibit D belongs to me; owned it 12 years; about December 1921 defendant I loaned the gun to Mr Gardner; later he returned and borrowed a rifle, then returned that and borrowed the shotgun again, and I think had it on April 15th 1922; it is a Remington automatic; it loads and reloads itself; it has a safety-lock for the trigger; have shot the gun many times; it has a very light trigger.

On cross-examination: After shooting the gun, to have another shot you have to pull the trigger, that is all; haven't shot any other automatic shotguns; have shot an automatic revolver; that is only one other automatic shotgun made; I know this trigger is lighter than the majority of shotguns, automatic or not.

GEORGE H. GARDNER, the defendant, testified in substance: My name is George H. Gardner and I have resided a mile and a half west of Welby since February 1921; am 38 years old; born at Mendon, Cache County, where I spent my boyhood; have been farming since I went to Welby, and before that was a salesman on the road thru the southeastern part of Salt Lake City; I operated the farm at Welby under a verbal contract between myself and my wife and Irvine and his wife; I was to have a half interest in it for the work and money I and my wife put in it, including a half in the stock we had; I was to have \$25 a month wages, which was to go to even up the equity between Irvine and I which I never received. On April 6th 1922 Mr Emery, Mr Morgan, Sam Howard and Mr Giles came to my home at Welby with a search warrant to search the place; I asked Mr Howard who signed the complaint, and he said he didn't know, and I said there was considerable disagreement between Irvine and I, and "I guess it came from Irvine; he has been trying to get something on me for a long time." He asked to look over the place, and I said "All right, help yourself," and I unlocked the granary and they looked over it; afterward I asked Mr Giles if he found anything, and he said "No, not yet," and we went to the house and sat down in the dining room; then I told them about the trouble between Irvine and I and what Irvine agreed to do and that he and his wife refused to sign the contract, and that in August 1921 Mr and Mrs Irvine came out to the ranch and we had quite an argument; I asked him to sign the contract, and he said "No, I ain't going to sign no contract, and if you don't like it you can get off the place;" as we walked from the barn to the granary he was shoving and elbowing me all the way; when we got to the granary I started for the house to get my wife, to be on an even break with Mrs Irvine, and as I did this he tried to pull a gun out of his pocket to stop me, but I went to the house, and Mrs Gardner and I went back with a twenty-two; there was one shell in the 22; when I came to the gate I handed my wife the gun, and when I stepped thru the gate Irvine's wife had the gun levelled at me, and she stood there with the gun within a foot of my face, shaking it this way; then we stood there and talked the matter over, and Irvine took a pencil and paper out of his pocket and wrote a contract, which was similar to the one we had agreed to in Mrs Martha Gerrans Gardner's name; he asked his wife to sign it, and she refused until she could see her attorney and for us to come in to Salt Lake; I said "Mrs Gardner will be in Monday morning," and when she came in Mrs Irvine refused to sign it. The difficulties went on; I told Mr Morgan about the whole transaction and said "Don't let Mr Irvine come out here, because as sure as he does come out here and tries to take anything off of the place that rightfully belongs to me, without a fair and just settlement, they will haul him off." Mr Morgan replied "You want to get that out of your head about shooting anybody; you have got an attorney, haven't you?" and my wife said "Yes, Mr Darmer." Mr Morgan said he was satisfied Mr Darmer could handle the case, and I said to Mr Emery "Will you please see Mr McCullough and tell him what I said." After they advised me to see an attorney I may have said I would kill anyone else that undertook to do so; I said "I am a fool and that was probably the best way." Then they got in the auto and drove away. On April 15th 1922 when the sheriff's parties arrived at my home I and Mrs Gardner were in the kitchen, and as I was ready and dressed to go to Midvale I told her to tell them that I had gone to Midvale, but I went into the next room, and she went out of the house, and soon after I heard somebody talking about some stock and heard Mrs Gardner say to Irvine: "Have you come to rob us some more; don't you dare slap me, Joe Irvine; then I looked thru the window in the kitchen door and saw two men coming up, I opened the door and Mr Mathews said "Mr Irvine and I have come to take some of the stock" - I didn't know