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THE KENT NEWS.

Frustra laborat, qui omnibus placere studet.—"He labours vainly, who endeavours to please every one."

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TRIAL OF

REV. THOS. J. BURROWS

FOR MANSLAUGHTER.

SNOW HILL, May 15, 1849.

State of Maryland vs Thos. J. Burrows, in Worcester county Court.—The prisoner was indicted and arraigned for manslaughter, in unlawfully killing James Bayard Bishop, on the 23d of March, '49, at Sandy Hill in Worcester county, Md,—Plea not guilty.

The prosecution was conducted by J. R. Franklin, Esq., and the defence by H. A. Wise, D. Williams, T. A. Spence, J. B. Ricaud, W. W. Handy, Walter P. Snow, and Wm. H. Purnell, Esqs.

The trial commenced on Tuesday last, and the following gentlemen composed the jury:—Wm. S. Hudson, Wm. S West, Wm. J. Leonard, John Henderson, James S Hayman, John B. White, Henry Taylor E. Quillin, Santon Atkins, G. W. Landing, Levi Merrill and Arthur A. Powell.

TESTIMONY FOR THE PROSECUTION.

Mr. Payden being duly sworn, testified that on the 23d of March saw Mr. Burrows and Mr. Bishop meet; saw Burrows walking the road on left hand side of cart rut; I looked some distance ahead, and saw Bishop meeting him, both in the same path; met off against Capt. Jones' pound gate; they stood there a little while, when I saw the hands of one of them moving; I said to Jas. Pruit and Jas. Wheatton, "boys, Bishop is going to strike Burrows;" upon looking again, I said to a by-stander, it is Burrows' hands, for Bishop has his hands in his pockets. Directly, I saw Burrows step back about four steps quick; saw Bishop approach about two steps, and turn his left side to Burrows, and then smoke rose over Burrows shoulder, saw Bishop fall; I went to him as quick as I could, I was the third or fourth that got to him. Dr. Savage had then hold of his hands; he was not dead. We carried him into the house; he was lying on his right side when I got to him, and I remember brushing dirt from his elbow. Don't recollect seeing his hands; I did assist in the examination of his person; saw him breathe his last in the house. There was not an examination of his person whilst I remained that I know of; I remained but very few minutes after he died. I was standing in Mr. Allen's store door 172 yards by measurement from the place where Bishop fell. When they met, Burrows was between me and Bishop; could see elbows of Bishop, and thought I could see, what I did see, distinctly. My attention was drawn particularly to them, from the time I saw them approach each other; removed my eyes but a very little while, felt a particular interest in observing every motion; I endeavoured to observe every thing that occurred saw the smoke when the pistol was fired. From the time of seeing them meet about four or five minutes intervened; when I first saw them meeting they were, I suppose, about 100 to 150 yards apart; there were two houses on the left hand side of the road where Burrows was, and one on the right side; houses on left side not more than 10 to 12 feet from railing, and railing immediately on street. (Here Mr. Wise exhibited a diagram to the court and jury, showing the localities, &c.) It was some where near 8 o'clock in the morning, I was in J. W. Jones' store when Burrows passed, but did not see him pass; the stores were opened at that time. Besides myself, there were on the porch J. R. Wheatton, J. Pruitt and James Paydon, standing at Allen's store when I first saw them.—I dont know how long they stood before waving of hands; very little while I think; saw Burrows retreat bias the road, and then could see Bishop plain; Mr. Bishop's attitude was stepping up the steps, and turned his left side to Burrows; didn't see Mr. Bishop's hands as he advanced towards Burrows; thought I was in a position to see Bishop's hands if they had been raised; step slow and deliberate; think the distance between Burrows and Bishop was not diminished by the approach of Bishop; I thought Burrows by retreating had rendered the distance greater between them.

Mr. Wise here objected, that no opinions or inferences of witness were competent to go to the jury. He thought the questions should be framed differently, as witness was not near enough to decide as to the facts of the case, and in a former part of his statement had given evidence of no means of knowing accurated.

Court decided that the facts must be adhered to with strictness.

