

# John D. Lee, First Trial

## Samuel Pollock and John Sherrett Testimonies

**RT**

**RS**

**BT**

**PS**

<p>[Bk 2 231]</p> <p>SAMUEL POLLOCK , SWORN FOR PERSECUTION.</p> <p>Q. WHERE DID YOU RESIDE IN SEPTEMBER 1857 ? A. IN CEDAR CITY, IRON COUNTY. Q. HAVE YOU EVER HEARD ANYTHING ABOUT OR DO YOU KNOW ANYTHING ABOUT THE MASSACRE OF THE EMIGRANTS AT THE MOUNTAIN MEADOWS ? A. YES, I HEARD A GREAT DEAL ABOUT IT. Q. WONT YOU STATE TO THE JURY WHAT YOU KNOW ABOUT IT ? A. I CAN DO SO BY REQUEST OF THE</p>	<p>[[Bk 4 36 cont.]]</p> <p><b>SAMUEL POLLOCK OF KANARRA</b></p> <p>Q WHAT IS YOUR FIRST NAME &lt;MR. POLLOCK&gt; A SAMUEL HAVE YOU BEEN SWORN YES SIR Q WHERE DID YOU RESIDE IN SEPTEMBER 1857 A CEDAR CITY IRON COUNTY Q HAVE YOU EVER HEARD ANYTHING ABOUT OR DO YOU KNOW ANYTHING ABOUT THE MASSACRE OF THE EMIGRANTS MOUNTAIN MEADOWS A YES I HEARD GREAT DEAL ABOUT IT. Q WONT YOU STATE TO THE JURY WHAT YOU KNOW ABOUT IT A I CAN DO SO BY REQUEST OF</p>	<p>[Bk 4 62]</p> <p>ASAMUEL POLLOCK SWORN FOR THE PROSECUTION. <b>EXAMINED BY M<sup>R</sup>_____ Q.</b> WHAT IS YOUR FIRST NAME, MR. POLLOCK? A. SAMUEL. Q. HAVE YOU BEEN SWORN? A. YES, SIR. Q. WHERE DID YOU RESIDE IN SEPTEMBER, 1857? A. CEDAR CITY, IRON COUNTY. Q. HAVE YOU EVER HEARD ANYTHING ABOUT, OR DO YOU KNOW ANYTHING ABOUT THE MASSACRE OF EMIGRANTS AT THE MOUNTAIN MEADOWS? A. YES, SIR, I HEARD A GREAT DEAL ABOUT IT. Q. I WILL ASK YOU TO STATE TO THE JURY WHAT YOU KNOW ABOUT IT? A. I CAN DO SO BY REQUEST OF THE</p>	<p>[Patterson Shorthand is missing one notebook here: Notebook 6, from Samuel Pollock's Testimony through John Macfarlane's Testimony.]</p>
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**RT**

**RS**

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**PS**

<p>PROSECUTION. Q. WE REQUEST THAT. WITNESS: YES SIR. Q. IN RELATION TO THE OCCURRENCE LET ME ASK YOU — PROBABLY WE WILL ARRIVE AT THAT BETTER BY QUESTIONS: WERE YOU AT THE MEADOWS AT THE TIME OF THAT OCCURRENCE? A. I WAS. Q. HOW LONG BEFORE THE OCCURRENCE DID YOU ARRIVE THERE ON THE GROUND A. I COULD NOT SAY DEFINITELY. Q. STATE WHAT YOU THINK ABOUT IT ? A. IT WAS SOME TWO AND A HALF TO THREE DAYS. Q. WHERE DID YOU GO FROM ? A. FROM CEDAR CITY. Q. DID ANY PERSON GO WITH YOU, IF</p>	<p>PROSECUTION YES SIR WE REQUEST THAT;  IN RELATION TO THE OCCURRENCE LET ME ASK YOU PROBABLY WILL ARRIVE AT THAT BETTER BY QUESTIONS {Q}P WERE YOU AT THE MOUNTAIN MEADOWS AT  THAT OCCURRENCE {A}PI WAS Q HOW LONG BEFORE OCCURRENCE DID YOU ARRIVE THERE ON THE GROUND {A}P I COULD NOT SAY DEFINITELY STATE WHAT YOU THINK ABOUT {IT}P {A}PIT WAS SOME TWO 1/2 TO 3 DAYS Q WHERE DID YOU GO FROM A FROM CEDAR CITY Q {DID}P ANY PERSON GO WITH YOU, IF</p>	<p>PROSECUTION. Q. YES, SIR, WE REQUEST THAT;  IN RELATION TO THE OCCURRENCE LET ME ASK YOU — PROBABLY WE WILL ARRIVE AT THAT BY QYUESTIONS. WERE YOU AT THE MEADOSWS AT  THAT OCCURRENCE? A A. I WAS. Q. HOW LONG BEFORETHE OCCURRENCE DID YOU ARRIEVE THERE ON THE GROUND? A. I COULD NOT SAY DEFINITELY. Q. STATE WHAT YOU THINK ABOUT IT? A. IT WAS SOME TWO AND A HALF TO THREE DAYS. Q. WHERE DID YOU COME FROM? A. FROM CEDAR DCITY. Q. DID ANY PERSON GO WITH YOU; ISF</p>	
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**RT**

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<p>SO WHOM ? A.          QUITE A          NUMBER WENT,          THOUGH I</p> <p>CANNOT          COUNT HOW          MANY OF          THEM. I CAN          NAME THOSE          WHO WERE MY          INTIMATE          NEIGHBORS. Q.          DO SO? A.          ROBERT WILEY          IS ONE,          WILLIAM          BATEMAN,          CHARLES          HOPKINS,          EZRA CURTIS  <sup>[232]</sup> AND I THINK          THOMAS          CARTRIGHT,          THOSE WERE          ALL MY          IMMEDIATE          NEIGHBORS          WITH WHOM I          WAS WELL          ACQUAINTED.          Q. WELL          GO ON, WHO          ELSE ? A. I          COULD NOT          SAY. Q. STATE          HOW YOU CAME          TO GO DOWN          THERE AND IF          BY ORDERS</p> <p>FROM WHOM ?          A. FROM EZRA          CURTIS. Q. WHO</p>	<p>SO WHO {A}<sup>P</sup>          QUITE          NUMBER WENT</p> <p>NAME THEM I          CAN'T          COUNT HOW          MANY[?] OF          THEM I CAN          NAME THOSE          WHO WERE MY          INTIMATE          NEIGHBORS {Q}<sup>P</sup>          DO SO {A}<sup>P</sup>          ROBERT WILEY          IS ONE;          WILLIAM          BATEMAN;          CHARLES          HOPKINS;          EZRA CURTIS          AND I THINK          THOMAS          CARTRIGHT.          THOSE WERE          ALL MY          IMMEDIATE          NEIGHBORS;          WITH WHOM I          WAS WELL          ACQUAINTED          Q. WELL          GO ON WHO          ELSE A I          COULD NOT          SAY Q. STATE          HOW YOU CAME          TO GO DOWN          THERE          BY ORDERS          &lt;THEY HAD&gt;          FROM WHOM          {A}<sup>P</sup>FROM EZRA          CURTIS. Q. WHO</p>	<p>SO, WHOM? A.          QUITE A          NUMBER WENT,          THOUGH TO          NAME THEM I          CAN'T NOT —          CANNOT NAME          ALL OF          THEM. I CAN          NAME THOSE          WHO WERE MY          INTIMATE          NEIGHBORS. Q.          DO SO? A.          ROBERT WILEY          IS ONE,          WILLIAM          BATEMEAN,          CHARLES          HOPKINS,          EZERA CURTIS          AND I THINK          THOMAS          CARTRIGHT.          THOSE WERE          ALL MY          IMMEDIATE          NEIGHBORS          SOME THAT I          WAS WELL          ACQUAINTED          WITH. Q. WELL,          GO ON, WHO          ELSE? A. I          COULD NOT          SAY. Q. STATE          HOW YOU CAME          TO GO DOWN          THERE?          A. BY ORDERS.          Q. BY ORDERS          FROM WHOM?          A. FROM EZRA          CURTIS. Q. WHO</p>	
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**RT**

**RS**

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**PS**

<p>WAS EZRA CURTIS ? A. HE WAS MY SUPERIOR OFFICER; THAT IS I WAS A PRIVATE<sup>248</sup> AND HE WAS AN OFFICER IN THE ORGANIZED MILITIA OF UTAH. Q. WHAT WAS THAT ORGANIZATION KNOWN BY ? A. UTAH MILITIA. Q. IN PURSUANCE OF THAT ORDER WHERE DID YOU GO ? A. WENT TO THE MOUNTAIN MEADOWS. Q. AFTER YOU ARRIVED THERE WHAT DID YOU SEE ? A. I HEARD FIRING OF GUNS WHICH SEEMED TO COME FROM THE INSIDE OF THE EMIGRANT TRAIN AND WHEN WE CAME IN SIGHT THEY WERE SURROUNDED BY INDIANS ON</p>	<p>WAS EZRA CURTIS <sub>A</sub> WAS MY SUPERIOR OFFICER THAT IS I WAS <math>\leq A \geq</math> PRIVATE HE WAS OFFICER IN THE ORGANIZATION; THE MILITIA OF UTAH. {Q}<sup>i</sup> WHAT WAS THAT ORGANIZATION KNOWN BY {A}<sup>i</sup> UTAH MILITIA {Q}<sup>p</sup> IN PURSUANCE OF THAT ORDER WHERE DID YOU GO <sub>A</sub>WENT TO MOUNTAIN MEADOWS <sub>Q</sub> AFTER YOU ARRIVED THERE WHAT DID YOU SEE <sub>A</sub>I HEARD FIRING OF THE GUNS BEFORE I CAME IN SIGHT OF EMIGRANT TRAIN AND WHEN WE CAME IN SIGHT AND THEY WAS SURROUNDED BY INDIANS ON</p>	<p>WAS EZRA CURTIS? A. HE WAS MY SUPERIOR OFFICER, THAT IS I WAS A PRIVATE. HE WAS AN OFFICER IN THE ORGANIZATION — THE MILITIA OF UTAH.. Q. BY WHAT NAME WAS THAT ORGANIZATION KNOWN BY? A. UTAH MILITIA. <sup>[63]</sup> Q. IN PURSUANCE OF THAT ORDREER WHERE DID YOU GO? A. WENT TO THE MOUNTAIN MEADOWS? Q . AFTER YOU ARRIVED THERE WHAT DID YOU SEE? A. I HEARD FIRING OF GUNS BEFORE I CAME IN THE SIGHT OF THE EMIGRANT TRAIN; AND WHEN WE CAME IN SIGHT THEY WAS SURROUNDED BY INDIANS ON</p>	
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248. Ezra Curtis was a second lieutenant of Company E, Cedar City, and Pollock was a sergeant in the same platoon.

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**PS**

<p>EVERY SIDE;</p> <p>THE INDIANS [space]</p> <p>THE INDIANS A GREAT MANY OF THEM WAS NOT IN SIGHT, BUT THEY WERE ON THE SLOPE OF THE HILLS AND IN THE BRUSH. Q. HOW MANY WHITES IF ANY WERE THERE ? A. I CANNOT RECOLLECT OF ANY MORE THAN I HAVE TOLD YOU; THERE WAS FROM FIFTEEN TO TWENTY WENT. Q. BESIDES YOUR OWN PARTY ? [233] A. I COULD NOT TELL; I SAW A FEW</p>	<p>EVERY SIDE</p> <p>INDIANS HAD APPROACHED THEM AT ALL ACCESSIBLE POINTS AND EVERY SOUL THAT MADE THEIR APPEARANCE OUT OF CAMP WERE SHOT AT BY INDIANS FROM THESE POINTS; BUT THE INDIANS = A GREAT MANY OF THEM WAS NOT IN SIGHT BUT THEY WERE ON THE BANKS OF THE HILLS IN THE BRUSH —[?] HOW MANY WHITE IF ANY WERE THERE AS NEAR AS I CAN RECOLLECT</p> <p>THERE WAS FROM FIFTEEN TO TWENTY WENT Q BESIDES YOUR OWN PARTY A COULD NOT TELL I SAW A FEW</p>	<p>EVERY SIDE. <del>THE</del><del>THE</del> INDIANS HAD APPROACHED THEM AT ALL ACCESSIBLE POINTS, AND EVERY LIVING SOLEUL THAT MADE THEIR APPEARANCE OUT OF CAMP, WEREAS SHOT AT BY THE INDIANS FROM THESE POINTS. THE INDIANS, A GREAT MANY OF THEM WASN 'T IN SIGHT, BUT THEY WERE ON THE BRINKS OF THE HILLS AND IN THE BRUSH THERE. Q. HOW MANY WHITES, IF YOU KNOW, WERE THERE? A. AS NEAR AS I CAN RECOLLECT</p> <p>THERE WAS FROM 15 TO 20 WENT. Q. BESIDES YOUR OWN PARTY? A. I COULD NOT TELL, I SAW A FEW</p>	
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<p>MORE; THEY WERE NOT ALL INCLUDED</p> <p>WITH ME. I COULD NOT TELL YOU ONLY BY GUESS; I THINK I SEEN</p> <p>FROM TWENTY TO TWENTY FIVE CAMPING I THINK ON THE GROUND, BUT I COULD NOT REMEMBER THE REST OF THEM. Q. DID THE MOST OF THEM APPEAR TO BE ARMED ? A. THOSE THAT WENT WITH ME WERE ARMED, MOSTLY. Q. WHEN YOU GOT THERE WHAT WAS DONE BY THE WHITE MEN ON THE GROUND ? A. WE WENT TO FIND A PLACE TO CAMP, AT A DISTANCE SAY ABOUT A MILE, IT MIGHT HAVE BEEN MORE OR</p> <p>LESS, AS I CANNOT</p>	<p>FROM OTHER PLACES, NOT BEING ACQUAINTED WITH 'EM I COULD NOT TELL <i>YOU/THE</i>[?] <i>MANNER OF EACH</i>[?] MEN I HAVE SEEN THERE SAY FROM 20 TO 25 MAKING ROUGH GUESS, I DID NOT COUNT AND I COULD NOT REMEMBER OF TIME IS LONG SINCE <i>DID</i>[?] THE MOST OF THEM <sup>[[37]]</sup> APPEARED TO BE ARMED <sub>A</sub> THOSE THAT WENT WITH ME WERE ARMED MOSTLY WHEN YOU GOT THERE WHAT WAS DONE BY WHITE MEN ON THE GROUND <sub>A</sub> WE WENT AND FOUND PLACE TO CAMP AT DISTANCE SAY ABOUT MILE, IT MIGHT HAVE BEEN LESS OR</p> <p>MORE AS NEAR AS I CAN</p>	<p>FROM OTHER PLACES, BUT NOT BEING ACQUAINTED WITH THEM, I COULD NOT TELL YOU, ONLY WHAT</p> <p>I HAVE SEEN.. OTHERS SAY FROM 20 TO 25. MAKING A ROUGH GUESS, I DIDN'T COUNT, AND I COULD NOT REMEMBER THEM, IT IS SO LONG SINCE. Q. DID THE MOST OF THEM APPEAR TO BE ARMED? A. THOSE THAT WENT WITH ME WERE ARMED MOSTLY. Q. WHEN YOU GOT THERE WHAT WAS DONE BY THE WHITE MEN ON THE GROUND? A. WE WENT AND FOUND A PLACE TO CAMP AT A DISTANCE SAY ABOUT A MILE. IT MIGHT HAVE BEEN LESS OR IT MIGHT HAVE BEEN MORE. AS NEAR AS I CAN</p>	
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**PS**

<p>RECOLLECT, BUT SOMEWHERE IN THE NEIGHBORHOOD OF A MILE FROM THE SPRINGS,  THAT IS ON THE SIDE OF THE HILL FROM WHERE THE COMPANY WAS. Q. I WANT YOU IN MAKING A STATEMENT TO UNDERSTAND THAT WE DO NOT DESIRE YOU ANYTHING  SAID THERE AND CONFINE YOURSELF ENTIRELY TO FACTS SUTHERLAND: TO WHICH WE OBJECT TO HIS GIVING ANY SUCH A PARTIAL STATEMENT. OBJECTION OVERRULED.</p>	<p>RECOLLECT  SOMEWHERE IN NEIGHBORHOOD OF A MILE FROM THE SPRING ON ELEVATION THAT IS ON THE SIDE OF THE HILL EAST FROM WHERE COMPANY WAS Q. I WANT YOU IN MAKING A STATEMENT  DO NOT DESIRE YOU TO STATE ANYTHING ANY PERSON SAID THERE AND CONFINE YOURSELF ENTIRELY TO FACTS SUTHERLAND WE OBJECT TO HIS GIVING ANY SUCH PARTIAL STATEMENT. OBJECTION OVERRULED ACTS AND THINGS DONE THERE FROM DAY TO DAY -[?]</p>	<p>RECOLLECT  SOMEWHERE IN THE NEIGHBORHOOD OF A MILE FROM THE AT A SPRING ON AN ELEVATION. Q. THAT IS ON THE SIDE OF THE HILL TO THE EAST FROM WHERE THE COMPANY WAS. I WANT YOU IN MAKING YOUR STATEMENT —  I DON'T DESIRE YOU TO STATE ANYTHING WHAT ANY PERSON SAID THERE BUT CONFINE YOURSELF ENTIRELY TO FACTS. BY MR. SUTHERLAND: WE OBJECT TO HIS GIVING ANY SUCH IMPARTIAL STATEMENT. OBJECTION OVERRULED. ARGUED BY MR. SUTHERLAND? ARGUED BY MR. BASKIN.</p>	
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	<p><del>PART[?] OF IT</del> <del>VOID[?]</del> COMPILED/COMP LETE[?] ALL THAT SAID THERE CAN BE GIVEN THIS JURY UNLESS IF ALL THAT WAS SAID IS SEPARATED FROM WHAT WAS DONE IT WAS DOINGS OF PEOPLE WHO ARE CHARGED NOT WITH ANY PARTISAN UNDERTAKING AND FACT IS IT IS DOINGS OF ONE TWO PERSONS THE WHOLE TRANSACTION BUT WHAT WAS SAID CONNECTION WITH ACTS AFFIRM PARTICULAR OF THESE ACTS THOSE REMARKS COMPREHEND THEM THEREBY TO PROVE THOSE ACTS BY WHAT WAS THE DOINGS OF PRESENTING TRANSACTION AS THE LAW IS UNDER</p>		
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**PS**

	<p>OBLIGATION TO PROVE THOSE ACTS AND THEREFORE AFFIRMING <i>PART</i>[?] OF THEM. DECLARATIONS ARE <i>RES</i>[?] GESTAE WHEN TEXT IS ASKED. ONLY WHAT WAS DONE OR ASKED HIM AND GIVEN IN SO MANY WORDS <i>WHEN TO GO</i>[?] PARTIAL TRANSACTION. BY COURT WON'T REQUIRE EITHER PARTY TO AFFIRM THE QUESTION PARTY HAS A RIGHT TO ASK WHAT WAS DONE THERE IS ONLY <i>PROPER</i>[?] OF EVIDENCE TO BRING IT OUT. BASKIN HE KNOWS VERY WELL EVERY THING THAT IS NOT MATERIAL WE DID NOT KNOW IT OR MAY FOR SIMPLE REASON ON THOSE FACTS THAT IS NOT RIGHT OF CROSS</p>		
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	<p>EXAMINATION. SUTHERLAND IF YOUR HONOR I MEAN SAY IN REPLY TO COUNSEL I HAD ASSUMED TO HAVE SOME FAMILIARITY WITH THESE RULES AND I <i>SPOKE</i>[?] FROM THAT FAMILIARITY I SHOULD NOT HAVE INTERPOSED THIS OBJECTION TO THEIR QUESTION WHICH WAS TO BE MOSTLY ON PROSECUTION WHILE I REGARDED THE MODE OF EXAMINING THAT WITNESS AS BOTH CONTRARY TO RULE AND UNPROFESSIONA L CONSIDERING THEY OBJECT THE <i>SUBJECT</i>[?] NOT PROVED <i>EXIST/UNDERSTO</i> <i>OD</i>[?] I REGARDED IT NOT VERY GRAVE OBJECTION BECAUSE I COULD SUPPLY</p>		
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**PS**