Witness resumed—I didn't think Bishop was near enough to have struck a blow with the hand on Burrows when pistol fired; saw Bishop step before I saw smoke rise; saw him turn his left side, but didn't see any thing like cowering or shrinking; there was a horse cart between Captain Jones' yard gate and pound gate; it was in the path; did not think the parties were more than five or six steps from the shafts of it, Burrows had passed the horse cart and retreated out in the road, leaving horse cart further from him; dont know how far the tail of cart was from Capt Jones' yard.

Here the examination of witness on the part of the State closed; and the cross-examination on the part of the defence commenced.

Cross-Examination.—The road is 27 feet wide; it is 172 feet from the place of occurrence to Allen's store; saw the parties; Allen's store stands on the west side of the road; course from thence to where Bishop fell N. E. and S. W. was standing in Allens porch and looking to the place; didn't think it parralel to the railing of Jones; don't know exactly the distance of Bishop's house, but nearly three fourths of a mile, would think, from Sandy Hill to Mr. Reid's house (R. was Burrows' tenant;) Bishop was coming from towards his house from south to north; had passed the gate of Reid over 100 yards: did not see Bishop stop at Reids gate; standing in Jones store door could see the gate of Capt. Jones; I crossed over from Jones' store to carry a letter to my brother at Allen's store, from our mother; I read it in the post office at Jones' store; there I first saw Burrows; saw no men but those already mentioned; don't think they were looking for any scene to occur down the road; saw nothing like an expectation of any thing occurring. I observed, I hope Bishop won't strike Burrows; said so because of circumstances that occurred in my shop on the day before the 23d of March; my shop is near John Jones' store; Burroughs came in my shop and remained an hour before Bishop came; in after Bishop came in he spoke to me about as usual, and asked me if the seams of his old shoes were sewed up; I said no, but wait a few minutes and I'll sew them up; Bishop then said, Burrows, I understand that you have been writing a slanderous letter about my brother George. Burrows said, can you prove it? Bishop said he could. Burrows said if so you have a law, and must seek your redress; Bishop asked him what kind of redress—sue a begger and catch a louse; damn you, I've a great mind to go up to John Jones' store and get a cowhide, and give you a cowhiding Burrows said Mr. Bishop, I promised my wife before I left home I would resent no insult. Bishop asked him if he did not write the letter. Don't remember Burrows reply; but don't think the reply was insulting.

Bishop asked him if he recollected handing the letter over a pair of bars and asking a person's opinion of it. Burrows denied that he ever did so hand it across bars; but dont remember the reply about writing the letter exactly. Bishop said to Burrows, "D—n you, I'm a great mind to take this board and give your head a slapping;" that board was 2 feet 4 inches long, 4 inches broad and ¾ inch thick; it it was a split board of a shoe maker. I never tried how much injury I thought could be done with it. Burrows said to Bishop that so long as he behaved himself, he expected the laws of his country to protect him. I recollect no further conversation that passed in my shop; I think there was, however some reference made by Burrows to his profession viz: that he was a minister, &c; but can't remember exactly. Burrows was all this time sitting down. Previous to Bishop's coming in, we had been talking of land he had to sell; talking all the time about business. Don't recollect whether Burrows and Bishop spoke pleasantly or not; I saw nothing like anger in Burrows.—Bishop was standing over three feet from Burrows; his manner was not that of a bully, he was fronting Burrows; his manner was that of a man in anger, he was I thought angry.

Mr. Bishop begged my pardon afterwards, for acting so in my shop. This was all that transpired, as well as I remember. He had inquired either personally or by agent, for his shoes before that day, but had never been to the shop himself, as I know of, for them. Every time he said any thing about the board or cowhide, he prefaced it with a 'dam you'.—After Bishop went out, Burrows asked if it was not near 12 o'clock, and went out going in opposite direction from Bishop. I invited him to dine with me, but he said he had to dine at Capt. Holland's. After Mr. Bishop went out Burrows sat in silence Bishop came down again before I was done the shoes, and Burrows was not I'm sure, down to Captain Holland's, but nearly there, but a person might see Burrows on the road; he was not out of sight; Bishop asked me if I thought Burrows was angry; I said no; he said, "the scamp, he ought to have had a slapping," and something about the letter, but cant say that he said he was a d—d rascal; he very seldom used the word rascal; I don't know whether I made a reply or not; I dont remember that he said any thing about the time of Burrows passing that way.

After sun set Bishop came again to me, and said he had called on Burrows to take up his paper, said he had a note of his uncle, George Bishop, on Mr. Burrows, to collect from him, never mentioned that note till the evening, don't know where Bishop went after leaving my shop, saw him afterwards riding out from Sandy Hill towards Snow Hill, don't reccollect what he said to me when he went, don't know whether or not he went to his uncle George Bishop's to get the note of Burrows wife to his uncle to collect; he said he called on Burrows to take up his papers Burrows said he came from home without a dollar in his pocket, and did not know where he should get the money from; Burrows asked Bishop where he could get the money from; Bishop answered that he did not know; Burrows replied I'll pay you in the morning; Bishop asked what time in the morning he replied early, Bishop asked me where I thought he (Burrows) could get the money from; my reply was I do not know; he then said, do you think he will pay me in the morning; I replied yes I don't think Burrows will tell you an untruth; Bishop then said, 'when first I heard of that letter, no noubt I should have cowhided him on first sight, if I was able, but I've heard he did not ask any odds of any man about Sandy Hill or on Sandy Hill, or something of the kind."

He said I've made up my mind not to touch him; I got a letter from brother George, in which letter he said he was out of Burrows reach, stated he had passed the board, and Burrows had said about him was false; said George would be home next Saturday week, he and Mr. Burrows could settle their difficulty themselves.—He said Mr. Payden you know my situation, I'm a young man, and to have it said about me that I've whipped a methodist preacher, it willl injure me, I've made up my mind not to touch him" I don't remember of Bishop saying what he would do if Burrows did not pay that money, he said he was coming out that morning to Sandy Hill, I did not expect to see them when I went to Allen's porch. If I had not heard what Bishop said probably I would not have said that I hoped Bishop would not strike Burrows, I did not expect he was going to strike him, I don't know why I didn't think of what passed the night before, and why I did not say he will not strike him. I dont know, it was named among those standing on the porch about a rencontre that was likely to take place, I saw as before, both and the elbows of Bishop showing out from the sides of Burrows, for Bishop was standing between me and him; couldn't say any thing postively of the distance between them, Burrows backed, and when he first commenced backing he was between me and Bishop.