	<p>REMAINDER OF TRANSACTION BY CROSS EXAMINATION BUT MOMENT I SEEK TO INTRODUCED FURTHER PART OF THE PICTURE THEY OBJECTED BECAUSE <i>THEY/THAT[?]</i> <i>EXCUSE[?]</i> NOW COUNSEL ANSWERS MY OBJECTION BY SAYING THE BALANCE OF THE PICTURE WE CAN BRING IN BY CROSS EXAMINATION. <i>[space]</i> <sup><i>[38]</i></sup> BASKIN I DID NOT GIVE GENTLEMAN CREDIT OF CANDOR THE GENTLEMAN DID NOT MISUNDERSTAND MY STATEMENT. COURT CERTAINLY COULD NOT MISUNDERSTAND MY STATEMENT AND I MADE NO SUCH STATEMENT HE GIVES ME CREDIT FOR. BY</p>		
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<sup>*[64]*</sup> BY

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**PS**

<p>SUTHERLAND: RE.PLEASE GIVE US THE BENEFIT OF AN</p>	<p>COURT PARTIES CAN ASK ABOUT WHAT WAS DONE THERE AND THE QUESTION WHEN MADE CAN BE OBJECTED I DO NOT REQUIRE EITHER PARTY TO MAKE QUESTION IN ANY PARTICULAR SHAPE. IT IS NOT VIOLATION OF RULE <i>NOT TO STATE</i>[?] TO WITNESS</p> <p>NOT TO SAY ANYTHING THAT WAS SAID. ANYTHING THAT IS NOT CALLED OUT WITHIN THE CROSS EXAMINATION CAN BE CALLED OUT BY EITHER PARTY WHEN HE IS THEIR WITNESS. BY BASKIN [space] BY SUTHERLAND YOUR HONOR PLEASE GIVE BENEFIT OF</p>	<p>COURT: PARTIES CAN ASK ABOUT WHA T WAS DONE THERE, AND THE QUESTION WHEN MADE CAN BE OBJECTED TO. I DON'T REQUIRE EITHER PARTY TO MAKE THE QUESTION A IN ANY PARTICULAR SHAPE. IT IS A VIOLATION OF THE RULES TO STATE TO WITNESS WHAT THEY SHALL NOT SAY OR NOT TO SAY ANYTHING THAT WAS SAID. AN YTHING THAT IS NOT CALLED OUT WITHING THE CROSS EXAMINATION CAN BE CALLED OUT BY EITHER PARTY WHEN HE IS THEIR WITNESS.</p> <p>BY SUTHERLAND. IF YOUR HONOR PLEASE, GIVE US THE BENEFEIT OF AN</p>	
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**RT**

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**PS**

<p>SMITH, AND WILLIAM STEWART I THINK. Q. DO YOU REMEMBER ANY OTHER ? A. NO, I CAN'T RECOLLECT ANY OTHERS. Q. HOW LONG DID YOU REMAIN IN THE CAMP THERE BEFORE THE MASSACRE ? A. WELL IT WAS ONE AND A HALF TO TWO DAYS I THINK. COULD NOT SAY DEFINITELY, BUT ONE AND A HALF OR TWO DAYS. Q. WHAT WAS DONE ? A. THE SECOND DAY I THINK THE INDIANS WITHDREW FROM SIGHT; CANNOT SAY DEFINITELY WHETHER ON THE MORNING OF THE THIRD THE INDIANS DISAPPEARED I WAS IN HOPES THEY WERE GOING TO WITHDRAW</p>	<p>SMITH, AND WILLIAM STEWART I THINK Q DO YOU REMEMBER ANY OTHER A NO I CAN'T RECOLLECT ANY OTHERS HOW LONG DID YOU REMAIN IN CAMP THERE BEFORE MASSACRE {A}<sup>P</sup> WELL IT WAS FROM ONE AND HALF TO TWO DAYS I THINK COULD NOT SAY DEFINITELY OUT OF ONE AND HALF 2 DAYS {Q}<sup>P</sup>WHAT WAS DONE A THE SECOND DAY I THINK THE INDIANS WITHDREW FROM SIGHT CANNOT SAY DEFINITELY ON MORNING OF THIRD THE INDIANS DISAPPEARED AND I WAS IN HOPES THEY WERE GOING TO WITHDRAW</p>	<p>SMITH AND WILLIAM STEWART, I THINK. Q. DO YOU REMEMBER ANY OTHER? A. NO, I CAN'T RECOLLECT ANY OTHERS. Q. HOW LONG DID YOU REMAIN IN CAMEP THE RE BEFORE THE MASSACERRE? A. WELL, IT WAS FROM ONE AND A HALF TO TWO DAYS, I THINK; I COULD NOT SAY DEFINITELY; BUT AT LEAST ONE AND A HALF TO TWO DAYS. Q. WHAT WAS DONE? A. THE SECOND DAY, I THINK THE INDIANS WITHDREW FROM SIGHT; CANT SAY DEFINITELY HOW THEY MARCHED OFF BUT THEY DISAPPEARED; AND I WAS IN HOPES THEY WERE GOING TO WITHDRAW</p>	
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**RT**

**RS**

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**PS**

<p>AND LET THE THING PASS OVER. Q. STATE THE FACTS ? A. THAT IS MY IMPRESSION; THEY CEASED FIRING AND WENT OUT OF SIGHT, WHILE A FEW WHITE MEN THAT WAS THERE WENT DOWN TOWARDS THE CAMP FROM WHERE WE WERE CAMPED. LEE WAS THERE, SMITH WAS THERE, HIGBEE WAS THERE, THAT I REMEMBER OF; THEY WENT DOWN TOWARDS THE CAMP; I HAD UNDERSTOOD THAT THEY WERE GOING TO TRY AND SAVE THEM; WELL, THEY WENT TOWARDS THE CAMP SOME DISTANCE. Q. WERE THEY IN LINE OR WALKING PROMISCUOUSL Y ? A. WALKING PROMISCUOUSL</p>	<p>LET THE THING PASS OVER Q STATE THE FACTS THAT ARE MY IMPRESSION THEY CEASED FIRING AND WENT OUT OF SIGHT; WHILE FEW WHITE MEN THAT WAS THERE, WENT DOWN TOWARDS THE CAMP FROM WHERE WE WERE CAMPED, LEE WAS THERE; SMITH WAS THERE; HIGBEE WAS THERE; THAT I REMEMBER OF. THEY WENT DOWN TOWARDS CAMP, I HAD UNDERSTOOD THEY WAS GOING TO TRY TO SAVE <del>THEM</del>., WELL THEY WENT TOWARDS THE CAMP SOME DISTANCE Q WERE THEY IN LINE OR WALKING PROMISCUOUSL Y A WALKING PROMISCUOUSL</p>	<p>AND LET THE THING PASS OVER. Q. STATE THE FACTS? A. THAT WAS MY IMPRESSION. THEN I RHEARD FIRING AND WENT OUT OF SIGRT AND A FEW WHITE MEN THAT WAS THERE WENT DOWN TOWARDS THE CAMP FROM WHERE WE WERE CAMPED. LEE WAS THERE, SMITH WAS THERE , HIGBEE WAS THERE, THAT I REMEMBER OF. THEMY WENT DOWN TOWARDS THE CAMP. I HAD UNDERSTOOD THAT THEY WERE GOING TO TRY TO SAVE THEM. WELL THEY WENT TOWARD THE CAMP SOME DISTANCE. <sup>[65]</sup> Q. WERE THEY IN LINE OR WALKING PROMISCUOUSL Y? A. WALKING PROMISCUOUSL</p>	
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**RT**

**RS**

**BT**

**PS**

<p>Y. THEY WENT DOWN TO THE RIGHT. WE WERE ON THE EAST OF THE ROAD; CAMPED BY THE LITTLE SPRING; THEY WENT</p> <p>TOWARDS THE ROAD AND THERE THEY STOPPED AND FROM THAT POINT I SAW THE FLAG CARRIED TOWARDS THE EMIGRANT TRAIN. <sup>[235]</sup> Q. WHAT KIND OF A FLAG ? A. I COULD NOT TELL YOU TO SAVE MY SOUL, IT WAS SOMETHING ON A STICK. Q. DO YOU REMEMBER ITS COLOR ? A. ; I DO NOT; IT WAS THIN CLOTH; I COULD SEE IT WAS A FLAG, SOMETHING ON A POLE, LIKE AN EMBLEM; WE SAW SOME</p>	<p>Y THEY WENT DOWN TO THE ROAD WE WERE ON THE EAST<sup>250</sup> OF THE ROAD CAMPED AT LITTLE SPRING. THEY WENT DOWN TOWARDS THE ROAD AND THERE STOPPED, AND FROM THAT BODY I SAW THE FLAG CARRIED TOWARDS THE EMIGRANT TRAIN q WHAT KIND OF A FLAG aI COULD NOT TELL YOU TO SAVE MY SOUL IT WAS SOMETHING ON A STICK qDO YOU REMEMBER ITS COLOR aI DO NOT IT WAS LIGHT COLORED, I COULD SEE IT WAS A FLAG SOMETHING ON A POLE LIKE EMBLEM WE SAW SOME</p>	<p>Y. THEY WENT DOWN TO THE <del>RIGHT</del> <del>RIGHT</del> . WE WERE ON THE EAST OF THE ROAD CAMPED AT A LITTLE SPRING. THEY WENT DOWN TOWARDS THE ROAD AND FROM THERE STOPPED ; AND FROM THAT BODY I SAW THE FLAG CARRIED TOWARD THE EMIGRANT TRAIN. Q. WHAT KIND OF A FLAG? A. I COULD NOT TELL YOU TO SAVE MY SOUL, IT WAS ON A STICK. Q. DO YOU REMEMBER ITS COLOR? A. I DO N'T. IT WAS A LIGHT COLOR; I COULD SEE IT WAS A FLAG. SOMETHING ON A POLE LIKE AN EMBLEM. WE SAW SOME OF</p>	
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250. Could be “EAST” or “WEST”; consonant is “ST”; there are no vowels or initial “W”, which Rogerson frequently omits.

**RT**

**RS**

**BT**

**PS**

<p>INDIVIDUAL COME FROM THE CAMP AND MEET THIS FLAG AND THE INDIVIDUAL SAT DOWN ON THE GROUND AND TALKED FOR QUITE A WHILE, THEN THEY WENT TO THE CAMP, AS NEAR AS I CAN REMEMBER THE WHOLE PARTY, AND THERE WAS A LAPSE OF TIME. Q. STATE WHAT YOU MEAN — WHAT PARTY ? A. THE TWO INDIVIDUALS. Q. ARE YOU CERTAIN THERE WERE ONLY TWO ? A. I THINK THERE WAS ONLY TWO. Q. AND THEY WENT WHERE ? A. TO THE EMIGRANT CAMP; THERE WAS SOMETIME SPENT THERE, AN HOUR OR MORE, PERHAPS TWO HOURS. Q. WHERE WERE THE WHITE PERSONS THAT</p>	<p>INDIVIDUAL COME FROM CAMP MEET THIS FLAG AND INDIVIDUAL SAT DOWN <sup>[[39]]</sup> ON GROUND AND TALKED FOR QUITE WHILE., THEN THEY WENT TO THE CAMP AS NEAR AS I CAN REMEMBER THE WHOLE PARTY; AND THERE WAS LAPSE OF TIME. Q. STATE YOU MEANT WHAT PARTY {A}P TWO INDIVIDUALS ARE YOU CERTAIN THERE WERE ONLY TWO A I THINK THERE WAS ONLY TWO Q THEY WENT WHERE A TO THE EMIGRANT CAMP THERE WAS SOMETIME SPENT THERE GOOD HOUR OR MORE PERHAPS TWO HOURS Q WHERE WERE THE WHITES PERSONS THAT</p>	<p>THEM COME FROM THE CAMP AND MEET THIS FLAG; AND THEN THEY SAT DOWN ON THE GROUND AND TALKED WITH THEM; THEN THEY WENT TO THE CAMP AND NEAR AS I CAN REMEMBER — THE WHOLE PARTY AND THERE WAS A LAPSE OF TIME. Q. STATE WHAT YOU MEAN — WHAT PARTY? A. THE TWO INDIVIDUALS. Q. ARE YOU CERTAIN THERE WERE ONLY TWO? A. I THINK THERE WAS ONLY TWO. Q. THEY WENT WHERE? A. TO THE EMIGRANT CAMP. THERE WAS SOME STANDING THERE AN HOUR OR MORE, PERHAPS TWO HOURS. Q. WHERE WERE THE WHITE PERSONS THAT</p>	
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**BT**

**PS**

<p>MARCHED DOWN THAT YOU HAVE SPOKEN OF IN THE MEAN TIME ? A. THEY WERE STILL STOPPING BY THE ROAD SIDE. AFTER WE GOT INTO THE CORRALL THEY REMAINED THERE TWO HOURS. Q. WHAT WAS NEXT DONE ? A. THE FIRST THING WE SAW THEN WAS SOME WAGONS BEING LOADED. Q. LOEADED UP WITH WHAT ? A. I DON'T KNOW; I WAS AT LEAST A MILE DISTANT; I COULD NOT TELL Q. WHAT WAS IT LIKE ? A. THE WAGONS CAME IN SIGHT OF THE CAMP, BUT WHETHER THEY WERE TAKEN <sup>[236]</sup> THERE OR WHETHER THERE WERE SOME OF</p>	<p>MARCHED DOWN YOU HAVE SPOKEN OF IN THE MEANTIME A THEY WERE STILL STATIONARY ON ROAD SIDE AFTER THEY GOT INTO CORRAL THEY REMAINED TWO HOURS Q WHAT WAS NEXT DONE {A}P FIRST THING WE SAW THEN WAS SOME WAGONS BEING LOADED  UP WITH WHAT ? AI <i>DON'T/DIDN'T[?]</i> I WAS AT LEAST MILE DISTANT COULD NOT TELL QWHAT WAS IT LIKE A WAGONS CAME IN SIGHT OF CAMP BUT WHETHER THEY WERE TAKEN THERE OR WHETHER THERE WERE SOME OF</p>	<p>MARCHED DOWN YOU HAVE SPOKEN OF, IN THE MOUNTAIN MEADOWS. A. THEY WERE STILL STATIONARY, BY THE ROAD; STAYED AFTER THEY GOT INTO THE RCORRAL — REMAINED TWO HOURS. Q. WHAT WAS NEXT DONE? A. NEXT THING WE SAW THEN, WAS SOME WAGONS BEING LOADED. <del>WITH WHAT</del> Q. UP WITH WHAT? A. I DIDN'T SEE, I WAS AT LEAST A MILE DISTANT, COULD NOT TELL. Q. WHAT WAS IT LIKE? A. WAGONS CAME IN SIGHT, OF THE CAMP; BUT WHETHER THEY WERE TAKEN OR WHETHER THEY WERE SOME OF THE</p>	
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**RT**

**RS**

**BT**

**PS**

<p>THE WAGONS BELONGING TO THE EMIGRANTS I DO NOT KNOW.</p>	<p>WAGONS BELONGED TO EMIGRANTS I DO NOT KNOW,</p>	<p>WAGONS THAT BELONGED TO THE EMIGRANTS, I DON'T KNOW;</p>	
<p>DOWN ROAD THERE WAS HORSE TEAMS THESE WAGONS WERE LOADED APPARENTLY. Q. YOU COULD SEE THERE WAS SOME COMMOTION GOING ON ? A. YES, AND AFTER WHILE THESE WAGONS</p>	<p>THESE WAGONS WERE LOADED APPARENTLY. Q YOU COULD SEE THERE WAS SOME COMMOTION GOING ON {YES SIR}<sup>P</sup> AND AFTER WHILE THESE WAGONS</p>	<p>AT ANY RATE THERE WAS TEAMS AND THESE TEAMS WERE LOADED APPARENTLY. Q. A<del>N</del>D YOU SAY THERE WAS SOME COMMOTION GOING ON? A. YES, SIR, WHILE THESE WAGONS WERE</p>	
<p>STARTED OUT AND AFTER THE WAGONS WE SAW THAT THE PEOPLE WERE COMING OUT, AND THEY FOLLOWED ON RIGHT AFTER THE WAGONS. Q. IN WHAT ORDER DID THEY COME OUT ? A. I DO NOT KNOW AT THE TIME TILL THEY CAME NEARER, AS THE DISTANCE FROM WHERE WE WERE AT THE TIME WAS TOO FAR HOW</p>	<p>STARTED OUT, AND AFTER THE WAGONS WE SAW THAT THE PEOPLE WERE COMING OUT AND THEY FOLLOWED ON AFTER RIGHT AFTER THE WAGONS Q IN WHAT ORDER DID THEY COME OUT A I DO NOT KNOW AT THE TIME UNTIL THEY CAME NIGHER AS THE DISTANCE FROM WHERE WE WERE TO THE CAMP WAS TOO FAR</p>	<p>STARTING OUT; AND AFTER THE WAGONS WE SAW THAT THE PEOPLE WERE COMING OUT AND THEY FOLLOWED ON RIGHT AFTER THE WAGONS. Q-IN WHAT WAY DID THEY COME OUT ? <sup>[66]</sup> A. I DIDN'T KNOW AT THE TIME UNTIL THEY CAME NIGHER, AS THE DISTANCE FROM WHERE WE WERE TO THE CAMP WAS TOO FAR</p>	

**RT**

**RS**

**BT**

**PS**

<p>TO TELL; AS THEY DREW NEARER THAT WAS WITHIN ABOUT A HALF A MILE OR LITTLE LESS WE COULD THEN SEE THE WOMEN WERE IN FRONT AND THE WAGONS AND MEN AFTER THEM. THIS IS THE ARRANGEMENT THAT THEY CAME OUT OF THE CAMP, TOWARDS THIS SQUAD OF WHITEMEN. Q. DID YOU SEE ANY CHILDREN OR MEN IN THE WAGONS ? A. I COULD NOT SEE DISTINCTLY, OR TELL WHETHER IT WAS INDIVIDUALS OR NOT, THEY ARRIVED WHERE THIS PARTY OF MEN WAS STATIONED AND THEY THEN WALKED RIGHT ON,</p>	<p>BEYOND TO TELL; AS THEY DREW NEARER, THAT WAS WITHIN ABOUT A HALF A MILE OR LITTLE LESS, WE COULD THEN SEE WOMEN WERE IN FRONT AFTER THE WAGONS AND MEN AFTER THEM. THIS IS THE ARRANGEMENT THAT THEY CAME OUT OF CAMP TOWARDS THIS SQUAD OF WHITE MEN Q DID YOU SEE ANY CHILDREN OR WOMEN IN WAGONS A I COULD NOT YET DISTINCTLY TELL WHETHER IT WAS INDIVIDUALS OR NOT, THEY ARRIVED WHERE THIS PARTY OF MEN WERE STATIONED AND THEY THEN WALKED RIGHT ON AFTER THEM</p>	<p>TO TELL. AS THEY DREW NEAR, THAT WAS WITHIN ABOUT A HALF A MILE OFR A LITTLE LESS; WE COULD THEN SEE THE WOMEN WERE IN FRIONT AFTER THE WAGONS AND THE MEN FOLLOWED THE <del>ME</del> THEM. THAT IS THE ARRANGEMENT THAT THEY CAME OUT OF THE CAMP TOWARDS T HE SQUAD OF WHITE MEN. Q. DID YOU SEE ANY CHILDREN OR MEN IN THE WAGONS? A. I COULD NOT DISTINCTLY STATE WHETHER IT WAS INDIVIDUALS OR NOT. THEY Z ARRIVED WHERE THESE PEOPLE, MEN WERE STATIONED; AND THEN WALKED RIGHT ON WITH THEM.</p>	
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**RT**