I noticed the shoes, but did not say that I counted steps, but thought it was about five steps; Bishop had on a box coat, pockets outside; couldn't hear a word that passed, and could not tell whether the hands of Burrows were placed in the attitude of expostulation or of palaver; to the best of my knowledge I do not know that he was drawing his fists; can't say how far Mr Bishop and Mr. Burrows were apart at the time of being shot; Burrows was somewhere in the cart-track of left side of road; his (Bishop) feet were near the track on the side of Captain Jones; he was lying on the path outside of track, nearer wheel-track than railing of Mr. Jones'; he did not speak to bystanders; could understand him after I went to him; breathed his last in an hour; efforts to save him were useless; he stood with his hands, as I thought in his pocket; I couldn't say how long; I recollect Burrows keeping path till he came to cart and then turned out to pass it; cart was not between me and the gentleman—that is did not obstruct my view of the transaction. I know of no body's having examined pockets of Bishop; body taken to Dr Savage's house; brother James stood by and guarded body; George Bishop came late in the evening to take body; nobody but my brother, that I recollect stood by and guarded body at Savage's; body remained about two hours in Savage's house; he was stripped and shaved at George Bishop's; John Dix, W. Colbourn myself and somebody carried the body in horse-cart, I helped to carry it, but not entirely to the house; I did not help the body out. I was present when the Coroner came; body had not been stripped before the Coroner came; clothing was not taken entirely off then; they made an examination of the body, though don't recollect whether he had boots or shoes on; he fell opposite Capt. J's. gate; he was lifted up before I got there; I did not see his hands; my attention was particularly drawn because of what had already passed between them; what had occurred the night previous, was the cause of particular notice, otherwise I should't have noticed them. It was somewhere in the neighborhood of 8 o'clock; report of pistol was loud; I didn't see the pistol, and never have; don't think he stood a moment; walked away tolerable quick; went up to Rice's, and then went to James Holland's house, I saw him after he was arrested; I heard him say something after the affair; said he (Bishop) rubbed his fist in his face; saw nothing of bravado or pass-c nade; saw no material change after fight; won't say I was well acquainted with him, don't know his character for courage, know Bishop's character was not that of a coward; had dark complexion, dark hair, and somewhat red in the cheeks; 'twasn't a general glow of red; dark eyes; could look at you when you looked at him; he was a strong man for his size; never saw him exercise, &c., since he was grown; have when a boy; was a peaceable man saw that he was mad in the shop; have heard of his saying once he was imposed on, but never knew of his having a fight since he was grown; if he was insulted it could be easily made up; seemed to be hurt in shop; I was not present when Bishop dunned him for money—nor do I know who was; he did not inform me of what passed between him and his uncle, nor why his uncle had given him the note to collect. He told me his uncle George had given a note for collection, and nothing was said as to the instructions about its collection; no recollection of what was to be done in case of non-payment; nothing said as to what he would or was to do; don't recollect having told Bishop's conversation with me to any body; not to my recollection did I tell any one on Allen' porch that morning; I never informed them at all of what had happened; don't recollect whether any body else heard the conversation with me on the 22d, after sunset, besides myself; he was talking to me in common voice; it was in general not very loud. Mr. Broughton passed by and I don't know whether he heard it or not; Bishop left me and went with Mr. Broughton; it was told me alone; I don't recollect when and to whom I first told it; I think I told Mr. J. W. Jones; I told James (my brother); don't know whether James told Pruitt or Wheatton. Bishop was stouter in body than Burrows, the latter taller of the two, though I never measured them; Bishop was a stout man, suppose he weighed 160 or 170 pounds, had not very large or long arms, not a long neck, rather short; a well built man; I think he was a strong man for his size; I think Bishop could handle Burrows; he worked on his farm, and was active and industrious. Bishop was in Sandy Hill; I can't say at what time; this was first of my knowing of his coming to my shop.

[The witness was then cross examined by the Deputy Attorney General, as to some matters of which the defence had made an examination in chief.] Bishop came into my shop on business; his shoes were brought on Monday or Tuesday, I think Tuesday promised to have them done that night; he sent for them, and afterwards came to my house; my house and shop are on the same road, the house below.

[The threats made by Bishop were repeated.] He made no motion to get the board; but it was where he could have got it easily, board had been there for sometime, don't remember that there was a knot in it; it was light, being of white pine; never heard of Bishop acting the bully; he appeared to be in a passion at sight of Burrows; there appeared no bitterness of feeling when he returned; he only observed, a scamp, he ought to have had a slapping. After sunset, in the conversation with me, he said, "I've not a doubt but I should have cowhided him at first sight, but now I've concluded not to touch him" &c.; I thought Bishop's anger had passed off; he did not say when Burrows was to pay him the money.—During the same conversation Bishop told me he had understood Burrows had said he did not ask any odds of any man at Sandy Hill; he also told me that he intended not to touch him. Here this witness was sent down.

Mr. George Bishop, uncle to the deceased, was called and sworn.

Mr. Wise wished to know the object of the prosecution in introducing this witness. Whether it was to show that James Byard Bishop went to his house on the 22d of March, the day preceeding the killing—got the note referred to—but received from him no instructions to act in a manner inconsistent with the public peace.

Mr. Franklin replied that this was the object in part, but more to show the mind and intent of Bishop when he got the note.

Mr Wise argued that the conversation with Payden being entire, the examination of Payden, on the subject of the note would not let in, as evidence, the conversation between James Bayard Bishop and the witness—occurring at a different time, and seven miles distant from the other.

Mr. Franklin replied—and the court decided that the object of the testimony with regard to the note, elicited by the defence being to show that Bishop in getting this note was actuated by a persecuting spirit it was admissible to show by what happened on his getting the note, *quo animo*. the note was obtained, and therefore the testimony was admitted.

Examination went on.—On the afternoon of the 22d March, about 2 or 3 o'clock, James B. Bishop came to my house. He told me that he came to consult me about bringing a suit in the name of his brother George, against Mr. Burrows, about a scandalous letter, which he (Burrows) had written. I told him [objected to] he did not bring the suit from what I said to him, I presume; we had some conversation after he told me Burrows had offered his property for sale, and if he did not sue him now his brother George would not be able to do it hereafter, as he would be out of the county, and he could not serve a writ upon him. After conversing, he appeared to be satisfied about the bringing of the suit, but said he should like to hold him to bail till his brother George came down. I then read this letter to Byard, [producing it.] [Mr Wise read the letter to the jury. It was a letter from Burrows to witness, written in February last, promising, when he came down, to pay an obligation held by witness against his (Burrows') wife; it was for $80 64, dated May 5th 1847, interest till 21st of March, 1849, $9 07, amount $89 71; signed by Elizabeth S. Holland, now Burrows.] This note I took from my pocket and gave to Byard. It was given to him for the purpose of collection, as Byard told me Burrows intended to leave on the next Saturday. I was unwell; my wife absent; a child sick, or I should probably have called upon Burrows myself. [Mr. Wise here objected to the testimony, as Mr. Franklin, in his statement of what he intended to prove by this witness, had declared the object of delivering the note to Byard Bishop to be to hold Burrows to bail; now witness state it was for collection.] Witness was directed to state the object, &c. Byard took the note, and was to deliver it, if not paid on presentation, to Mr. Franklin, to bring suit upon it; he could then hold him to bail, so that it would answer all his purposes without bringing the suit for slander now. I had in my possession the letter on which Byard wished to bring suit for slander. Examination in chief here closed, and the witness was

Cross examined by Mr. Wise.—Byard Bishop came to my house to consult with me on bringing suit against Burrows; told me Burrows had offered his property for sale, and if sold he would be out of the jurisdiction of the court. I then took the note, showing that the wife owed me the debt, placed it in his hands in order to enable him to hold Burrows to bail, (unless he should pay it,) and then accomplish his wishes without the suit for slander.—Byard was satisfied with this. Byard was in the habit of attending to my business, collecting moneys for me, selling and buying; acted as overseer for me for five years previous to the present affair; he transacted nearly all my business in that neighborhood; never before placed a bond in his hands for collection; this was the first; I live about seven miles from Sandy Hill, and am in the habit of going there once in two or three weeks. Cross-examination closed.

James Payden, a witness for the State, was called, but did not answer in consequence of sickness, and

James Wheatton being called and sworn, testified as follows:—I know Burrows; I saw him on the 23d March last; when I saw him first on that day I was in John H. Allen's store; Burrows was coming from toward Capt. Jas. Holland's; he came into the porch of Mr. Allen's store, and had some few words of conversation with Mr. Jas. Payden; he left there and went up toward Mr. Thos. Reid's, one of his farms; a little after he left Wm. Payden. came into the store, remarking as he entered: "Burrows and Bishop are going to meet again this morning." I ask him the question if there was any difference between them? He observed "yes, they had a quarrel in my shop yesterday." I then went to the door and saw the two men meeting. I suppose they stood some five minutes talking. While we were standing at the door of Mr. Payden said, "he was afraid Byard would strike Mr. Burrows" Mr. Pruitt answered, "yes, he has his hands waying now." As he said that, Mr. Payden walked away from the door. I observed it was not Mr. Bishop waving his hands, but it was Mr. Burrows. Then Mr. Payden came back, and we all discovered that it was a mistake, and that it was Burrows waving his hands, and not Bishop. They stood there a little while, and I saw Bishop walking towards Burrows and Burrows walking backward, and, as Mr. Burrows stopped, the pistol was fired. I saw Bishop fall. Started with Mr. Payden within, I suppose, a minute. We went to him. When I got there, Dr. Savage was there. Don't recollect who else, but think there were three or four persons.