**RS**

**BT**

**PS**

<p>PASSING OUR CAMP</p> <p>AT A RIGHT ANGLE FROM WHERE WE WERE AND GOING ON THE ROAD TOWARDS HAMBLIN'S RANCH, GOING NORTH OR NEARLY S.O THEY PASSED RIGHT ON AND IN TEN OR FIFTEEN MINUTES, MAY BE TWENTY MINUTES AFTER THEY PASSED THE RIGHT ANGLE OF THE ROAD WE HEARD A VOLLEY OF SHOTS THAT CAUSED OUR ATTENTION, TO LOOK MORE CLOSELY, TOWARDS THE COMPANY AND WE SAW IT WAS ONE CLOUD OF SMOKE, AT THE SAME TIME WE SAW THE INDIANS RUSH UPON THEM AND ALL WAS</p>	<p>THEY WERE THEN PASSED OUR CAMP = PASSED RIGHT ANGLE FROM WHERE WE WERE; GOING ON THE ROAD TOWARDS HAMBLIN'S RANCH GOING NORTH OR NEARLY SO, THEY PASSED RIGHT ON AND IN TEN 15 MINUTES MAYBE 20 MINUTES AFTER THEY PASSED RIGHT ANGLE OF ROAD, WE HEARD VOLLEY OF SHOTS; THAT CAUSED OUR ATTENTION TO LOOK MORE CLOSELY TOWARDS THE COMPANY, AND WE SAW IT WAS ONE CLOUD OF SMOKE, AT THE SAME TIME WE SAW INDIANS RUSH UPON THEM AND ALL WAS</p>	<p>THEY WERE THEN PAST OUR CAMP — <del>PAST AT</del> PASSED AT RIGHT ANGLES FROM WHERE WE WERE, GOING ON THE ROAD TOWARDS HAMBLIN'S RANCH — GOING NORTH OR NEARLY SO. THEY PASSED RIGHT ON AND IN TEN OR FIFTEEN MINUTES — MAY BE 20 MINUTES AFTER THEY PASSED AT <del>THE</del> RIGHT ANGLE OF THE ROAD WE HEARD A VOLLEY OF SHOTS. THAT CAUSED OUR ATTENTION TO LOOK MORE CLOSELY TOWARD THE COMPANY AND WE SAW IT WAS ONE CLOUD OF SMOKE. † AT THE SAME TIME WE SAW THE INDIANS RUSH UPON THEM AND ALL WAS</p>	
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**RT**

**RS**

**BT**

**PS**

<p>COMMOTION AND</p> <p>YOU COULD NOT SEE WHAT WAS DONE, THERE W&amp;AS A PERFECT COMMOTION, EVERYTHING SEEMED LIKE IN DISORDER, WITH THE YELLS OF THE INDIANS; YOU COULD JUST FAINTLY HEAR THEM AND WE CONCLUDED THE THING WAS CONSUMMATED AND NONE OF THEM WOULD <sup>[237]</sup> BE PERMITTED TO ESCAPE. Q. THAT WAS DONE THEN, WHAT DID YOU SEE AFTER THAT A. I THINK THERE WAS SOME ORDER GIVEN AND AFTER SOMETIME ELAPSED WE SAW THE INDIANS RUSHING FOR THE WAGONS IN THE MASS, AND</p>	<p>COMMOTION IT WAS JUST ALL WHILE, YOU COULD NOT SEE WHAT WAS DONE IT WAS A PERFECT COMMOTION <i>EVERYTHING</i>[?] SEEMINGLY IN <i>DISORDER</i>[?]</p> <p>YELLS OF INDIANS = COULD JUST FAINTLY HEAR THEM AND WE CONCLUDED THE THING WAS CONSUMMATED NONE OF THEM WOULD BE PERMITTED TO ESCAPE Q THAT WAS DONE THEN WHAT DID YOU SEE AFTER THAT A THEN AFTER THAT THERE WAS SOME <sup>[[40]]</sup> RATHER TWO HOURS I GUESS</p> <p>ELAPSED AND WE SAW THE INDIANS RUSH FOR THE WAGONS IN MASS AS</p>	<p>COMMOTION.. IT WAS JUST ALL THE WHILE, YOU COULD NOT HEAR WHAT WAS DONE. IT WAS A PERFECT COMMOTION, EVERYTHING SEEMINGLY IN DESPERATE</p> <p>YELLS OF INDIANS — COULD JUST FAINTLY HEAR THEM, AND WE CONCLUDED THE THING WAS CONSUMATED AND NONE OF THEM WOULD BE PRERMITTED TO ESCAPE. Q. WHAT WAS TH DONE THEN? WHAT DID YOU SEE AFTER THAT? A. THEN AFTER THAT THERE WAS SOME — RATHER TWO HOURS</p> <p>LAPSED AND WE SAW THE INDIANS RUSH TO THE WAGONS IN MASS ANSD</p>	
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**RT**

**RS**

**BT**

**PS**

<p>WE SUPPOSED IT WAS FOR THE PLUNDER. Q. LET ME CALL YOUR ATTENTION BACK TO THAT SHOT — DID YOU SEE ANY PERSONS FALL ? A. NO, WE <del>DO</del> DIDN'T,</p> <p>THE DISTANCE WAS TOO FAR TO SEE ANY OF THEM FALL. WHEN THE INDIANS STARTED ALL WAS STILL, THEY CONTINUED THEIR JOURNEY TOWARDS HAMBLIN'S AND WENT OUT OF SIGHT. Q. WAS THIS FIRING BEFORE OR AFTER THE INDIANS MADE THE ATTACK ? A. I COULD NOT TELL.</p> <p>Q. HOW FAR AWAY WERE THE INDIANS AT</p>	<p>WE SUPPOSED IT WAS FOR THE PLUNDER. Q. LET ME CALL YOUR ATTENTION BACK TO THAT SHOT DID YOU SEE ANY PERSONS FALL A. NO WE DIDN'T COULD NOT DISTANCE TOO FAR TO SEE ANY INDIVIDUAL FALL Q. WHEN THE INDIANS STARTED ALL WAS STILL, THEY CONTINUED THEIR JOURNEY TOWARDS HAMBLIN'S WENT OUT OF SIGHT. Q. WAS THOSE SHOTS FIRED BEFORE OR AFTER INDIANS MADE ATTACK A. I COULD NOT TELL SHOTS WERE WHAT CALLED OUR ATTENTION FIRST. Q. HOW FAR AWAY WERE INDIANS AT</p>	<p>WE SUPPOSED IT WAS FOR THE PLUNDER. Q. LET ME CALL YOUR ATTENTION BACK TO THAT SHOT. DID YOU SEE ANY PERSONS FALL? A. NO, <del>S</del> I DIDN'T — COULD NOT. THE DISTANCE WAS TOO FAR TO SEE ANY OF THEM FALL. WHEN THE INDIANS STARTED ALL WAS STILL. THEY CONTINUED THEIR JOURNEY TOWARDS HAMBLIN'S AND WENT OUT OF SIGHT. <sup>[67]</sup> Q. WAS THIS FIRING BEFORE OR AFTER THE INDIANS MADE THE ATTACK? A. I COULD NOT TELL. THE SHOOTING IS WHAT CALLED OUR ATTENTION FIRST. Q. HOW FAR AWAY <del>WERE</del> WERE THE INDIANS AT</p>	
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**RT**

**RS**

**BT**

**PS**

<p>THE TIME YOU FIRST SAW THEM ? A. THEY WERE RIGHT ON THE COMPANY; THE INDIANS RUSHED IN FROM THE RIGHT, THE INDIANS RUSHED RIGHT IN FROM THE RIGHT, FROM AN ELEVATION, SOMETHING LIKE THEY WERE CAMPED AROUND AND CAME IN FROM THE HILLS, CAMPING CLOSE TO THE ROAD. Q. AFTER THE FIRING DID YOU GO UPON THE GROUNDROUND ? A. NOT THEN, NOT TILL THE NEXT DAY. Q. DESCRIBE WHAT YOU SAW THERE ? A. I SAW THE BODIES OF MEN, WOMEN AND CHILDREN BUTCHERED IN THE MOST HORRIBLE MANNER. SOME OF THE CHILDREN HAD THEIR</p>	<p>TIME YOU FIRST SAW THEM A THEY WERE RIGHT ON COMPANY INDIANS RUSHED IN MADE A RUSH  {=}<sup>i</sup> INDIANS RUSHED RIGHT IN FROM RIGHT FROM ELEVATION, SEEMINGLY  CAME AROUND IN FROM THE HILLS CAME CLOSE TO ROAD Q. AFTER {THE}<sup>i</sup> FIRING DID YOU GO UPON GROUND NOT THEN NOT UNTIL NEXT DAY Q. DESCRIBE WHAT YOU SAW THERE {A}<sup>p</sup> I SAW THE BODIES OF MEN WOMEN AND CHILDREN BUTCHERED IN MOST HORRIBLE MANNER SOME OF CHILDREN THEIR</p>	<p>THE TIME THAT YOU FIRST SAW THEM? A. THEY WERE RIGHT ON BEHIND; THE INDIANS RUSHED IN FROM THE RIGHT — THE INDIANS RUSHED RIGHT IN FROM A THE RIGHT FROM AN ELEVATION;  CAME AROUND IN FROM THE HILLS. CAME CLOSE TO THE ROAD. Q. AFTER THE FIRING DID YOU GO UPON THE GOUND? A. NOT THEN, NOT TILL THE NEXT DAY. Q. DESCRIBE WHAT YOU SAW THERE? A. I SAW THE BODIES OF MEN, WOMEN AND CHILDREN, BUTCHERED IN THE MOST HORRIBLE MANNER. SOM E OF THE CHILDREN <b>WITH</b> THEIR</p>	
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**RT**

**RS**

**BT**

**PS**

<p>HEADS CRUSHED IN BY ROCKS, I SUPPOSE. Q. DID YOU LOOK MUCH AT THEIR WOUNDS TO SEE HOW THEY WERE ALL KILLED A. ; I DID NOT. <sup>[238]</sup> Q. WHAT DID YOU GO UP THERE FOR ? A. WE WENT TO HELP BURY THE BODIES. Q. WHAT DID YOU DO ? A. WE BURIED THE BODIES OF ALL WE COULD FIND. Q. HOW WAS IT DONE ? A. THE LITTLE SQUAD I WAS WITH IT WAS HARD</p> <p>TO GET THEM IN VERY DEEP WITHOUT DIGGING THE GROUND, WHICH WAS VERY HARD; IT WAS IMPOSSIBLE FOR US TO DIG IT. WE FOUND</p>	<p>HEADS WERE CRUSHED IN BY ROCKS I SUPPOSE Q WELL TO LOOK AFTER THEIR WOUNDS TO SEE HOW THEY WERE ALL KILLED A I DID NOT WHAT DID YOU GO UP THERE FOR A WENT TO HELP BURY BODIES. Q WHAT DID YOU DO WE BURIED BODIES ALL WE FIND HOW Q WAS IT DONE <i>THEY[?]</i> A LITTLE SQUAD I WAS WITH WE FOUND THE MOST NATURAL LOCALITY TO GET THEM IN PRETTY DEEP WITHOUT DIGGING GROUND WAS VERY HARD IT WAS IMPOSSIBLE FOR US TO DIG IT WE FOUND NATURAL</p>	<p>HEADS <del>WERE</del> MASHED IN BY ROCKS, I SUPPOSE. Q. WELL, DID YOU LOOK AT THEIR WOUND<del>S</del> TO <del>±</del>SEE HOW THEY WERE ALL KILLED? A. I DIDN<del>±</del> NOT? Q. WHAT DID YOU GO UP THERE FOR A. I WENT TO HELP BURY THE BODIES. Q. AND QWHAT DID YOU DO? A. WE BURIED THE BODIES ALL WE COULD FIND. Q. THEN WHAT WAS DONE? A. THE LITTLE SQUAD I WAS WITH, WE FOUND THE MOST NATURAL LOCALITY TO GET THEM I<del>H</del>N PRETTY DEEP. Q- WE DUG THE GROUND AND FOUND IT WAS VERY HARD; IT WAS IMPOSSIBLE FOR US TO DIG IT. WE FOUND <del>N</del>O NATURAL</p>	
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**RT**

**RS**

**BT**

**PS**

<p>CAVITIES AND LOW PLACES; THERE WAS A DEPOSIT</p> <p>OF DIRT, IN ORDER TO KEEP THEMSELVES SAFE FROM THE WOLVES.</p> <p>Q. YOU DIDN'T BURY THEM ALL SEPARATE ?</p> <p>A. NO, ONLY IN TWO PLACES THAT WE BURIED, WHERE THERE WAS THREE OR FOUR PUT TOGETHER, GENERALLY IN PLACES THAT WE COULD WE PUT THEM IN SEPARATE</p> <p>Q. HOW DEEP WERE THEY COVERED ? A. FOUR FEET GENERALLY OF DIRT PUT ON THEM, PUT IN A WASH MOST OF THEM — WHAT WOULD BE TERMED A WASH.</p> <p>CROSS - EXAMINED BY SUTHERLAND.</p>	<p>CAVITIES LOW PLACES THERE WAS <i>DEPOSIT</i>[?] HERE AND PUT ON DIRT ENOUGH TO KEEP THEM SAFE FROM THE WOLVES</p> <p>Q DIDN'T BURY THEM ALL SEPARATE ONE OR TWO PLACES</p> <p>WHERE THERE WAS 3 OR 4 PUT TOGETHER GENERAL THING AS FAR AS WE COULD, WE PUT THEM IN SEPARATE</p> <p>Q HOW DEEP WERE THEY COVERED A 4 FEET GENERALLY OF DIRT PUT ON THEM IN WASH MOST OF THEM, WHAT WOULD BE TERMED A WASH.</p> <p><b>XEXAMINED</b> BY CAREY YOU CAN TAKE THE WITNESS</p>	<p>CAVITIES <del>OR</del> &amp; LOW PLACES</p> <p>TO DEPOSIT THEM AND WE PUT ON DIRT ENOUGH TO KEEP THEM SAFE FROM THE WOLVES.</p> <p>Q. YOU DIDN'T BURY THEM SEPARATELY?</p> <p>A. IN ONE OR TWO PLACES</p> <p>WHERE THERE WAS THREE OR FOUR PUT TOGETHER — GENERALLY IN PLACES WHERE WE COULD, WE PUT THEM IN SEPARATELY.</p> <p>Q. HOW DEEP WERE THEY COVERED? A. FOUR FEET GENERALLY OF DIRT PUT ON THEM</p> <p>IN WHAT WOULD BE TERMED A WASH, MOST OF THEM. CROSS-EXAMINATION BY M<sup>R</sup> SUTHERLAND.</p>	
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**RT**

**RS**

**BT**

**PS**

<p>Q. DID YOU KNOW THE NAMES OF ANY OF THE EMIGRANTS ? A. I DID NOT KNOW. Q. STATE HOW MANY THERE WERE ALTOGETHER ? A. THAT I COULD NOT SAY, BUT I SHOULD JUDGE IN THE NEIGHBORHOOD OF A HUNDRED. Q. WHEN YOU SAW THE INDIANS AFTER THE SLAUGHTER GOING TOWARDS THE WAGONS AFTER THE SLAUGHTER, WERE YOU NEAR ENOUGH TO SEE THEM INDIVIDUALLY ? A. NOT TO KNOW THEM, I KNEW THEY WERE INDIANS. <sup>239</sup> ✓<sup>251</sup> Q. YOU COULD NOT INDIVIDUALIZE</p>	<p>DID YOU KNOW NAMES OF ANY OF THESE EMIGRANTS A I DID NOT KNOW <i>I HAVE</i> NOT DID YOU STATE HOW MANY THERE WERE ALTOGETHER THAT I COULD NOT SAY I SHOULD JUDGE I NEIGHBORHOOD OF HUNDRED &lt;100&gt; SUTHERLAND WHEN YOU SAW INDIANS AFTER SLAUGHTER GOING TOWARDS WAGONS AFTER SLAUGHTER WERE YOU NEAR ENOUGH TO SEE THEM INDIVIDUALLY A NOT TO KNOW THEM I KNEW THEY WERE INDIANS Q YOU COULD &lt;NOT&gt; INDIVIDUALIZE</p>	<p>Q. STATE ANY OF THE NAMES OF ANY OF THOSE EMIGRANTS? A. I DON'T KNOW.Q.  STATE HOW MANY THERE WERE ALL TOGETHER? A. THAT I COULD NOT SAY, I SHOULD JUDGE IN THE NEIGHBORHOOD OF A HUNDRED. Q. WHEN YOU SAW THE INDIANS AFTER THE SLAUGHTER GOING TOWARDS THE WAGONS — AFTER THE SLAUGHTER, WERE YOU NEAR ENOUGH TO SEE THEM— ANY OF THEM? A. NOT TO KNOW THEM; I KNEW THEY WERE INDIANS. Q. CAN YOU GIVE US AN IDEA—</p>	
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251. In the left margin.

**RT**

**RS**

**BT**

**PS**

<p>THEM, GIVE THE BEST IDEA YOU CAN OF THEIR NUMBER ? ✓<sup>252</sup> A. WELL I SHOULD JUDGE BETWEEN FOUR AND FIVE HUNDRED. Q. DURING THE TWO OR THREE DAYS THAT YOU WERE THERE PRECEDING THIS SLAUGHTER STATE WHETHER THERE WAS MORE OR LESS FIRING NIGHT AND DAY BETWEEN THE EMIGRANTS OR SOMEBODY ELSE, IF SO BETWEEN WHOM ? A. AS FAR AS I COULD SEE I COULD STATE THAT THE FIRING WAS KEPT UP DURING THE</p>	<p>THEM, GIVE THE BEST IDEA YOU CAN OF THEIR NUMBER<sup>253</sup> <i>[[Bk 5</i> <i>1]]</i><sup>254</sup> <i>[space]</i> A SHOULD JUDGE BETWEEN 4 AND FIVE HUNDRED <i>ONLY</i>[?]. DURING THE TWO OR THREE DAYS THAT YOU WERE THERE PRECEDING THIS SLAUGHTER STATE WHETHER THERE WAS SOME <i>[page torn]</i> FIRING NIGHT AND DAY BETWEEN EMIGRANTS AND SOMEBODY ELSE AND IF SO BETWEEN WHOM A AS FAR AS I SAID <i>CAN STATE</i>[?] THAT THE FIRING KEPT UP <i>[page</i> <i>torn]</i></p>	<p>GIVE US THE BEST IDEA YOU CAN OF THEIR NUMBER. <sup>168]</sup> A. WELL, I SHOULD JUDGE BETWEEN FOUR AND FIVE HUNDRED Q. DURING THE THREE DAYS YOU WERE THERE PRECEDING THIS SLAUGHTER, STATE WHETHER THERE WAS THE ANY SAME FIRING  BETWEEN THE EMIGRANTS AND SOMEBODY ELSE, IF SO BETWEEN WHOM? A.  THERE WAS A KIND OF A FIRING KEPT UP DURING THE</p>	
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252. In the left margin.

253. At the bottom of page: **TRANSCRIBED MAR 1/88 FOR COOK.**

254. There are no page numbers written in Book 5. This first page is dirty, torn and very difficult to read. Written out at the top of Book 5 page 1 in between shorthand lines in longhand: **TUESDAY JULY 27, 1875 BOOK NO. 5 MORNING SESSION CONTINUED BOOK NO. 5 SAMUEL POLLOCK TESTIMONY, JNO SHERRETT (MUTE) GEO. W. BRADSHAW R. KERSHAW E.C. MATTHEWS.**

**RT**

**RS**

**BT**

**PS**

<p>DAY WE ARRIVED THERE. WE ARRIVED THERE PRETTY EARLY DURING THE DAY. AT THIS PLACE WHERE WE CAMPED THE FIRING KEPT UP AT INTERVALS ALL THE DAY FROM THE SURROUNDING HILLS AND FROM THE EMIGRANT CAMP. Q. THE FIRING UPON THE EMIGRANTS WAS BY WHAT PERSON OR PERSONS ? A. WE SUPPOSED IT WAS THE INDIANS. WE KNEW NOTHING TO THE CONTRARY.</p> <p>Q. DID YOUR PARTY FIRE AT THEM THEN ? A. NOT A SHOT, NOT AT ALL, WE NEVER DREAMED OF</p>	<p>DAY WE ARRIVED THERE WE ARRIVED THERE PRETTY EARLY DURING DAY AT THIS PLACE WHERE WE CAMPED, FIRING KEPT UP INTERVALS ALL DAY AND [<i>page torn</i>] SURROUNDING HILLS AND FROM THE EMIGRANT CAMP [<i>space</i>] THE FIRING UPON EMIGRANT WAS BY WHAT  PERSONS, WE SUPPOSED IT WAS THE INDIANS WE KNEW NOTHING TO CONTRARY</p> <p>DID YOUR PARTY FIRE UPON THEM A NOT A SHOT NOT AT ALL WE NEVER DREAMED OF</p>	<p>DAY — DURING THE DAY WE ARRIVED THERE. WE ARRIVED THERE PRETTY EARLY DURING THE DAY, AT THIS PLACE WHERE WE CAMPED. FIRING WAS KEPT UP AT INTERVALS ALL THE DAY</p> <p>AND FROM THE EMIGRANTS CAMP. Q. FIRING UPON THE EMIGRANTS WAS BY WHAT  PERSONS? A. WE SUPPOSED IT WAS THE INDIANS,—WE KNEW NOT TO THE CONTRARY. <del>WE</del> &amp; WE SUPPOSED IT WAS THEINDIANS FIRING UPON THEM. Q. DID YOUR PARTY FIRE UPON <del>THEM THE</del>? A. NOT A SHOT, NOT A<del>T</del> ALL. WE NEVER DREAMED OF</p>	
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**RT**

**RS**

**BT**

**PS**

<p>SUCH A THING. Q. YOU SAY YOU WERE SUMMONED TO GO OUT THERE</p>	<p>SUCH A THING. YOU SAY YOU WERE SUMMONED TO GO OUT THERE</p>	<p>SUCH A THING. Q. YOU SAY <del>W</del>YOU WERE SUMMONED TO GO OUT THERE?</p>	
<p>BY CURITS, WHERE WERE YOU WHEN YOU WERE SUMMONED TO GO ? A. I WAS TO WORK IN MY SHOP IN CEDAR CITY. Q. WHAT WAS THE SUMMONS ? A. MY ORDERS WERE—THE LIEUTENANT CAME INTO MY SHOP AND SAYS HE THERE IS NEWS COME IN THAT THE INDIANS HAVE ABOUT MASSACRED THAT COMPANY OF EMIGRANTS THAT PASSED THROUGH HERE A FEW DAYS SINCE AND WE WANT TO RAISE A POSSE TO GO OUT AND SAVE THE LIVES OF THEM THAT REMAIN, AND IF POSSIBLE BURY THE</p>	<p>BY CURITS WHERE WERE YOU WHEN YOU WERE SUMMONED TO GO I WAS TO WORK IN MY SHOP IN CEDAR CITY Q WHAT WAS THE SUMMONS A MY ORDERS WERE THE LIEUTENANT CAME INTO SHOP SAYS HE THERE IS NEWS COME IN THAT THE INDIANS HAVE ABOUT MASSACRED THAT COMPANY OF EMIGRANTS THAT PASSED THROUGH HERE FEW DAYS SINCE AND WE WANT TO RAISE A POSSE TO GO OUT AND SAVE LIVES OF THEM THAT REMAIN AND IF POSSIBLE AND BURY THE</p>	<p>A. YES, SIR. Q. BY WHOM? A. BY CURTIS. Q. WHERE WERE YOU WHEN YOU WERE SUMMONED TO GO THERE? A. I WAS AT WORK IN MY SHOP IN CEDAR CITY. Q. WHAT WAS THE SUMMONS? A. MY ORDERS WERE— LIEUTENANT CAME INTO THE SHOP, AND SAYS HE, “THERE IS INFORMATION COME IN THAT THE INDIANS HAVE ABOUT MASSACRED THAT COMPANY OF EMIGRANTS THAT PASSED THROUGH HERE A FEW DAYS SINCE, AND WE WANT TO RAISE A POSSEE TO GO OUT AND SAVE THE LIVES OF THEM WHAT REMAINS IF POSSIBLE, AND BUTRY THE</p>	

**RT**

**RS**

**BT**

**PS**

<p>DEAD, I WANT YOU TO GO AND ARM YOURSELF WITH A GUN AND GET EITHER A PICK OR A SHOVEL OR EITHER ONE OF THESE AND GO PREPARED TO DO WHAT WAS NECESSARY; IN ONE HOUR YOU ARE REQUIRED TO BE <sup>[240]</sup> READY IF POSSIBLE IF YOU CAN; THIS WAS IN THE EVENING; THESE WERE THE ORDERS I RECEIVED; I WENT TO WORK AND WAS ON THE GROUND READY TO GO A LITTLE BEFORE DARK. Q: WHEN YOU ARRIVED AT THE MOUNTAIN MEADOWS WHY DIDN'T YOU PROCEED IMMEDIATELY TO RELIEVE THE EMIGRANTS ? A. I DO NOT KNOW.</p>	<p>DEAD. WANT YOU TO GO ARM YOURSELF WITH GUN GET <math>\Leftarrow</math>EITHER<math>\Rightarrow</math> PICK OR SHOVEL OR —[?] ONE OF THESE TWO AND GO PREPARED TO DO WHAT WAS NECESSARY. IN ONE HOUR YOU ARE REQUIRED TO BE READY IF YOU CAN. THIS R[?] IN <i>EVENING</i>[?] THOSE WERE ORDERS I RECEIVED I COMPILED WITH THEM WAS ON THE —[?] GROUND READY TO GO A LITTLE BEFORE DARK. WHEN YOU ARRIVED AT MOUNTAIN MEADOWS WHY DIDN'T YOU PROCEED IMMEDIATELY TO RELIEF OF EMIGRANTS A I DO NOT KNOW</p>	<p>DEAD. I WANT YOU TO GO <del>ARMED</del> AND ARM YOURSELVES WITH A GUSN AND GET EITHER A PICK OR A SHOVEL; OR SEND SOMEONE THAT IS PREPARED TO GO. IN ONE HOUR YOU ARE <math>\emptyset</math>REQUIRED TO BE READY IF YOU <math>\forall</math>CAN". THIS WAS IN THE AFTERNOON. THEY WERE THE ORDERS I RECEIVED AND I COMPLIED WITH THEM; SO WE WERE ON THE GROUND READY TO GO A LITTLE BEFORE DARK. Q. WHEN YOU ARRIVED AT THE MOUNTAIN MEADOWS, WHY DIDN'T YOU PROCEED IMMEDIATELY TO RELIEVE THE EMIGRANTS? A. I DON'T KNOW</p>	
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**RT**

**RS**

**BT**

**PS**

<p>WE WENT THERE AND CAMPED, EXPECTING THAT SOMEBODY ELSE THAT WAS THERE OR IN THAT VICINITY WOULD COME TO US. BASKIN OBJECTED TO WHAT HE EXPECTED.</p> <p>Q. STATE WHETHER ANY EXPLANATION TO YOU, OR COMMUNICATION AS TO WHY THEY WERE TO GO THERE, OR; IF IT WAS GIVEN WHILE YOU WERENTHERE ?</p> <p>A. THE COMMUNICATION ONLY</p>	<p>WE WENT THERE AND CAMPED EXPECTING THAT SOMEBODY ELSE THAT <del>WAS</del> THERE OR IN THAT VICINITY WOULD COME TO US BASKIN WE OBJECT WHAT HE EXPECTED WHEN IN CROSS EXAMINATION <i>WE[?]</i> ONLY NOW EXAMINE THIS WITNESS AS TO FACTS WHAT OCCURRED.</p> <p>SUTHERLAND STATE WHETHER ANY EXPLANATION OF YOUR INTENTION FACT <i>FOR IT/FIGHT[?]</i> TO DO GIVEN WHILE YOU WERE THERE {A}<sup>P</sup>THE COMMUNICATION ONLY</p>	<p>WE WENT THERE AND CAMPED EXPECTING THAT SOMEBODY ELSE WAS THERE OR <sup>[69]</sup> IN THAT VICINITY AND WOULD COME TO UES. BY MR. BASKIN: WE OBJECT TO WHAT HE EXPECTED AND <b>IT IS NOT AS</b> CROSS-EXAMINATION. WE ONLY EXAMINED THIS WITNESS AS TO THE FACTS THAT OCCURRED. <b>M<sup>R</sup></b> SOUTHERLAND : STATE WHETHER YOU HAD ANY COMMUNICATI ON WITH THEM.</p> <p>A. THE COMMUNICATION ONLY</p>	
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**RT**

**RS**

**BT**

**PS**

<p>OCCURRED ON ONE DAY. Q. DID YOU SEE MR. LEE THERE ? A. NOT THAT DAY. Q. WHEN DID YOU FIRST SEE HIM ? A. THE NEXT DAY AS NEAR AS I CAN REMEMBER, I THINK IT WAS IN THE MORNING, BUT I DO NOT KNOW. Q. WHO CAME WITH HIM ? A. SOME INDIANS CAME WITH HIM; WHILE WE WAS THERE THERE WAS TWO CHIEFS CAME WITH HIM. Q. DO YOU SPEAK THEIR LANGUAGE ? A. NO, NOT ANY. Q. DID YOU HAVE A TALK WITH LEE THEN AND WITH THE INDIANS ? BASKIN: WE OBJECT.</p>	<p>OCCURRED ONE DAY<sup>255</sup> Q DID YOU SEE MR. LEE THERE A NOT THAT DAY WHEN DID YOU I SAW HIM {A}P NEXT DAY AS NEAR AS I CAN REMEMBER I THINK IT WAS IN MORNING BUT I DO NOT KNOW WHO CAME WITH HIM &lt;SOME INDIANS CAME WITH HIM&gt; <del>SOMEBODY</del> ELSE CAME WHILE. WE WAS THERE WAS TWO CHIEFS CAME WITH LEE Q DID YOU SPEAK THEIR LANGUAGE NO NOT ANY. DID YOU HAVE TALK WITH LEE THEN AND WITH THE INDIANS {BASKIN}P &lt;BASKIN&gt; OBJECTED. SINCE</p>	<p>OCCURRED ONE DAY. Q. DID YOU SEE MR. LEE THERE? A. NOT THAT DAY. Q. WHEN DID YOU SEE HIM? A. NEXT DAY; AS NEAR AS I CAN REMEMBER, I THINK IT WAS IN THE MORNING, BUT I DON'T KNOW. I <del>CAME T HE</del> CAME THAT MORNING AND SOME OF THE INDINAS CAME WITH HIM, AND SOMEBODY ELSE CAME WITH HIM.. THERE WAS TWO CHIEFS CAME WITH HIM. Q. DO YOU SPEAK THEIR LANGUAGE? A. NO, NOT MUCH.. Q. DID THEY TALK WITH LEE THEN AND WITH THE INDIANS. BY MR. BASKIN: I OBJECT. THIS</p>	
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255. Word added later.

**RT**

**RS**

**BT**

**PS**

<p>SUTHERLAND:</p>	<p>QUESTION OF DISCUSSION WAS PUT BEFORE I THINK RULE ON CROSS-EXAMINATION <sup>[[2]]</sup>256 FURNISH[?] LAW AND IT IS THIS IT IS RULE STATED BY SUPREME COURT OF THE UNITED STATES TO BE SOLELY USED THAT PARTY HAS NO RIGHT CROSS EXAMINE ANY WITNESS EXCEPT AS TO FACTS CIRCUMSTANCE S CONNECTED/GIVEN[?] STATED IN DIRECT EXAMINATION GREENLEAF ON EVIDENCE THAT IS NOT LEGITIMATE CROSS EXAMINATION. SUTHERLAND THERE IS NO DISPUTE BETWEEN —[?] AS TO THAT THE RULE WHAT THE UNITED STATES RULE IS THE CROSS</p>	<p>QUESTION IS WAS NOT PUT BEFORE AND IT IS NOT CROSS-EXAMINATION. ARGUED BY COUNSEL ON BOTH SIDES.</p>	
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256. “**COMPARED TRANSCRIBED**” in longhand at the top of the page.

**RT**

**RS**

**BT**

**PS**

<p>Q. WE ARE TRYING TO FIND OUT WHAT WAS DONE AT THE MOUNTAIN MEADOWS— ALL THAT WAS DONE BY THE INDIANS AND WHAT WAS DONE BY THE [241] WHITES.</p>	<p>EXAMINATION BE CONFINED TO SUBJECT MATTER OF EXAMINATION IN CHIEF IT WAS WHAT WAS DONE AT MOUNTAIN MEADOWS</p> <p>SUBSTANCE OF THE CONVERSATION WITNESS HAD DETAILED CONVERSATION ON CROSS EXAMINATION WOULD IT BE ADMISSIBLE TO BRING OUT FURTHER THINGS SAID IN THE SAME CONVERSATION THAN WOULD HAVE BEEN CALLED OUT EXAMINATION CHIEF MYSELF MOST CERTAINLY THAT IS THE OBJECT OF IT IT IS SUPPOSED CROSS EXAMINATION IT IS —[?] AND[?]</p>		
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**RT**

**RS**

**BT**

**PS**

	<p>THE PARTY CROSS EXAMINES FOR THE PURPOSE OF BRINGING OUT TRANSACTION MORE BOLDLY THAN IT WAS BROUGHT OUT IN EXAMINATION CHIEF AND THE WIDEST LATITUDE IS ALLOWED HE MENTIONED MATTER INQUIRED INTO UNLESS CROSS EXAMINATION GOES TO THIS EXTENT IT IS NOT IN VIOLATION STATE MATTER INQUIRED IN CHIEF AS I REMARKED BEFORE IS WHAT TOOK PLACE AT THE MOUNTAIN MEADOWS IT DID NOT CONSIST EVEN IN VIEW OF PROSECUTION OF WHAT JOHN D. LEE ALONE DID HE HAS ASSUMED <i>HE/SHOULD[?]</i> HAVE WITNESS ON THE STAND</p>		
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**RT**

**RS**

**BT**

**PS**

	<p>WHAT EVERYBODY DID THERE BELONGED TO PARTY JOHN D. LEE ACTED WITH THEY ARE ACCUSED OF ACTING IN CONCERT THEREFORE ONE IS RESPONSIBLE FOR WHAT EVERY ONE DID. ALL THAT WAS DONE THERE SHALL BE <i>BEFORE[?]</i> THIS JURY <i>WERE/WHERE[?]</i> ACTING IN CONCERT IT INCLUDES THEIR ACTS AND QUALIFYING DECLARATIONS WE SEEK TO INQUIRE OF THIS WITNESS WHAT TOOK PLACE THERE IN THAT BROAD SENSE. BASKIN IN ANSWER TO THAT I HAVE SIMPLY THIS TO SAY, GENTLEMAN ASSERTS CROSS EXAMINATION IS CONFINED TO THE SUBJECT MATTER GENTLEMAN</p>		
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**RT**

**RS**

**BT**

**PS**

	<p>NEVER AS MUCH[?] TALK/TOOK[?] ANNOUNCED[?] ANYTHING BACK COULD NOT HAVE[?] WHILE[?] AS TO LAW[?] THIS EXCEEDS ANY REASON AND GROWS OUT OF RULE ITSELF [space] CROSS EXAMINATION IS CONFINED SUBJECT MATTER DRAWN OUT IN CHEF UNDER THE RULE THE GENTLEMAN STATES IT THERE COULD NOT BE ANY LIMITS IT WOULD DESTROY ALL THE LIMITS UPON CROSS EXAMINATION RULE NO REASON AND WHILE I DO NOT NOW HAVE IN MY MIND ANY BECAUSE I HAVE HEARD WHAT ESTABLISHED TALK[?] ANY REASON LIMITATION IS CROSS EXAMINATION</p>		
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**RT**

**RS**

**BT**

**PS**

	<p>MUST BE CONFINED TO THE SUBJECT MATTER DRAWN OUT THERE BY THE EXAMINATION IN CHIEF THE GENTLEMAN ASSERTS HERE RULE IT IS <i>TENDS[?]</i> TO WHOLE SUBJECT MATTER <i>COVERED[?]</i> CONTROVERTS. ALL WE HAVE ASKED THIS WITNESS IS THE ACTS DONE. THEN IT <i>DEPRIVES[?]</i> VERY IMPORTANT AND THAT IS ADVANTAGE OF CROSS EXAMINATION IT IS OBJECTIONABLE ON THAT <sup>[13]</sup> GROUND MORE PARTICULARLY. BISHOP I WISH SIMPLY TO CALL ATTENTION TO THIS AUTHORITY PAGE "131" <b>ROSCOES</b> CRIMINAL EVIDENCE I UNDERSTAND &lt;GENTLEMAN&gt;</p>		
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**RT**

**RS**

**BT**

**PS**

	<p>TO SAY JUDGE SUTHERLAND MISSTATES LAW THE WITNESS MAY BE QUESTION ON ANY POINT FOR THE PURPOSE OF <i>SETTLE</i>[?] AS TO IS CAPABLE TO ANSWER QUESTIONS AND GIVE TESTIMONY PROCEEDED READ STILL FURTHER. ON PAGE <u>131</u> NOTE WHEN ATTORNEY CAN'T EXAMINE WITNESS. A PARTY MAY CROSS EXAMINE AS TO RES GESTAE PROVIDED IT MAY BE NEW MATTER WE CLAIM IN THIS CASE THIS IS PART RES <del>RAES</del> GESTAE EVERY THING CONNECTED WITH TRANSACTION THEY HAVE ASKED HIM REGARD EVERY FACT AND ASKED HIM HOW HE CAME TO GO THERE WENT BY</p>		
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**RT**

**RS**

**BT**

**PS**

	<p>ORDERS NOW THEN WE ARE CERTAINLY ENTITLED THEN TO KNOW EVERY WORD THAT WAS SAID AT THAT TIME WHEN HE LEFT CEDAR CITY TO GO TO THE FIELD ANOTHER THING WE ARE CERTAINLY ENTITLED ABOUT TO KNOW INCLUDE WHAT WAS DONE BY HIM FROM TIME HE LEFT CEDAR CITY UNTIL HE GOT TO CAMP ALL THAT HAS BEEN SLIPPED OVER BY PROSECUTION THEY ARE CALLING EVIDENTLY HERE TO GET CERTAIN EVIDENCE BY THIS WITNESS. WE HAVE RIGHT TO GET THING HEARD BY PARTIES SHOWING MOTIVES OF PARTIES ASKING HIM TO GO THING HE HEARD GOING AND ALL HIS</p>		
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**RT**

**RS**

**BT**

**PS**

	<p><i>MEANS/MASS</i>[?] OF INFORMATION SO JURY MAY DRAW THEIR OWN INFERENCES AS TO WHETHER HE SAW THAT HE <i>PRETENDED/PERTAIN</i>[?] TO DETAIL OR NOT CLAIM IT IS PART OF RES GESTAE EVERYTHING SET DOWN THAT FOLLOW SUCH PART OF PROSECUTION AS ACTS OF VIOLENCE USED AGAINST THEM. BY COURT I HAVE ANSWERED THIS QUESTION BEFORE DIFFERENTLY SEEMS BY BASKIN. <i>BY BISHOP</i> OUR IDEA IS THIS THE ORDERS THAT CAUSED THE ACTS ARE PART OF ACTS THEMSELVES. SUTHERLAND ENGLISH RULE IS SUSTAINED AS TO ANY <i>RISK</i>[?] CROSS EXAMINATION</p>		
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**RT**