Bishop was lying on the ground on his back; he fell on his right side; did not observe his hands; assisted in carrying him in the house; he drew two or three breaths after. When I first saw Bishop he was a little on this side of Thos. Reid's gate; do not know how far apart they were; Burrows had not crossed the bridge in the road; kept my eyes upon them until they met; Mr. Payden said as he come into Allen's store, "Bishop and Burrows are going to meet again this morning."

I went to the door immediately, and I think the others who were in the store also. Mr. Payden said "he was afraid Bishop would strike Burrows," during the five minutes they were standing they appeared to be talking; I knew it was Burrows' hands moving; they were moving in the manner of gesture in common conversation; I could not say how long they were moving; I could not see Bishop distinctly, Burrows being between him and me, with his back to me; but think his hands were in his pockets; I saw his elbows; they were not in the attitude of assault; I cann t say whether Bishop or Burrows moved first; when they moved I think Burrows went rather bias the road, stepping backward; as the pistol fired I thought I could see Bishop sort of turned in this manner; his left side toward Burrows seemed "scringing;" I could not say how far Burrows retreated; when the pistol fired I could not say whether Bishop was near enough to inflict a blow on Burrows with his hand; in retreating I think Burrows stepped back farther than Bishop advanced; I do not know the position of Bishop's hands as he advanced upon him; he advanced upon him with a common step not a violent rush; I thought it was a moderate step; Bishop did not stop until the pistol fired; they were both walking at the same time; neither of them stopped till the pistol fired, to the best of my recollection.

Examination in chief here closed, and witness was cross-examined by Mr. Wise.—I was standing at the porch of Allen's store; was attracted to the door by Mr Payden's remark that they were about to meet again; they were mooving in a direct line, one from the other, towards me—being neither to the right or lef; it was difficult to tell the distance between them, or how fast they approached each other.—The distance between Allen's store and Jones' gate is about 280 yards. Burrows was standing between me and Bishop's body. In backing, I think Burrows backed to the right and towards me. I knew nothing of the transaction between them the day before (22d.) After firing the pistol, Burrows stood an instant; did not approach the body, but went on where he was going; he walked as usual—not faster than usual. I did not know for what he was going to Reed's; I don't know whether they were getting out corn at Reed's or not; I don't think I saw him as he returned from Reed's; he went from Reed's to Capt. Holland's; I saw them bringing him from there after arrest. I don't know how he came back from Reed's; didn't see him. I might have been up at Sandy Hill two or three times the day before; but did not see Bishop. Didn't see Bishop on the morning of the 23d until I saw him and Burrows meeting. I heard of the quarrel on the day it occurred—the day before the killing; some one person named it to me, no more; don't recollect who it was. I did not expect Bishop to strike Burrows that morning.

After Payden told us he was afraid Byard would strike Borrows, we might by running, have overtaken them and prevented a breach of the peace; don't recollect Burrows' walk as they approached each other; I saw Burrows after he was arrested; I did not see any thing like bravado, boasting or crowing in his conduct; he behaved submissively; did not resist the officer; was not taken before a magistrate in Sandy Hill, but was brought to Snow Hill; the magistrate there was not at home; don't know when he went from home; that morning. [The cross examination here closed.]

There being no probability of the case being concluded to-day, the court having set from 8 A. M. to 5 P. M. was adjourned till to-morrow morning at 8 o'clock, committing the jury to the care of four special bailiffs, charged to keep them all together in one place, neither speaking through themselves, nor permitting others to speak to them, on any matter at all connected with this trial.

May 16, 1849.

Caroline Jones, being called and sworn, testified as follows: I have seen Mr. Burrows several times; I know him; on the 23d of March last, I was sitting in the north room of my house at work, and heard some persons talking; it was between 7 and 8 o'clock in the morning; I stepped into the passage, and saw Burrows and Bishop; they were standing near the south corner of the yard; I heard Bishop observe to Burrows, "Now, damn you, I've got you just where I want you," and he (Bishop) stepped a step or two towards Burrows and raised his right fist; Burrows began to step back and stepped two or three steps out of my sight; I cast my eye towards the window, expecting to see him pass there; and while my eye was towards the window the pistol went off. [Mr. Wise here presented a diagram of the location, showing the relative positions of the witness, the doors, the windows, and the parties in the road.] When I looked again out of the door Bishop was down, he called for the doctor, and I stepped to the door, and when I got there Burrows was just moving off; Bishop fell on his right side, and this brought his face toward my house; when I got to the railing, he had his right hand under his head; I did not notice his left hand, when I got to the door Burrows was standing between the wheel tracks; he did not move away hurriedly; it was not more than two or three minutes after I heard the voices, before I went out of the north room into the passage; it appeared as if I could hear them once in a while bring out an oath; I did not hear two voices distinctly; there was but one voice talking loudly; I could hear another saying something, but could not understand what it was; when I first got into the passage, they were standing still; didn't stand no time hardly after I first saw them, before Bishop said, "Now, damn you, I've got you just where I want you," and stepping a step or two towards Burrows, drawing his fist; his right fist; he moved his fist backward and forward; did not seem to draw it back; they were standing close enough to touch each other when Bishop was moving his fist, they were both stepping, Bishop stepping towards him, Burrows stepping back; I saw Bishop advance about one step; Burrows then began to step back, and after he began to go back I saw Bishop stop after making one step, Burrows stepping back; I took my eyes off of him to look out at the window; don't recollect the position of his hands when I first saw him; did not notice them until he said, "Now, damn you, &c." as he said when he raised his right fist; don't recollect the position of his left hand at any time; Burrows was never in my house.

Examination in chief closed.

Cross-examined by Mr. Wise—Mr. Bishop was known to me, as a neighbor; he had been to my house; I heard a loud voice, suppose they were a couple of black persons; heard oaths now and then, and a sort of murmuring; I thought they were quarrelling; I stepped into the passage and looked through the front door; they were standing near, facing; I could see Bishop except his left hand it being concealed by Burrows; Bishop raising his fist, stepped a step towards Burrows; he then backed until he was hid by the right lintel of the door; Bishop stepping another step while he was backing, and then as I thought, stopping; cannot say it it was a dead pause or only a hesitation; all done so quick, that there seemed no perceptible difference in the passing and report of the pistol; Bishop did not appear to cringe at all; I didn't go to the body; Burrows had no pistol in his hand when he backed; don't recollect the position of his hands as he backed; didn't hear him say anything; he was shaking his head; Bishop spoke loud and seemed to be in anger; I cannot say that Bishop may not have taken more than one step, when I turned my eyes from the window; passed the lintel of the door out of my sight; and been knocked back into my sight by the pistol.

Re-examined by Mr. Franklin—I cannot say whether Bishop stopped or not before the firing; I took my eyes off to look through the window, when I last saw him he was standing there; it was quick as thought from my looking toward it and the firing of the pistol.

Dr. Savage being called and sworn, testified as follows: On the 23d March last at a very early hour in the morning—7 o'clock I presume—I had just got up and was sitting sharpening my razor, in my room, when I heard the report of a pistol and some one call me—"doctor, doctor, doctor"—repeated three times, and by that time I was at my yard gate; I immediately demanded "what is the matter?" and passing through the gate Bishop remarked (I advancing all the time) "that he was shot," and he further remarked "take me in." By that time I was up to him, and was the first to him; as soon as possible, the wound appearing fatal, I endeavored to get him into the house. After we got him in the house he expired in a short time; he lived, I think, not exceeding 5 minutes from the time I got to my gate. After he was carried into my house his body was not examined; he remained there about two hours; I saw the examination of his pockets by Mr. James Bayden, there was some silver money and a piece of paper in them; amount of money was about 17 or $18, I should judge from the bulk; they were thoroughly searched. His coat was no taken off in my house; did not examine the wound at my house. When I got to Bishop, he was lying nearly in a direct line across the road, his face fronting Sandy Hill, with his right hand under his head; I could not say positively where his left hand was, but think to the