**RS**

**BT**

**PS**

	<p><i>THEN/THERE[?]</i> MAY QUESTION ABOUT WHOLE CAUSE WHEREVER WITNESS IS CONCERNED ABOUT THAT HE IS NOT ASKED QUESTION HE IS GIVEN ADVANTAGE OF CROSS EXAMINATION AND BELIEVE AMERICAN <i>D-K/D-G[?]</i> IS NOT SO BROAD AS THAT THE UNITED STATES RULE IS THE RULE LAID DOWN BY SUPREME COURT OF THE UNITED STATES CROSS EXAMINATION SHALL BE LIMITED SUBJECT MATTER OF EXAMINATION IN CHIEF THAT IS THE UNITED STATES RULE AS I UNDERSTAND IT I BELIEVE I HAVE GIVEN IT CONSIDERABLE ATTENTION. BY COURT I AM ACCUSTOMED TO THEIR RULE</p>		
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**RT**

**RS**

**BT**

**PS**

<p>COURT: I WILL MAKE THE SAME RULING AS I DID BEFORE.</p> <p>SUTHERLAND: PLEASE NOTE OUR EXCEPTION.</p>	<p>AND LIKE IT, —[?] NR/KR/CAREY[?] IS ONE WILL GO UP AS THIS IS LIKELY TO GO SUPREME COURT OF THE UNITED STATES. BY COURT I WILL MAKE SAME RULING AS I DID AS ON OTHER MATTER I DID AS WHEN THE SAME POINT IS RULED AND ONCE IT IS I THINK IT WOULD BE SUFFICIENT. SUTHERLAND ANSWERED AS TO HIS RULING. SUTHERLAND NOTED</p> <p>EXCEPTION. <del>BASKIN IN THIS</del> SUTHERLAND DID I UNDERSTAND YOUR HONOR TO RULE NOTHING THAT WAS SAID IN TRANSACTION IS TO BE INTRODUCED <sup>[[4]]</sup> BY COURT YES SIR NOTHING OF THAT KIND IS TO BE CALLED OUT. IT IS VERY</p>	<p>OBJECTION SUSTAINED.</p>	
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**RT**

**RS**

**BT**

**PS**

	<p>DIFFICULT FOR US CROSS EXAMINATION TO ANY ADVANTAGE UNDER THAT RESTRICTION I WILL ONLY CROSS EXAMINE IN RESPECT TO ONE PART OF TRANSACTION AFTER SLAUGHTER WHAT WAS DONE WITH WAGONS AND PROPERTY THERE BY BASKIN THAT IS POINT OF MY OBJECTION BECAUSE WE ASKED NO QUESTIONS ABOUT THAT ? I DO NOT OBJECT I THINK THEY WOULD HAVE RIGHT TO PROVE WHAT WAS DONE BY THIS WITNESS BUT WE HAVE RIGHT TO CROSS EXAMINE. SUTHERLAND ANSWERED COURT INTERFERED SUTHERLAND REMARKED WE <i>SAY</i> <i>ABOUT/ASKED[?]</i></p>		
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**RT**

**RS**

**BT**

**PS**

<p>Q. STATE WHAT WAS DONE THERE AT THAT TIME TO WHICH I CALLED YOUR ATTENTION TO LAST ? A. AS I STATED THE INDIANS WERE RUNNING VERY FAST IN EVERY DIRECTION BUT WE DIDN'T KNOW EXACTLY WHERE. Q. STATE WHAT ELSE THEY WERE DOING ? A. UNLESS THEY WERE PACKING OFF SOMETHING</p> <p>OR HEADING IT OFF I DON'T KNOW—UNLESS THEY WERE. TOWARDS EVENING OF THAT DAY THE</p>	<p>THOSE WAGONS DON'T KNOW WHETHER IT WAS PART OF EMIGRANT WAGONS WHICH WERE LOADED <i>OFF</i>[?] OR WAGONS BROUGHT THERE [space] QAS TO WHAT WAS DONE AT THE TIME</p> <p>AS I STATED INDIANS RUSHING VERY FAST IN EVERY DIRECTION WE DIDN'T KNOW {EXACTLY}<sup>P</sup> WHAT <del>q</del></p> <p>ELSE THEY WERE DOING THERE, UNLESS THEY WERE PACKING OFF SOMETHING</p> <p><i>DEPOSITING</i>[?] OR HIDING IT {I DON'T KNOW}<sup>P</sup></p> <p>TOWARDS EVENING OF THAT DAY</p>	<p>Q. STATE WH AT WAS DONE AT THE TIME?</p> <p>A. I STATED THAT THE INDIANS WERE RUNNING FROM EVERY DIRESECTION. WE DIDN'T KNOW EXACTLY WHAT</p> <p>THEY WERE <del>G</del>DOING UNLESS THEY WERE PACKIN<del>F</del>G OFF SOMETHING AND DEPOSITING AND HIDGING IT. I DON'T KNOW. <del>Q.</del> TOWARDS EVENING <b>OF</b> THAT DAY, <b>THE</b></p>	
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**RT**

**RS**

**BT**

**PS**

<p>WHITE MEN WAS THERE,</p> <p>SMITH AND HIGBEE, THEY ORDERED SOME OXEN TO BE BROUGHT UP AND THEY WENT AND DROVE IN ENOUGH TO HAUL THE WAGONS AND TEAMS, THEY WERE GOT TOGETHER; THE WAGONS WERE STARTED ON THE ROAD AND TAKEN TO CEDAR CITY. Q. BY WHOSE DIRECTIONS ? A. BY P. K. SMITH'S. I UNDERSTOOD IT AT THE TIME TO BE UNDER HIS SUPERVISION. Q. WHO TOOK THEM ? A. THESE WHITE MEN FROM CEDAR CITY, I WENT WITH THEM. Q. TELL WHETHER SMITH WENT WITH YOU ? A. I THINK HE DID. I</p>	<p>WHITE MEN THAT WAS</p> <p>WITH SMITH HIGBEE; THEY ORDERED SOME OXEN TO BE BROUGHT UP, ASKED</p> <p>DRIVE IN ENOUGH TO HAUL WAGONS TEAMS. THEY WERE GOT TOGETHER WAGONS WERE STARTED ON ROAD TAKEN CEDAR CITY Q BY WHOSE DIRECTIONS A BY P K SMITH'S, I UNDERSTOOD IT AT THE TIME &lt;UNDER HIS SUPERVISION&gt; Q WHO TOOK THEM A THOSE WHITE MEN FROM CEDAR CITY I WENT WITH THEM {Q}P TELL WHETHER SMITH WENT WITH YOU OR NOT AI THINK HE DID SO = I</p>	<p>WHITE MEN THAT WE SAW WERE <del>WERE</del> <del>WITH THEM,</del> , SMITH, — HAGBEE — THEY ORDERED SOME OXEN TO BE BROUGHT UP, AND THE HERDERS DROVE IN ENOUGH TO HAUL THE WAGONS AND TEAMS. THEN WE GOT TOGETHER THE WAGONS, AND WE STARTED ON THE ROAD TO GO TO CEDAR CITY. Q. BY WHOSE DIRECTIONS? A. BY P.K.SMITHS. I UNDERSTOOD IT SO AT THE TIME:- —UNDER HIS SUPERVISION. Q. WHO TOOK THEM? A. THESE WHITE MEN FROM CEDAR CITY. I WENT <del>WITH</del> WITH THEM. Q. TELL WHETHER SMITH WENT WITH YOU OR NOT. [70] A. I THINK HE DID SO, I</p>	
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**RT**

**RS**

**BT**

**PS**

<p>UNDERSTOOD HE DID. Q. STATE WHETHER HE DIDN'T HAVE THE DIRECTION OF THE PARTY THAT WENT WITH THOSE WHO TOOK THESE WAGONS ? A. I UNDERSTOOD SO. Q. WASN'T IT A FACT THAT WHAT WAS DONE WAS DONE UNDER HIS DIRECTIONS <sup>[242]</sup> IN TAKING THESE WAGONS TO CEDAR CITY ? A. YES SIR.</p> <p>COURT: I WANT TO ASK THIS WITNESS ONE QUESTION. Q. YOU SAY WHEN THE INDIANS CAME DOWN NEAR TO OR ABOUT THE WAGONS THEY JUST KEPT RIGHT ON—</p>	<p>UNDERSTOOD HE DID STATE WHETHER HE DIDN'T HAVE DIRECTION OF THE PARTY THAT WENT WITH THOSE THAT TOOK THESE WAGONS <i>AROUND[?] A</i> UNDERSTOOD IT SO. <del>IS NOT</del> WASN'T THAT A <del>FACT</del> <del>FACT</del> THAT WHAT WAS DONE WAS DONE UNDER HIS DIRECTION IN TAKING THESE TEAMS TO CEDAR CITY {YES SIR}<sup>P</sup>. BY SUTHERLAND THAT IS ALL FROM THIS WITNESS. BY COURT I WANT JUST ASK THIS WITNESS ONE QUESTION. <del>COURT</del> YOU SAY WHEN INDIANS CAME DOWN NEAR OR ABOUT THE WAGONS JUST KEPT RIGHT ON</p>	<p>KNOW HE DID. Q. STATE WHETHER HE DID HAVE DIRECTION OF THE PARTY THAT WENT <del>WITH</del> WITH THESE, THAT TOOK THOSE WAGONS AROUND? A. I UNDERSTOOD IT SO. Q. ISNT <del>THAT IT</del> THE FACT THAT WHAT WAS DONE, WAS DONE UNDER HIS DIRECTION IN TAKING THESE TEAMS TO CEDAR CITY? A. YES, SIR. Q. BY MR. SUTHERLAND: THAT IS ALL FROM THIS WITNESS. Q. BY THE COURT: I JUST WANT TO ASK THIS WITNESS ONE QUESTION. YOU SAY WHEN THE INDIANS CAME DOWN AND WENT THERE ABOUT THE WAGONS —&amp; JUST GO RIGHT ON —</p>	
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**RT**

**RS**

**BT**

**PS**

<p>DID THE INDIANS GO TOWARDS THESE WAGONS ? A. I COULD NOT SAY WHETHER THE WAGONS KEPT ON OR MADE A HALT. I COULD NOT SAY,</p> <p>I WAS A DISTANCE OFF FROM THE WAGONS, BUT THE WAGONS WENT RIGHT AHEAD TOWARDS HAMBLIN'S RANCH. AFTER THE THING WAS DONE THE INDIANS DIDN'T MOLEST THE WAGONS; A DISTANCE OF FROM THREE OR FOUR MILES. THERE WERE WAGONS THAT CEME FROM THE EMIGRANT TRAIN. THEY DIDN'T ATTACK THE TRAIN</p>	<p>{Q}P DID {THE}1 INDIANS GO TOWARDS THOSE WAGONS {A}P I COULD NOT SAY WHETHER WAGONS KEPT ON OR MADE HALT, I COULD NOT SAY.</p> <p>I WAS DISTANCE FROM THERE BUT WAGONS WENT AHEAD TOWARDS HAMBLIN'S RANCH. AFTER THING WAS DONE THE INDIANS DIDN'T MOLEST WAGONS = A DISTANCE OF 3 OR 4 MILES, THOSE WERE WAGONS THAT CAME FROM EMIGRANT TRAIN THEY DIDN'T ATTACK THE TRAIN.</p>	<p>DID THE INDIANS GO TOWARDS THESE WAGOHWNS? A. I COULD NOT SAY WHETHER THE WAGONS KEPT ON THE ROAD OR MADE A HALT. I COULD NOT SAY WHETHER THE WAGONS KEPT ON THE ROAD OR MADE A HALT. I WAS OFF A DISTANCE BUT THE WAGONS WENT AHEAD TOWARDS HAMBLIN'S RANCH. AFETDER THE THING WAS DONE THE INDIANS DIDHNA'T MOLEST THE WAGONS. A DISTANCE OF THREE OF FOUR MILES — THESE WERE THE WAGONS THAT CAME FROM THE ENMIGRABNT TRAIN. THEY DIDN'T ATTACK THE TRAIN..</p>	
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**RT**

**RS**

**BT**

**PS**

<p>THEN. Q. WERE ANY OF THE PERSONS TAKEN OUT OF THESE WAGONS KILLED ? A. NOT THAT I KNOW OF. Q. WERE YOU NEAR ENOUGH TO TELL ? A. NO SIR, I WASN'T NEAR ENOUGH TO TELL. Q. WHAT OCCURRED WITH THE WAGONS ? A. I DON'T KNOW, WE SAW NO MORE OF THEM AFTER EVERYTHING WAS STILL. Q. HOW LONG WAS THAT AFTER THE FIRST FIRING WHEN THEY FIRST STARTED FROM THE WAGONS ? A. TWO OR THREE HOURS PERHAPS. Q. SO THEY HAD TIME AFTER THE FIRST FIRING TO PURSUE THESE WAGONS AND TO DESTROY ALL THE PERSONS THAT</p>	<p>Q WERE ANY PERSONS TAKEN OUT OF THOSE WAGONS AND KILLED A NOT THAT I KNOW OF. Q WERE YOU NEAR ENOUGH TO TELL A NO SIR I WASN'T NEAR ENOUGH TO TELL WHAT OCCURRED WITH THE WAGONS A I DON'T KNOW; WE SAW NO MORE OF THEM AFTER EVERYTHING WAS STILL. HOW LONG WAS THAT AFTER THE FIRST FIRING, WHEN THEY FIRST STARTED TO THE WAGONS A 2 OR 3 HOURS PERHAPS. A Q SO THEY HAD TIME AFTER THE FIRST FIRING TO PURSUE THOSE WAGONS &lt;&amp;&gt; TO DESTROY ALL PERSONS THAT</p>	<p>Q. WERE ANY OF THESE PERSONS TAKEN OUT OF THESE WAGONS AND KILLED? A. NOT THAT I KNOW OF. Q.. WERE YOU NEAR ENOUGH TO TELL? A. NO, SIR, I WAS NOT NEAR ENOUGH TO TELL. WJHAT OCCURRED WITH THE WAGONS? A. I DON'T KNOW. WE SAW NO MORE OF THEM AFTER EVERYTHING WAS STILL. Q. HOW LOJNG WAS THAT AFTER THE FIRST FIRING , WHEN THEY FIRST STARTED TO THE WAGONS? A. TWO OR THREE HOURS PERHAPS.. Q. DSO THEY HAD T IME AFTER THE FIRST FIRING TO PURSUE THESE WAGONS AND DESTROY ALL PERSONS THAT</p>	<p></p>
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**RT**

**RS**

**BT**

**PS**

<p>WERE IN VIEW; ?  A. I DON'T  KNOW ABOUT  THAT, BUT I  THINK  THERE WAS  TIME  ENOUGH. Q.  HOW WERE  THE INDIANS  ARMED ? A.  ARMED WITH  GUNS,  DIFFERENT  KINDS OF  GUNS, BOWS  AND ARROWS, I  SHOULD <sup>[243]</sup>  JUDGE FROM  WHAT I SAW  AND THAT  CAME WITHIN  MY SIGHT.  THERE WAS  ENOUGH</p> <p>OF THEM HAD  GUNS. Q.  ABOUT THEIR  BOWS AND  ARROWS,  STATE  WHETHER THEY  ARE WEAPONS  SUFFICIENT TO  TAKE LIFE OR  NOT ? A. THOSE  THAT CARRIED  GUNS ALSO  CARRIED BOWS  AND ARROWS.  Q. STATE  WHETHER</p>	<p>WERE IN THEM  NO  QUESTION  ABOUT  {FIRING}<sup>p</sup> THAT  THERE WAS  TIME <sup>[15]</sup>  ENOUGH. Q  HOW WERE  THOSE INDIANS  ARMED  A ARMED WITH  GUNS,  DIFFERENT  KINDS OF  GUNS. BOWS  AND ARROWS; I  SHOULD  JUDGE FROM  WHAT I SAW =</p> <p>CAME WITHIN  MY SIGHT;  THERE WAS  ENOUGH</p> <p>OF THEM HAD  GUNS Q  ABOUT THEIR  BOWS  ARROWS =  STATE  WHETHER THEY  ARE WEAPONS  SUFFICIENT TO  TAKE LIFE  A THOSE  THAT CARRIED  GUNS ALSO  CARRIED BOWS  AND ARROWS  Q STATE  WHETHER</p>	<p>WERE IN THEM-?  A. THERE IS NO  QUESTION  ABOUT  THAT. I THINK  THERE WAS  TIME  ENOUGH. Q.  HOW WERE  THESE INDIANS  ARMED? A.  ARMED WITH  GUNS —  DIFFERENT  KINDS OF  GUNS-, BOWS  AND ARROWS. I  SHOULD  JUDGE FROM  WHAT I SAW, —  THAT  CAME WITHING  MY SIGHT,  THERE WAS  ENOUGH OF  THEM HAD  GUNS ONE HALF  OF THEM HAD  GUNS.. Q.  ABOUT THEIR  BOWS AND  ARROWS:  STATE  WHETHER THEY  ARE WEAPONS  SUFFICIAENT TO  TAKE LIFE?  A . YES, SIR. <sup>[71]</sup>  THEY CARRIED  GUNS, ALSO  CARRIED BOWS  AND ARROWS.  Q. STATE  <b>WHETHER</b></p>	
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**RT**

**RS**

**BT**

**PS**

<p>THEY WERE WEAPONS SUFFICIENT TO TAKE LIFE ? A. WHY SOME OF THEM COULD, EITHER ONE OF THEM WOULD BE APT TO GET A</p> <p>MAN. _____ Q. AT A DISTANCE OF TWENTY FIVE YARDS</p> <p>I HAVE SEEN THEM SHOOT</p> <p>Q. WERE THE INDIANS SKILLFUL IN THE USE OF THEM ? A. THEY GENERALLY ARE AS FAR AS I HAVE SEEN. IT IS THEIR GENERAL DEPENDENCE FOR LIFE AND THEY ARE GENERALLY PRETTY SKILLFUL. Q. YOU BEING THERE AT THE TIME, OR NEARLY SO, STATE WHETHER YOU</p>	<p>THEY WERE WEAPONS SUFFICIENT TO TAKE LIFE A WHY CERTAINLY THEY COULD = EITHER ONE OF THEM WOULD &lt;GO&gt; RIGHT THROUGH A MAN AT A DISTANCE OF 25 YARDS, FROM THE &lt;WAY&gt; POWER I HAVE SEEN THEM SHOOT AT THEIR REQUEST</p> <p>Q WERE THE INDIANS SKILLFUL AT THE USE OF THEM A THEY GENERALLY ARE AS FAR AS I HAVE SEEN; IT IS THEIR DEPENDENCE FOR A LIVING; THEY ARE GENERALLY PRETTY SKILLFUL TO BE SURE. &lt;THEY CAN&gt; KILL YOU WHERE THEY CAST IT STATE WHETHER YOU</p>	<p>THEY WERE WEAPONDS SUFFICIENT TO TAKE LIFE? A. WHY, CERTAINLY THEY <del>COULD</del> WERE. EITHER ONE OF THEM WOULD GO RIGHT THROUGH A MAN AT A DISTANCE OF 25 YARDS FROM THE WAY THAT I HAVE SEEN THEM SHOOT AT OTHER ARTICLES. Q. WERE THE INDINAS SKILLFUL IN THE USE OF THEM? A. THEY GENERALLY ALL Y ARE SO FAR AS I HAVE SEEN; IT IS THEIR DEPEBNDÆENCE FOR A LIVING. THEY ARE GENERALLY PRETTY SKILLFUL. Q. WHEN YOU SAW THE BODIES THERE , COULD YOU TELL</p>	
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**RT**

**RS**

**BT**

**PS**

<p>SAW THAT THEY WERE WOUNDED WITH ARROWS OR NOT ? A. I COULD NOT SAY. Q. YOU BURIED THE DEAD ? A. I HELPED TO BURY SOME OF THEM. Q. DID YOU PULL ANY ARROWS OUT OF THE DESTROYED PERSONS ? A. NO, I DID NOT. Q. DID YOU SEE ANY ARROWS ON THE GROUND—WAS THE GROUND COVERED WITH ARROWS ? A. YES,</p> <p>SCATTERED HERE AND AROUND AMONG THE BODIES. Q. DID YOU BURY THE WOMEN OR MEN ? A. BOTH. Q. AND YOU FOUND ARROWS SCATTERED OVER THE GROUND WHERE YOU FOUND THE <sup>[244]</sup></p>	<p>SAW WHETHER THEY WERE WOUNDED WITH ARROWS  <sup>A</sup>I COULD NOT SAY <sup>Q</sup>YOU BURIED THE DEAD <sup>A</sup>I HELPED TO BURY SOME OF THEM <sup>Q</sup>DID YOU PULL ANY ARROWS OUT OF DECEASED PERSONS <sup>A</sup> NO I DID NOT <sup>Q</sup> DID YOU SEE ANY ARROWS ON THE GROUND YES THE GROUND WAS COVERED WITH ARROWS YES SIR</p> <p><sup>A</sup>SCATTERED {THICK}<sup>P</sup> HERE AND THERE AROUND AMONG THE BODIES <sup>Q</sup>DID YOU BURY THE WOMEN OR MEN <sup>A</sup>BOTH <sup>Q</sup> FOUND ARROWS SCATTERED OVER THE GROUND WHERE YOU FOUND</p>	<p>WHETHER THEY <b>WERE</b> WOUNDED WITH ARROWS?  A. I COULD NOT SAY. Q. YOU BURIED THE DEAD? A. I HE<del>P</del>LPE<del>D</del>D TO BURY SOME OF THEM.. Q. DID YOU PULL ANY ARROWS OUT OF THE DECEASED PERSONS? A . NO, I DIDN'T.. Q. DID YOU SEE ANY ARROWS ON THE GROUND—YOU SAY THE GROUND WAS COVERED WITH ARROWS? A. YES, SIR, THEY WERE SCATTERED THICK HERE AND THERE AROUND AMONG THE BODIES. Q. DID YOU BURY THE WOMEN AND MEN , A. BOTH. Q. AND FOUND ARROWS SCATTERED OVER THE GROUND WHERE YOU FOUND</p>	
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**RT**

**RS**

**BT**

**PS**

<p>MEN ? A. YES SIR.</p> <p>Q. WERE THEY FOUND WITH THE DEAD BODIES THAT YOU FOUND, OR WERE THE ARROWS SCATTERED MORE OR LESS ?</p> <p>A. THEY DIDN'T SEEM TO TAKE TIME TO GATHER THEM.</p> <p>WHETHER THEY INTENDED TO GATHER THEM OR NOT I DON'T KNOW; PERHAPS THEY THOUGHT TO GATHER THEM THE <del>NEXT</del> ANOTHER DAY. [<i>space</i>]</p>	<p>MEN <sup>A</sup>YES SIR YES SIR TO BOTH;</p> <p>Q WHEREVER <del>WE</del> THEY FOUND DEAD BODIES = WE FOUND THAT THE ARROWS WERE SCATTERED : INDIANS</p> <p>DIDN'T SEEM TO TAKE TIME TO GATHER 'EM; AFTER THE THING WAS COMPLETE</p> <p>SOMETHING ELSE ON THEIR MIND</p> <p>WHETHER THEY INTENDED TO GATHER THEM OR NOT I DO NOT KNOW PERHAPS THEY THOUGHT THEY COULD GATHER THEM</p> <p>ANOTHER DAY. BY CAREY COURT PLEASE WE HAVE AN ACUTE DEAF AND DUMB MAN ONLY SHALL ASK ONE QUESTION OF</p>	<p>WOMEN? A. YES, SIR; <del>YES SIR</del> ALL OVER THEM.</p> <p>WHEREVER WE FOUND DEAD BODIES — WE <del>FOUNDED</del> THAT THE ARROWS WERE SCATTERED. THE INDIANS</p> <p>DIDN'T SEEM TO TAKE TIME TO GATHER THEM, AFTER THE THING WAS ACCOMPLISHED . THEY HAD SOMETHING ELSE IN THEIR MIND;</p> <p>WHETHER THEY INTENDED TO GATHER THEM OR NOT I DO NOT KNOW. PERHAPS THEY THOUGHT THEY WOULD GATHER THEM</p> <p>ANOTHER <del>G</del>DAY.. BY MR. CAREY: WE HAVE A MUTE — A DEAF AND <b>DUMB</b> <del>DUMB</del> MAN WE ONLY WISH TO ASK ONE QUESTION OF</p>	
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**RT**

**RS**

**BT**

**PS**

<p>[245] JOHN SHERRETT , SWORN FOR PROSECUTION. OF CEDAR CITY, DEAF AND DUMB, CAN READ AND WRITE WELL. CAREY WROTE OUT HIS QUESTION PRESENTED IT</p> <p>TO WITNESS, WHICH WAS READ BY COUNSEL FOR DEFENSE AND HANDED TO THE WITNESS. PROSECUTION WROTE OUT THE SEVERAL QUESTIONS FOLLOWING WHICH WERE EXAMINED BY COUNSEL FOR DEFENSE AND THEN SHOWN TO THE WITNESS, <del>TO</del> <del>WIT:</del></p>	<p>HIM HE CAN READ AND WRITE [space] <b>JOHN</b> <b><u>SHERRETT</u></b></p> <p><b>OF CEDAR CITY</b> DEAF AND DUMB CAN READ AND WRITE WELL. MR. CAREY WROTE OUT HIS QUESTIONS PRESENTED</p>	<p>HIM . HE CAN READ AND WRITE. [72] JOHN SHERRETT SWORN FOR THE PROSECUTION.</p> <p>( DEAF AND DUMB)</p> <p>( QUESTIONS WERE WRITTEN BY THE ATTORNEYS AND HANDED TO THE REPORTER WHO AFTER TAKING THEM DOWN</p> <p>HANDED THE <del>W</del>QUESTION TO THE WINTNESS</p> <p>WHO READ THEM AND</p>	
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**RT**

**RS**

**BT**

**PS**

<p>WHO WROTE OUT HIS ANSWERS TO THE SAME AS FOLLOWS, TO- WIT:</p> <p>Q. DID YOU SEE ANY PROPERTY OF THE EMIGRANTS AT THE MOUNTAIN MEADOWS IN THE TITHING OFFICE AT</p>	<p>THEM TO BISHOP SAID THEY WERE RESPECTING SALE OF PROPERTY AT CEDAR CITY. THE CLERK HANDED 'EM TO THEM IN WRITING. CAREY I HAVE SUBMITTED MY QUESTIONS TO THE DEFENSE. SHERRETT SAT DOWN AT PROSECUTION TABLE READ QUESTIONS AND ANSWERED THEM BY WRITING ANSWERS. CAREY QUESTIONS WE HAVE AGREED UPON ARE THESE Q DID YOU SEE ANY PROPERTY OF THE EMIGRANTS AT MOUNTAIN MEADOWS IN TITHING OFFICE</p>	<p>WROTE HIS ANSWER)</p> <p>Q . DID YOU SEE ANY PROPERTY OF THE EMIGRANTS AT THE MOUNTAIN MEADOWS AT THE TITHING OFFICE IN</p>	
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**RT**

**RS**

**BT**

**PS**

<p>CEDAR CITY ? A.          YES          SIR. Q. WAS          THERE AN          AUCTION AT          CEDAR CITY ? A.          YES. Q. WAS          THE          EMIGRANTS          GOODS SOLD          AT THIS          AUCTION A.          YES. Q. AT THIS          AUCTION ?          A. YES.          Q. WHO SOLD          THEM ? A. JOHN          D. LEE SOLD ME          A STOVE,          SHOVEL. Q. WHO          WAS THE          AUCTIONEER ?          A. I THINK JOHN          D. LEE, BUT I          DON'T          REMEMBER,</p> <p>BECAUSE I          COULD SEE          SO MANY OF          THEM IN THE          CROWD.</p>	<p>CEDAR CITY. A          ANSWER YES          SIR. WAS          THERE          AUCTION AT          CEDAR          YES. Q WAS          THE          EMIGRANTS'          GOODS SOLD          AT THIS          AUCTION A          YES.</p> <p>Q WHO SOLD          THEM. A JOHN          D. LEE SOLD ME          A STOVE          SHOVEL. WHO          WAS          AUCTIONEER          I THINK JOHN          D. LEE BUT I          DON'T          REMEMBER,</p> <p>BECAUSE I          CAN'T SEE          TOO MANY          &lt;IN A&gt;          CROWD HE          SAYS. &lt;BY          CAREY&gt; THAT IS          ALL WE WISH TO          SHOW. [space] <sup>[6]</sup>          BY BISHOP I DO          NOT THINK WE          SHALL WISH TO          EXAMINE THIS          WITNESS WE'LL          TAKE RECESS          UNTIL HALF          PAST TWO</p>	<p>CEDAR CITY? A.          YES,          SIR. Q. WAS          THERE AN          AUCTION AT          CEDAR? A.          YES. Q. WAS          THE          EMIGRANT'S          GOODAS SOLD          AT THIS          AUCTION? A.          YES.</p> <p>Q. WHO SOLD          THEM? A. JOHN          D. LEE SOLD ME          A STOVE          SHOVEL. HE          WAS          AUCTIONEER,          I THINK,          BUT I          DON'T          REMEMBER THE          GOODS</p> <p>BECAUSE I          CAN'T SAY—          TOO MANY          OF A          CROUD IN          THERE. BY MR .          CAREY: THAT IS          ALL I WISH TO          SHOW BY HIM..          NO CROSS-          EXAMINATION.</p> <p>RECESS TILL          HALF          PAST TWO</p>	
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**RT**

**RS**

**BT**

**PS**

<p>[246] TUESDAY, JULY 27TH 1875, 2:30 P.M.</p> <p>AFTER LENGTHY ARGUMENT AS TO THE ADMISSABLILIT Y OF EVIDENCE RELATING TO THE EXCITEMENT OF THE INDIANS FOR DAYS AND WEEKS PRECEDING THE MASSACRE, WHICH WAS OVERRULED BY THE COURT,</p>	<p>O'CLOCK. [space]</p> <p><b>TUESDAY AFTERNOON JULY 27 1875. 2 30 P M</b></p> <p>NAMES OF JURORS READ BY CLERK ALL PRESENT.</p> <p>BASKIN</p>	<p>O'CLOCK.. —O—</p> <p>TWO O'CLOCK.</p> <p>JURY ACALLED, ALL PRESENT.</p> <p>MR. BASKIN HERE RE- OPENED THE ARGUEMENT ON THE OBJECTION MADE TO QUESTION PUT BY COUNSEL FOR DEFENSE TO WITNESS POLLOCK IN WHICH HE WAS ASKED TO RELATE WHAT MR. LEE AND OTHERS SAID ON THE GROUND OF THE</p>	
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**RT**

**RS**

**BT**

**PS**

	<p>IF YOUR HONOR PLEASE CHAIRMAN ASKED US [<i>space</i>] AS THIS QUESTION CAME UP SPRANG RATHER UNEXPECTED HAVE HAD MAN <i>RS/RECESS</i>[?] OURSELVES TO COLLECT FEW CASES ILLUSTRATE THE RULE THERE SEEMS &lt;TO BE&gt; NO DIFFERENCE AS TO GENERAL PROPOSITION AS ESTABLISHED ≤BY≥ SUPREME COURT MANY OTHER STATES AND SO IN ITS APPLICATION I SHALL CALL YOUR HONOR'S ATTENTION</p>	<p>MOUNTAIN MEADOWS AT THE TIME OF THE MASSACRE. <b>THE COURT SUSTAINED M<sup>R</sup> BASKIN'S OBJECTION. COURT RULED IN VAVOR OF MR. BASKIN FOR PLAINTIFF.</b></p>	
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**RS**

TO *LANDERSBURG/LINDERBERG*[?] AGAINST **BORUM** FIFTH CALIFORNIA SYLLABUS READS THIS WAY 450 PAGE PARTY HAS NO RIGHT TO ASK WITNESS AS TO STATE FACTS ETC. BY COURT. WHY IS NOT THAT IN RELATION TO *ESTABLISHMENT/ST*[?]. 7 14TH CALIFORNIA 23 IN WHICH HE USE LANGUAGE AS STRONG AS IN THIS CASE. THIS CASE ILLUSTRATES FACTS TO WHICH *I*[?] APPLY. IT APPEARS  $\Leftarrow$ TO BE $\Rightarrow$  BE REQUIRED PERSON CONNECTING PERSON TO TRUTH WAS CALLED TO PROVE *STORY*[?] OF PROPERTY BY ONE *BORUN/BRN*[?] ON WHICH ATTACHMENT WAS LEVIED PERMITTED TO ASK WITNESS FOLLOWING QUESTION <sup>///</sup> STATE ALL CONVERSATION BETWEEN YOURSELF AND  $\Leftarrow$ **BORUN** $\Rightarrow$  BORUN BUT COMPLAINED AS TO CHARGE BY WHICH HE FELT TOWARDS ATTACHMENT AND WHAT WAS SAID IN REPLY THAT WAS ALL RELATED. *MENTIONED*[?] 14 POTTER  $\Leftarrow$ **POTTER** $\Rightarrow$  EXCEPTION UNITED STATES. READ FROM CALIFORNIA REPORT FOR 1855, HOUSTON AGAINST JONES FIRST *WLS/WILLOW'S*[?] SUPREME COURT REPORTS PAGE 702 FILED *DIFFERENT*[?] OPINION OF COURT *OCCASION*[?] OF JACKMAN RECOVERED CERTAIN PROPERTY STATUTE *COMMON*[?] *CONTRACTUS*[?] STATE OF CALIFORNIA POINT IN THIS CASE IS THIS THAT HE CALLED SUBSCRIBING WITNESS TO PROVE EXECUTION IT APPEARS SUBSCRIBING WITNESS TO DEED INTRODUCED WAS PRESENT IN COURT AT THE TRIAL AND WAS EXAMINED DEFENSE CLAIMED RIGHT TO EXAMINE HIM COURT LAID LIMITS FOR THAT PURPOSE THEY COULD NOT PROPERLY MAKE EXAMINATION RULE BINDING STATE EVIDENCE MUST BE LIMITED TO PREVIOUS EXAMINATION IN CHIEF. BASKIN IT TAKES AWAY FROM THEM RIGHT TO EXAMINE ON NEW MATTER. I READ FROM WHARTON'S BARBER'S CRIMINAL TRIAL PAGE. IF THESE GENTLEMEN WANT TO PROVE ANY OUTSIDE MATTER THEY MUST PUT HIM ON THE STAND THEREBY GIVE US RIGHT TO CROSS EXAMINATION OTHER QUESTION PERMIT US HERE ON SUBJECT OF WHAT IS PART OF RES GESTAE WHAT MAY OR MAY NOT PROVE IS PART OF RES GESTAE IS ANOTHER QUESTION BUT WHEN IT ARISES WE ARE PREPARED TO MEET THAT QUESTION. [space] SUTHERLAND YOUR HONOR PLEASE AUTHORITIES WHICH COUNCIL HAS REFERRED TO DOESN'T MODIFY OR TEND TO MODIFY RULE AS RECITED THIS FORENOON. THEY CONFIRM IT. I HAVE NOT CONTENDED THAT ON A CROSS EXAMINATION WE ARE AT LIBERTY TO DEPART FROM THE SUBJECT OF THE EXAMINATION IN CHIEF. IF COUNSEL MEANS BY THE LANGUAGE HE USED AND IF HE CONSIDERS THE DECISIONS TO WHICH HE REFERS AS MEANING <sup>[[7]]</sup> THAT ON CROSSEXAMINATION NO QUESTION CAN BE ASKED EXCEPT IN RESPECT TO PRECISE CIRCUMSTANCES ALLUDED BY THE WITNESS IN EXAMINATION IN CHIEF I RESPECTFULLY DENY THAT THE AUTHORITIES WILL BEAR ANY SUCH CONSIDERATION I DENY RULE THAT THE BOOKS LAY DOWN ANY SUCH RULE. THEY ALL SPEAK OF THE SUBJECT MATTER OF THE EXAMINATION IN CHIEF UNDERSTAND THE RULE TO BE THAT THE CROSS EXAMINATION SHALL BE LIMITED TO THAT MATTER AND OTHERS IMMEDIATELY CONNECTED WITH IT. TAKE THE CASE IN THE FIFTH OF

CALIFORNIA TO WHICH HE REFERS. A WITNESS WAS THERE CALLED TO EXAMINATION IN CHIEF IN RESPECT TO DELIVERY OF PROPERTY. IT WAS SOUGHT ON CROSS EXAMINATION TO PROVE CONVERSATION IN RESPECT TO THE INTENT TO  $\leftarrow^*$  DEFRAUD CREDITORS THAT WAS VIOLATION OF THE SUBJECT EXAMINATION IN CHIEF THE DEGREE OF RULE AS I CONSIDERED IT TO BE THAT CROSS EXAMINATION WAS PROPERLY EXCLUDED. TAKE THE CASE *RL/RR*[?] *AS/HAS*[?] OF *WLS/WILLIS*[?] WITNESS IS SAID TO BE A SUBSCRIBING WITNESS TO THE DEED HE WAS NOT CALLED AS SUCH. HE WAS CALLED TO TESTIFY OTHER MATTERS NOT INCLUDING THE SUBSCRIPTION OF THE DEED. ON THE CROSS EXAMINATION IT WAS SOUGHT TO INQUIRE OF HIM ON THAT SUBJECT. THAT WAS FOREIGN *AND SET*[?] IN THE BOOK TO BE FOREIGN SUBJECT OF HIS EXAMINATION IN CHIEF ACCORDING OF TO RULE THEREFORE AS I SAID IT BE THAT CROSS EXAMINATION WAS PROPERLY REJECTED. I DO NOT KNOW THE PURPOSE OF DISCUSSING THE ENGLISH RULE THAT IS CONSIDERED TO BE BROADER THAN THE ONE WE CONTEND FOR. I READ IN A NOTE FURTHER TO ROSCOES CRIMINAL EVIDENCE PAGE 131 BASED UPON AMERICAN CASES AND FOLLOWING DEFENDANT CAN'T EXAMINE PLAINTIFF WITNESS TO MAKE ENTIRELY NEW IN ORDER TO INTRODUCE A DIFFERENT *NTRML*[?] BY RULES OF DIRECT EXAMINATION REFERRING *SECOND*[?] THE WITNESSES FLIGHT AGAINST *MAYBERRY*[?] 6<sup>TH</sup> OF THE SAME NOTE ONE ON PAGE 131 A PARTY MAY CROSS EXAMINED AS TO THE RES GESTAE GIVEN IN EVIDENCE THOUGH IT BE NEW MATTER. 8<sup>TH</sup> OF THE SAME A PARTY MAY CROSS EXAMINED AS TO RES GESTAE GIVEN IN EVIDENCE THOUGH IT BE NEW MATTER. THAT I UNDERSTAND TO BE A FAIR STATEMENT OF THE RULE THE *ANGLO*[?] RULE OF CROSS EXAMINATION. 14 PETER'S STATEMENT THAT BECAUSE A PARTY HAS NO RIGHT CROSS EXAMINE ANY WITNESS EXCEPT AS TO FACTS AND CIRCUMSTANCES CONNECTED WITH THE MATTER CONSIDERED IN HIS DIRECT EXAMINATION. 14<sup>TH</sup> OF PETERS STATEMENT OF THAT CASE A PARTY HAS NO RIGHT TO CROSS EXAMINE ANY WITNESS EXCEPT AS TO FACTS AND CIRCUMSTANCES CONNECTED WITH THE MATTER CONSIDERED IN HIS DIRECT EXAMINATION. [*space*] TO ILLUSTRATE I THAT IF THIS WERE A CASE FOR ASSAULT AND BATTERY WHERE ONE MAN WAS ACCUSED OF PUTTING HIS FACE IN AN *INSOLENT*[?] THREATENING MANNER <sup>[18]</sup> IN ANOTHER MAN'S FACE WITNESS IS CALLED UPON THE STAND SAY HE SAW IT IN THIS THREATENING MANNER THE ATTORNEY EXAMINATION IN CHIEF TELL WHAT HE DID AND YOU BE CAREFUL NOT TO SAY ANYTHING HE SAID HE JUST DESCRIBES THAT MOTION. ON CROSS EXAMINATION COUNSEL ASKS WHAT THE PARTY PUTTING HIS FACE IN THAT INSULTING MANNER IN ANOTHER MAN'S FACE  $\leftarrow$ SAID $\rightarrow$  AT THE VERY TIME WHEN HE DID IT [*space*] HE SAYS HE WAS TELLING HIM A STORY OF TWO OTHER PERSONS OF ONE'S MAKING ASSAULT UPON ANOTHER [*space*] HIS PUTTING HIS FACE IN THE OTHER'S THUS AND TELLING HIM JUST POINT OF GIVING HIM A THRASHING WOULD NOT THAT INDICATE VERY UNMISTAKABLE ASSAULT NO QUESTION WAS NO ASSAULT AT ALL IF THE

ATTORNEY ASKING THE QUESTIONS IN CHIEF HAD GIVEN ENTIRE TRANSACTION IT WOULD HAVE IMPARTED NO ASSAULT. TAKEN APART FROM THE LANGUAGE THAT ACCOMPANIED THE ACT IT WAS A LIE IT IMPARTED AN ASSAULT WHICH THE LANGUAGE CONTRADICTED [space] THIS IS THE CASE THE PEOPLE HAVE PUT BEFORE THIS JURY BY THE EXAMINATION OF TWO WITNESSES THESE MEN AND THEY HAVE PROVED THE PUTTING OF THE FACE IN THE MAN'S FACE AND WITHHELD THE EXPLANATION THAT IT WAS ONLY TO ILLUSTRATE WHAT ANOTHER MAN HAD DONE. FOR SOME OTHER EXPLANATION THAT TOOK AWAY THE SIGNIFICANCE OF THE ACT CONSIDERED ALONE. [space] NOW WHAT WAS THE SUBJECT MATTER OF THE RES GESTAE GIVEN IN EVIDENCE IN CHIEF WAS NOT IT DESTRUCTION OF THE EMIGRANT TRAIN. CLAIMED TO BE A MURDEROUS ATTACK AND DESTRUCTION. IT IS A CLAIM ON PART OF THE PEOPLE ON THE EXAMINATION OF SMITH ON THAT HYPOTHESIS AND I RESPECTFULLY ASSERT YOUR HONOR PERMITTED THEM TO EXAMINE SO *THEY/THAT*[?] ALL THAT TOOK PLACE AT CEDAR THAT COUNCIL ALL THAT WAS SAID ON THE JOURNEY AND THAT WAS SAID AT THE MOUNTAIN MEADOWS WAS A PART OF A RES GESTAE AND WHAT ONE DID THEY WERE ALL RESPONSIBLE FOR IN CONSEQUENCE OF THEIR CONCERT OF ACTION AFTER THEY REACHED THE MEADOWS IN THEIR FINAL DESTRUCTION. KNOW FULLY THAT CONSTITUTES BUT ONE TRANSACTION THAT BEING THE TRANSACTION ABOUT WHICH THOSE TWO WITNESSES TESTIFY ALL THAT FOR THE PURPOSE OF CROSS EXAMINATION THIS *REAL/RULE*[?] RES GESTAE GIVEN IN EVIDENCE TO WHICH CROSS EXAMINING MUST BE CONFINED WAS NO MORE LIMITED ASCRIBED LIMITS. ARE WE ENTITLED TO HAVE THOSE DECLARATIONS PUT IN EVIDENCE. IF THEY IMPART SOMETHING FAVORABLE TO OURSELVES IF THEY INDICATE THAT ALL THAT WAS DONE THERE WAS *INNOCENCE*[?] AND HUMANE WE CONTEND WE ARE ENTITLED TO THEM [space] IT IS PART OF THE TRANSACTION [space] IF IT IS PART OF THE TRANSACTION <sup>[9]</sup> AND IT IS PARTICULARLY IN RESPECT TO THE PEOPLE AND PARTICULARLY IN RESPECT TO DEFENSE [space] WHAT IS IN THE LEGAL SENSE A RES GESTAE I READ NOW FROM FIRST PHILIPS EVIDENCE ≤TOP OF≥ PAGE 150 STAR PAGE 185 VERBAL AND WRITTEN DECLARATIONS *ARE CONSIDERED*[?] TO BE ADMISSIBLE [space] IT IS IN THIS CASE FULLY WITHIN THAT DEFINITION [space] IS NOT A PARTY TO THIS DESTRUCTION MOTIVE OF IT RESPECT TO THIS INQUIRY. IS NOT THE NATURE OF THE PROCEEDING THERE THE SUBJECT OF THIS INQUIRY WHETHER IT WAS INNOCENT OR WHETHER IT WAS FELONIOUS. IN SUCH CASES WORDS ARE RECEIVED AS ORIGINAL EVIDENCE ON THE GROUND THAT WHAT WAS SAID AT THE TIME AFFORDS LEGITIMATE *FND/FIND*[?] BASIS MEANS OF ASCERTAINING CHARACTER OF SUCH EQUIVOCAL ACTS AS ADMIT OF EXPLANATION FROM THIS INDICATION OF THE MIND WHICH LANGUAGE AFFORDS. THERE IS A LENGTHY NOTE ABOUT THAT TEXT IN WHICH AMERICAN AND ENGLISH AUTHORITIES ARE VERY CURIOUSLY STATED. BEGINNING WHAT NOTE IS TO BE PART OF A RES GESTAE AND THE DECLARATIONS MUST HAVE BEEN

HAD AT THE TIME THE ACT DONE WHICH THEY ARE SUPPOSED TO CHARACTER WELL CALCULATED TO UNFOLD NATURE AND CHARACTER OF FACTS CALCULATED TO EXPLAIN. FIRST COMES TWO SUCH CASES IN THE *AUTHORITY*[?] OF CONDUCT SUPPOSE FOR INSTANCE THE CASE CONSIGNED FROM **A** TO **B** ANY ACTION BROUGHT EITHER BY THE SIGNOR OR THE SIGNEE. ETC. IT IS COMPETENT TO PROVE ANYTHING SAID BETWEEN BY WHICH THE TITLE IS BETWEEN THE SIGNOR AND SIGNEE SHALL BE VESTED IN ONE OR IN THE OTHER AGAINST CARRIER FOR WRONG DONE BY HIM IN AN ADDITIONAL NOTE TO SAME TEXT NOTE 80 THE AUTHOR SAYS *SAW/SO*[?] THE INSTRUCTIONS WHICH WERE PUT ABOVE ALL DIRECTIONS BY THE SIGNOR OF ACTS SUCH DECLARATIONS ARE AS WE SHALL NOTICE SOME *TLJ/TUTELAGE*[?] IN FAVOR OF PARTY WHO MAKES THEM. THE ACCOUNT OF DEPUTY SHERIFF *KT/NT*[?] *NGD*[?] EVIDENCE WAS RECEIVED OF THE INQUIRIES HE MADE SHOWING *HIS OWN/SINGULAR*[?] ACTS INQUIRIES HE MADE FOR EXPLANATION IN ORDER TO ARREST HIM THE PLACES HE VISITED TO OBTAIN HIS WHEREABOUTS PARTS OF A RES GESTAE. PAGE 155 *CASES*[?] CITED SAY IF *ACQUAINTED/COUNTED*[?] TO THIS WE SHALL BRING FORWARD IN THIS NOTE TEND CONNECT CASES IN WHICH THESE DECLARATIONS ARE ADMISSIBLE [*space*] THEY MUST BE EVIDENCE THOUGH EMANATING FROM THE PARTY HIMSELF WHO SEEKS TO USE THEM IN HIS OWN FAVOR. IN *RICH* AGAINST *SMITH* 5TH OF *CARRINGTON* AGAINST *PAINÉ* [*space*] THE CONSTABLE BEING INDICTED FOR FORCIBLE ENTRY HIS COUNSEL WERE ALLOWED TO ASK THE WITNESS WHAT HE SAID AT THE TIME. IN *TROVER* FOR THE 50 DOLLAR BANK NOTE COMPLAINT ALLEGED <sup>[[10]]</sup> HE HAD LOST THE NOTE AND IT WAS AFTERWARDS IN CONNECTION WITH THE DEFENSE THAT DEFENDANT HAD BEEN SEEN HUNTING FOR IT AND THAT IT WAS AFTERWARDS IN POSSESSION OF THE DEFENDANT. VERDICT FOR THE PLAINTIFF AND MOTION FOR NEW TRIAL WAS IT PROPER TO RECEIVE DECLARATIONS OF PLAINTIFF TO PROVE THE LOSS THE COURT THOUGHT IT WAS *SUFFICIENT*[?] PARTY WAS SEEN WITH HIS FRIENDS AND RELATIVES DILIGENTLY SEARCHING THE ROAD THEY CONSIDERED QUESTION AS EMBRACING POSSIBLE CIRCUMSTANCES ACTS DONE WAS SIMPLY *SUPPOSED*[?] WHERE PERSON'S ACTS ARE EVIDENCE THOSE DECLARATIONS IN RELATION TO ACTS MUST NECESSARILY BE ADMITTED. IN THE FIRST TWO CASES IT IS DECLARATION WHICH CONSTITUTES THE ACT. ON TRIAL FOR RIOT IN DESTROYING THRESHING MACHINE [*space*] HE AND THE DEFENDANTS WERE COMPELLED TO JOIN THE MOB THEY HAD BEFORE AGREED TO RUN AWAY BEFORE AT THE FIRST CHANCE WHICH THEY BOTH DID IN TEN MINUTES. ON TRIAL FOR MURDER WORDS TENDING TO EXPLAIN HIS CONDUCT WERE RECEIVED IN EVIDENCE. THIS IS A —/*PSLFN*[?] CASE *DEFENDANT*[?] RECEIVED OF *DEFENDANT*[?] IN LETTER TO EXPLAIN EVIDENCE *PSLFN*[?] *BATTLED*[?] TO EXPLAIN BUT THE *BALANCE/BILLS*[?] WERE NOT *AT ALL*[?] *NTV/NATIVE*[?] TO THE *ACTION*[?] IF/*FOR*[?] THE *LN/LV/LS*[?] THE VIOLENCE WHICH THE DEFENDANT HAD PART WAS PROVED TO HAVE BEEN GOOD WILL INSPIRED. HE STOPPED AT



SOME TOWN IN *PSLFM*[?] WROTE THAT HE HAD WROTE HIM. THAT HE HAD LOST SUM OF MONEY [space] THE DEFENDANT CAME TO HIS HOST HOUSE SAID HE HAD BEEN ROBBED OF SUM OF MONEY THAT HE SHOULD NOT FEEL SO UNPLEASANT FOR WAS SEEN PRETTY MUCH CONCERNED AT THE LOSS ANXIOUS TO ATTACK ALMOST *TO/BUT*[?] *TRUST*[?] THE MEN SAID THEY HAD NOT OPENED HIS BAGGAGE UNTIL HE LEFT THAT HOUSE AND ARRIVED IN THAT HOUSE PROVED MONEY WAS STOLEN BY SERVANT AT SAME TIME IT SHOULD HAVE BEEN DONE HE BROUGHT THE *BD/BT*[?] LETTER REQUESTED LOOK TO INFORMATION. STATEMENT OF LOSS CONJECTURE AS TO MANNER OF IT ~~ETC~~ TIME HE DISCOVERED IT ALL THESE FACTS WERE OFFERED IN EVIDENCE BY THE DEFENSE TOGETHER WITH WHAT HE WAS TOLD EXPLANATION ON HIS RETURN AND EVEN THE LETTER WERE EXCLUDED AS ADMISSIBLE A VERDICT FOUND FOR PLAINTIFF ON ERROR SUPREME COURT HELD THE EXCLUSION WAS ERROR AND REVERSED VERDICT. HE MIGHT THEREFORE SHOW HOW HE CONDUCTED HIMSELF ON HIS JOURNEY WHAT CARE HE TOOK OF THIS AND HIS PROPERTY. EVIDENCE IS CONSTANTLY ACCOMMODATING ITSELF TO *SOCIETY*[?] MODE OF TRAVEL COACHES STEAMBOATS INSTEAD OF ON HORSEBACK PRIVATE CARRIAGES IN READING ALL THE EXACT AS ALL THESE ~~WERE BEFORE~~ FACTS OCCURRED BEFORE ANY CLAIM MADE BY PLAINTIFF THEY WERE EVIDENCE OF THE WHOLE RES GESTAES ENTIRE CONDUCT MADE DECLARATION AND AT HOT PURSUIT OF DEFENDANT. {AND READ}<sup>1</sup> ANOTHER INSTANCE WHERE DECLARATION WAS ADMITTED ASSERTION OF PERSON SENDING SERVANT ETC. <sup>[[1]]</sup> ON TRIAL OF INDICTMENT FOR COUNTERFEITING NOTES FOUND ON THE FARM WHERE PRISONER WAS HIS DENIAL THAT HE WAS NOT THERE AT THE TIME ALSO HIS STATEMENT ON HIS WAY WAS GOING THERE TO GET BAIL FOR HIS BROTHER IN LAW. PROSECUTOR DIFFERS ABOUT LOST CHEESE OFFERING REWARD PRISONER *GIVING*[?] WITH THEM UPON WHICH HE WAS PROSECUTED AS THIEF IT WAS HELD WHAT PRISONER SAID ON BRINGING THE CHEESE SHOULD BE RECEIVED IN HIS FAVOR. ON TRIAL FOR LIBEL THE DEFENDANT WAS ALLOWED TO PROVE HIS OWN DECLARATION AT THE VERY TIME OF THE ACT IT WAS HIS INTENTION TO TRANSFORM PICTURE INTO SOMETHING ELSE THIS WAS CONSIDERED AS PART OF RES GESTAES DECLARATIONS AND CONDUCT OF PARTY ARE FOUND EXTREMELY MATERIAL IN CASE ABOARD SHIPS AS IT FREQUENTLY HAPPENS THAT WHEN THE MUTINEERS HAVE DEPOSED THE CAPTAIN THEY FIND NONE OF THEM ARE ABLE TO NAVIGATE. THE SHIP AND FIND FORCE THE OFFICERS TO ASSUME COMMAND HE IS EVENTUALLY BROUGHT TO TRIAL BECAUSE IT APPEARS HE IS ACTING WITH MUTINEERS. ASSUME HERE IS CASE WHERE PARTICULARS RESPECTING FACTS CIRCUMSTANCES CONSTITUTING RES GESTAE ARE VERY ABLY TREATED BY JUDGE UNDERWOOD THE ACTS PROBATION AT THE TIME OF THIS *CONDITION*[?] CASE OF LANDS GRANTED WHICH WAS PROVED AMONG OTHER THINGS SAID LANDS WERE CONVEYED CENTER TURNS ON PARTICULAR FACTS OF THAT CASE I SHALL NOT READ IT. THE

CONVERSATION OR DECLARATIONS MADE BY THE ACTOR OR PARTY ASCERTAINED AT THE TIME THE ACT IS DONE WHICH EXPLAIN DESIGN OF PERFORMER WHENEVER END OF ACT IS CALLED IN QUESTION BE GIVEN IN EVIDENCE AS PART OF RES GESTAE. NOTE IS VERY LENGTHY ONE IT IS FILLED UP WITH CASES OF WHICH THESE I HAVE SAID CONSTITUTE AND SUFFICE AS SPECIMENS. BY BASKIN IF THE COURT WILL JUST INDULGE ME A MOMENT UNTIL I GET THE TEXT OF *MRPLY/MRSPY/MURPHY*[?]. SUTHERLAND NOW I READ FROM RUSSEL ON ~~ILLINOIS~~ <CRIMES> 2 VOLUME PAGE 779. ON CHARGE OF MURDER EXPRESSION OF GOOD WILL ACTS OF KINDNESS ON PART OF THE PRISONER TOWARDS DECEASED ARE ALWAYS —/*STRONG*[?] EVIDENCE SHOWING WHAT WAS HIS REAL DISPOSITION TOWARDS DECEASED FROM WHICH JURY MAY BE LEAD TO BELIEVE THE INTENTION OF THE PRISONER COULD NOT BE *FROM*[?] AS ALLEGED COMING BACK TO QUESTION OF CROSS EXAMINATION. OUR POSITION IS PROPOSAL WE MAINTAIN IS WHERE EXAMINATION IN CHIEF EMBRACES THE WHOLE TRANSACTION IT EMBRACES THE MAIN FACT IT *BE AS*[?] TRUE FOR CROSS EXAMINATION IN RESPECT THAT ALL DECLARATIONS WHICH QUALIFY THAT MAIN FACT AND EVEN THE CASES WHICH COUNSEL HIMSELF REFER TO BUT DID NOT READ AS WELL AS THOSE HE DID READ SUPPORT THAT THEORY I HAVE REFERRED TO *TAKE/TALK*[?] WITH RESPECT TO RES GESTAE TO SHOW YOU PARTICULARLY IT IS DECLARATIONS MADE IN FAVOR OF THE DEFENDANT OR THAT IMPLY SOMETHING IN FAVOR ARE ADMISSIBLE *SINCE*[?] THEY ARE ADMISSIBLE BECAUSE ARE PART OF A RES GESTAE WHENEVER EXAMINATION IN CHIEF <sup>[[12]]</sup> EMBRACES RES GESTAE IT ALSO EMBRACES ACTS COMPETENT TO BRING THEM OUT FURTHER IF THEY HAVE NOT BEEN BROUGHT OUT IN CROSS EXAMINATION IN CHIEF [*space*] ONE OF THE AUTHORITIES SITED BY MR. BASKIN WAS 14 CALIFORNIA. ON PAGE 23 THE COURTS SAY *BLDNR/BLTTNR*[?] DELIVERING INFORMATION WE HAVE SOME DIFFICULTY SUPREME ≦COURT≧ ASSIGNMENT OF ERRORS WAS THERE WHAT YOU SAW WAS WATER SPLASHING FROM THE FLUMES COURT ASKED DID YOU SEE WATER SPLASHING OVER THE FLUME. TO THIS INQUIRY AN AFFIRMATIVE ANSWER WAS GIVEN ON QUESTION BUT IN EXAMINATION IN CHIEF THE *PRTSS*[?] OF EVIDENCE GIVEN AS PART OF RECOVERY *DENOTES*[?] FROM THE *RF/FRL/MFL*[?] AND *ALLEGE*[?] OF WHAT IN CHIEF DID NOT SEE RIGHT TO RECOVER WAS THE INJURY RESULT FROM THESE ACTS WHICH HE ALLEGED IS THE NEGLIGENT USE OF THIS DITCH THIS WAS CONTENTED <IN> BUT NOT SHOWN BY DEFENDANT THIS INJURY RESULTED FROM ACTS AND THROUGH OF WHICH THEY WERE NOT RESPONSIBLE, APART FROM THIS IT WAS CONTENTED QUESTION WAS WITHIN LIMITED POINT OF CROSS EXAMINATION [*space*] NOTICE GREENLEAF SECTION 447 OF THIS CASE. IT EXCEEDS *HAS*[?] AND IT EXCEEDED IN GREAT LATITUDE.<sup>////</sup> SEEMS TO ME THAT *EXPRESS*[?] SOUNDS VERY MUCH LIKE THE ONE MY BROTHER BASKIN SAYS HE HAD NEVER SAW IN A LAW BOOK.<sup>////</sup> WITHIN THE SUBJECT MATTER OF THE EVIDENCE IN CHIEF WHICH IS THE VERY RULE I CONTENTED FOR [*space*] SUBJECT

MATTER OF THE EVIDENCE IN CHIEF IN ORDER TO THIS A WITNESS MAY BE *SIFTED*[?] AS TO EVERY FACT TOUCHING MATTERS AS TO WHICH HE TESTIFIES *IS ADMISSIBLE*[?] AS RELATES TO PARTIES OF THE CASE HIS INTELLIGENCE ACCURACY OF HIS MEMORY HIS DISPOSITION TO TELL THE TRUTH INTELLIGENCE KNOWLEDGE OF SUBJECT MATTER MAY BE FULLY ETC. MUCH MUST BE LEFT TO DISCRETION UPON THIS SUBJECT. THE WHOLE REMAINDER OF OPINION *BETWEEN*[?] CONSISTS OF TWO MORE *PRKV/FRTG*[?] QUESTION WAS PROBABLY ON ANOTHER POINT. *RESPECT*[?] *WFL*— [?] OF ESTABLISHMENT. WE DO NOT UNDERSTAND *DKTR/DOCTRINE*[?] OF GREENLEAF TO GO FURTHER THAN THIS ETC. RULE IS WHOLLY DIFFERENT WHEN ALL THE DEFENSE ON CROSS EXAMINATION WISHES IS TO DISPROVE WHAT PLAINTIFF'S WITNESSES VERY WITNESS HAS MADE. THIS VERY STRONG THIS COUNSEL SAYS THIS CASE IS IN HARMONY WITH THAT OF 5<sup>TH</sup> CALIFORNIA *AND VARIOUS*[?] CASES [space] WHICH IS GOOD *LKM*[?] OF THE RULE [space] THAT THEORY STATED [space] THIS RULING THEY APPEAL IN THIS CASE *HOWEVER*[?] DEFENDANT SAYS IT IS SIMPLY IN *TNR/TNL*[?] BY THE WITNESS IN HIS TESTIMONY IN CHIEF THEN WE MAY BRING OUT ALL CIRCUMSTANCES THAT WILL MAKE *DNR/DNL*[?] FULLY AND EFFECTIVE *IF/FOR*[?] WORDS ALONE TEND TO CONVICT IF THE ACTS TAKEN ALONE TEND TO CONVICT WORDS TAKEN IN CONNECTION WITH THOSE ACTS WOULD TEND TO ACQUIT THEN WE ARE ENTITLED TO PROVE THESE WORDS THOSE DECLARATIONS BECAUSE THEY WOULD TEND TO OVERTURN *POWER*[?] OF *TNR/TNL*[?] THE CASE WHICH THE ACTS <sup>[13]</sup> THEMSELVES SEEM TO ASSERT. BY BASKIN NOW MAY IT PLEASE YOUR HONOR QUESTION UNDER DISCUSSION IS ONE OF GREAT NICETY QUESTION OF A RES GESTAE WHAT IS A RES GESTAE AND IT MAY NOT DEPEND IN ITS APPLICATION UPON THE FACTS AS THEY ARISE IN EACH PARTICULAR CASE *KLM*[?] THE RULE HAS BEEN ESTABLISHED AND IT GREW OUT OF FROM FACT OF IMPOSSIBILITY OF ESTABLISHING ESTABLISHED IN RULE THAT WOULD APPLY ESTABLISH WHAT IS PART OF RES GESTAE [space] WHAT SHALL BE PART OF A RES GESTAE [space] WHAT DECLARATIONS IS PART OF RES GESTAE SHALL BE PROVED IS WITHIN DISCRETION OF THE COURT I HAVE SEEN THAT IN GREENLEAF'S EVIDENCE WHICH HE OMITTED TO BRING INTO THE COURT I WILL READ SOME SECTIONS IN ORDER TO EXAMINE AND ILLUSTRATE THAT RULE [space] THE GENERAL RULE AS I GATHER IT FROM THE WAY I UNDERSTAND IT FROM PRACTICE IT IS ONLY THOSE ACTS AND DECLARATIONS WHICH WILL ILLUSTRATE PRINCIPLE FACT AND THE GENTLEMEN COME TO MAKE AN ILLUSTRATION OF THE APPLICATION THAT RULE VERY CERTAINLY VERY —[?] SO FAR AS IT APPLIES TO THOSE ACTS I WILL ILLUSTRATE WHERE DECLARATION OF PARTIES ARE PART OF RES GESTAE IT MUST BE IT MUST TRANSPIRE AT THE SAME TIME [space] *WORDS/RS*[?] TEND TO ILLUSTRATE EXPLAIN GENERAL FACTS. TAKE FOR INSTANCE CASE OF TWO MEN —[?] *OR/AND*[?] BOTH MEN WHO ACTS IN IT COVERTLY ONE IS *WORK/RKR*[?] OTHER ROBS WORKER MAN IS WHOLLY INCOMPETENT TO DEFEND MAN FOR STRONG MAN HE HAS MAN

THREATENED ETC. WORKER MAN SAYS TO HIM I AM SENSIBLE TO DEFEND MYSELF I CALL UPON YOU TO DESIST OR ELSE I WILL STRIKE YOU DOWN BY A WEAPON OR I WILL SHOOT YOU AND I WILL STAB YOU NOW THEN FROM HIS DECLARATION WHICH TOOK PLACE WHAT THE PRINCIPLE FACTS OF THE CASE ILLUSTRATES IT IS MADE UNDER SUCH CIRCUMSTANCES IT IS DECIDED THAT —[?] YOU CAN TELL IT IS NOT THE RESULT OF DELIBERATION THAT IT IS NOT RESULT OF INTENTION OF PARTY. MAKES DECLARATION TO COVER UP CRIME AND I SHALL SHOW WHEN THIS AUTHORITY GIVES ANOTHER ONE CIRCUMSTANCE TENDING FROM CASE SHOW WHEN DECLARATIONS WERE MADE TO COVER UP CRIME OR TO MANUFACTURE TESTIMONY ANY EXCUSE OF A WITNESS *WAS TO BE CALLED OUT*[?] OCCURRED BEFORE THE PERPETRATION OF THE HOMICIDE THOSE ACTS ARE EXCLUDED IN THE ORIGINAL EDITION OF PHILLIPS ON EVIDENCE BY REASON OF SOME CHANGE I CAN'T *LET/LAID*[?] MY EYE FULLY UPON IT [*space*] IN THIS BOOK IT WAS A CASE OF TREASON A CASE OF TREASON ARREST IN SAID CASE INDICTED FOR TREASON SOME MEN INDICTED FOR TREASON IN ENGLAND AND THEY SET TO PROVE HIS ACTS DECLARATION AS TO HIS INTENTIONS BUT THE COURT IN DELIVERING OPINION ON THAT CASE WHICH IS IN ORIGINAL EDITION *WHILE*[?] I <sup>[14]</sup> DID NOT FULLY ATTAIN IT [*space*] THEY SOUGHT TO PROVE HIS ACTS HIS DECLARATION MADE AS TO HIS INTENTION IN THE MIND MADE THAT LOOK LIKE INTENTION AND OVERTURNED. WILL SHOW APPLICATION OF RULE IN THIS CASE MR. GORDON CASE AFTER QUESTION HAD BEEN ARGUED AT SOME LENGTH HE DID NOT KNOW WHETHER YOUR MIND CAN'T BE *TEND*[?] TO ACQUIESCE ANY INFORMATION WE HAVE IN THE MIND AND FORM ON THE SUBJECT IN WHICH WE GIVE A CERTAIN WAY WITH YOU NO OTHER IS SO CLEAR AS THAT OF THE DECLARATIONS WHICH APPLY TO THE FACTS AND THEN APPLY TO PROVE ACTS THEY SHOULD INTEND SHOULD MAKE PART IN DEFENSE OF PERSON BECAUSE PRESUMPTION NO MAN WOULD DECLARE ANYTHING AGAINST HIMSELF UNLESS IT WERE TRUE BUT THAT EVERY MAN <NOT GUILTY> WOULD MAKE DECLARATIONS FOR HIMSELF. UPON A TRIAL FOR INDICTMENT FOR EVIDENCE *AFFAIR*[?] TO BRIBE WITNESS ETC. I READ FROM **ABBOTTS** NATIONAL DIGEST. START FROM THAT POSITION [*space*] HOW WAS IT THE GENTLEMAN IN THE READING OF HIS AUTHORITIES ASSUMES PROPOSITION THAT EVERY THING THAT MAY BE PROVED BY THE PROSECUTION IN THIS CASE WHICH TEND TO ACQUIT HIM MAY BE PROVED FOR THE DEFENSE AND THEREFORE ON CROSS EXAMINATION HE HAS RIGHT TO PROVE IT AS PART OF RES GESTAE BY SUTHERLAND THAT IS NOT MY ASSERTION ANYTHING *DECLARED*[?] *TO BE DONE*[?] THIS TO PROVE WHO WHAT *EVENT*[?] OF RES GESTAE DECLARATION YOU MAY PROVE THE DECLARATION MADE CONTENDED BY THE ACCUSED. BASKIN PROCEED ACT FOR WHICH HE IS CHARGED IS FOR UNLAWFULLY PREMEDITATEDLY SLAYING THESE EMIGRANTS THE FACT BEING PROVEN OF THE KILLING WITHOUT LAWFUL EXCUSE THE CRIME IS MADE OUT AND THE DECLARATIONS AND EVIDENCE OF THE PARTIES IN THE KILLING

CAN'T PROVE OR DISPROVE THE CRIME IT CERTAINLY CAN'T DISPROVE ACTS UNLAWFUL KILLING WITH MALICE AND THE MALICE IS IMPLIED WITH THE ACT [space] IT IS THE BEST PROOF OF IT HE CAN ONLY DISPROVE IT BY ACTS [space] THE GENTLEMAN'S PROPOSITION IS THIS THE KILLING HAS BEEN PROVED IN THIS CASE NOW AND HE COMES IN ATTEMPTS TO DISPROVE KILLING NOT BY ACTS NOT ALLEGING SELF DEFENSE BUT ATTEMPTS TO OVERCOME PRESUMPTIONS WHICH THE LAW IMPLIES BY THE DECLARATIONS OF THE PRISONER IT DON'T MAKE ANY DIFFERENCE WHAT HE SAID BEFORE WHAT THE INDIANS WERE IF HE UNLAWFULLY DELIBERATELY AND WILLFULLY KILLED THE PARTY NO DECLARATION WHATEVER COULD MAKE IT LAWFUL ACT THEREFORE YOU SEE THE ACTS THEY SEEK TO PROVE BEFORE PERPETRATION OF THIS DEED THE TENDENCY WOULD BE TO OVERCOME THE PRESUMPTION OF AN UNLAWFUL ACT. MOST OF AUTHORITY *THEY*[?] HAVE READ WHERE THE DECLARATIONS <sup>[[15]]</sup> OF THE PARTIES ARE ALLOWED TO BE PROVED IT IS ONLY CASES WHERE EVIDENCE ENTERS INTO ELEMENT OF THE INTENTION OF CRIME WHERE RULE IS *LIFTED/LEFT*[?] MILITARY PURPOSES A MOB YOU MAY SAY THAT AIN'T TREASON THE ASSEMBLING OF MOB IS NOT TREASON BUT TREASON CONSISTS IN AN ATTEMPT OVERTURN THE GOVERNMENT THE INTENTION CONSTITUTES INTEREST IN IT PART PARCEL OF THE CRIME. AND YOU *HEARD*[?] WHEN YOU GO TO APPLY IT TO MURDER MURDER CONSISTS IN THE ACT OF KILLING THE PERSON. THE INTENTION CAN'T AFFECT THE KILLING [space] DOESN'T GO BEYOND THAT. IN THE CASE OF TREASON WHILE *IT WOULD/DEPEND*[?] WAS NOT FOUND IN THE AUTHORITY [space] IN THE INTENTION ARE THE MAJOR CRITERION THEY WOULD NOT ALLOW TO PROVE HIS DECLARATION PRECISELY MADE AS TO HIS INTENTION WHERE THE INTENTION THAT CASE WAS PART AND PARCEL OF HIS CRIME [space] IT IS NOT THE CASE HERE [space] GENTLEMAN HAS ASSERTED WHAT HE EXPECTS TO PROVE BY THIS WITNESS —[?] HE SAYS HE EXPECTS TO PROVE THESE PARTIES WERE TAKEN IN THE HANDS OF THE INDIANS AND FORCED AND TO PROVE THIS CRIME LET'S SEE THE AUTHORITIES AND WHAT THE EVIDENCE OF PROOF WE TAKE HIS WORD FOR IT. I READ NOW FROM BLACKSTONE COMMENTARIES PAGE 30. I REFER YOU IN SUPPORT OF THIS TAKE FIRST GREENLEAF'S CRIMINAL LAW SECTION 8. ONLY EXCUSE THOSE PARTIES COULD ALLEGE WOULD BE IN SELF DEFENSE. ONLY EXCUSE THE LAW WOULD ALLOW WOULD BE IN DEFENSE OF THEIR LIVES. THE KILLING OF HUMAN BEING IS NOT JUSTIFIABLE NO ACT DECLARATION NO OTHER *PART*[?] CAN DISPROVE THEY ATTEMPT TO DISPROVE THEY WERE NOT GUILTY OF THIS ACT BECAUSE SOME INDIAN SAID SOMETHING OR SOMEBODY ELSE THEY DID NOT INTEND. IF THEY HAVE SOME OTHER EVIDENCE TO SHOW THOSE MEN WERE ATTEMPTING TO BREAK INTO HOUSE AND STEAL SOMETHING OF THAT SORT THOSE CIRCUMSTANCES MIGHT BE SHOWN. HOW DOES IT ILLUSTRATE THE FACT AND DOES THE EVIDENCE STAND UP TO THIS POINT [space] EVIDENCE AND DETAILS HERE TEND TO SHOW THERE WAS CONSPIRACY ATTEMPT TO PROVE IT IT WAS

DONE FROM EVIDENCE OF INTENTION TO PERFORM THIS ACT THAT JOHN D. LEE OR SOMEBODY ELSE MADE DECLARATIONS IN HIS FAVOR MADE DECLARATIONS TENDING TO DO WHAT I WILL TELL YOU *IT SEEMS*[?] ANYTHING THAT YOU I CAN TAKE OF HIS TESTIMONY TO MAKE IT *RELEVANT/IRRELEVANT*[?]. WE'LL GO ON SEE ANOTHER APPLICATION OF THE RULE. ON THE TRIAL OF DEFENDANT INDICTED FOR KNOWING HE HAD IN HIS POSSESSION DESIGN FOR GUNNING MAKING —[?] GUNS AND IT WAS DECIDED HE COULD NOT BE ALLOWED TO GIVE EVIDENCE HOW THEY CAME IN HIS POSSESSION. [space] THERE IS NOTHING IN THIS CASE THAT CAN POSSIBLY CALL FOR COUNSELOR TO ADMIT ALL THIS SORT OF EVIDENCE FOR SIMPLE REASON DECLARATIONS OF THESE PARTIES DOES NOT ENTER <sup>[[16]]</sup> INTO OR CONSTITUTE PART OF RES GESTAE OF DEFENSE. IT DON'T MAKE ANY DIFFERENCE WHAT THE INTENTION WAS SAY THE KILLING IS PROVEN IT AIN'T *PRETENDED* WAS ANY GOOD PRINCIPLES HERE IT WAS DONE IN SELF DEFENSE. I WILL READ FROM GREENLEAF'S EVIDENCE PAGE 108/188[?] COMMENCING FORCES OF HUMAN SITUATIONS COMPLICATIONS OF CIRCUMSTANCES WAS INTERWOVEN IT SEEMS TO SUFFER MANY OF THEM UNSUPPORTABLE. WHERE THE INTENTION IS *ELEMENT*[?] CONSTITUTE GESTAE OF THE CRIME CLAIMS WOULD BE BY ACTS AND DECLARATIONS OF PARTIES WHILE IN THE ACT OF COMMITTING A CRIME THOSE CERTAIN CIRCUMSTANCES CONSTITUTE PART OF RES GESTAE [space] THEY ARE ADMISSIBLE AS DETERMINED BY THE JUDGE ACCORDING TO THEIR DEGREE OF RELATION TO THAT FACT. WHAT IS THE MAIN FACT HERE IT IS THE KILLING OF THESE EMIGRANTS WITH MALICE AFORETHOUGHT NO DECLARATION OF PARTIES OR WITNESSES CAN TEND TO OVERTHROW BY INTENTION OR ACTS OF DECLARATIONS EXPRESSING INTENTION. CAN ANY TALK OF JOHN D. LEE MADE IN HIS INTEREST THERE SHOW HE DID NOT KILL THESE PARTIES WITH MALICE AFORETHOUGHT THERE IS NO PLEA SET UP BY DEFENSE OF SELF DEFENSE. OF COURSE I ADMIT IT IS A LEGAL DISCRETION JUDICIAL DISCRETION WHICH MUST BE EXERCISED IN PROPER CAUSE BEFORE YOUR HONOR WILL EXERCISE THERE MUST BE PROPER CAUSE [space] ALLOW ALL THOSE PERSONS WHO COMBINED TO DO THIS ACT TO DISPROVE AND GET CLEAR OF THIS KILLING BY THEIR OWN DECLARATION IT WOULD BE LIKELY THE PARTY WOULD MAKE DECLARATIONS IN HIS FAVOR. DECLARATIONS AGAINST PARTY CAN ALWAYS BE PROVEN AND FOR THE REASONS ASSIGNED. THE QUESTION HERE IS AS TO EXTENT OF CROSS EXAMINATION. GENTLEMEN READ IRRELEVANT CASE WHICH WAS SIMPLY AN ANNUNCIATION OF ENGLISH RULE. THEY SEEK NOW IN WAY OF CROSS EXAMINATION TO INTRODUCE DECLARATIONS OF THOSE PARTIES WHICH PERPETRATED THIS ACT NOT AT THE TIME MASSACRE WAS GOING ON BUT DAYS BEFORE AT A TIME WHEN IT MAY NOT HAVE BEEN THEIR INTEREST AND IT IS ACTS MADE DECLARATIONS WHICH WOULD EXCULPATE THEM FROM PUNISHMENT IN CASE OF DETECTION. BY HOGE DID I UNDERSTAND YOU TO SAY RES GESTAE IS SOMETHING IN THE DISCRETION OF COURT YES SIR I UNDERSTAND THAT RES GESTAE

THE LAW —[?] WAS IT A RES GESTAE FROM THE FACTS SUBMITTED WITHIN THE DISCRETION OF THE COURT WHEN THESE FACTS ARE SUBMITTED THE LAW THEN —[?] WAS IT A RES GESTAE [space] RES GESTAE IS NOT WITHIN THE DISCRETION OF THE COURT I UNDERSTOOD YOU TO SAY THE HOMICIDE HAS BEEN PROVED THEN THERE CAN BE NOTHING BUT JUSTIFICATION OF SELF DEFENSE INTENTION OF THE PARTY DOESN'T ENTER INTO THE CHARACTER OF THE HOMICIDE BASKIN THEY CAN PROVE THEY HAD NOT BEEN COLLUDED. BY HOGE I UNDERSTOOD LAW TO BE THIS THERE CAN SCARCELY BE CRIME COMMITTED INTENTION OF PARTY COVERS THE CRIMINAL INTENTION ENTERS INTO EVERY CRIME THAT IS COMMITTED HOMICIDE PARTY <sup>[[17]]</sup> DEAD ONLY KILLING IS PROVED THE WHOLE REST PRESUMPTION THAT IT WAS DONE WITH MALICE AND HE GOES ON THE NEXT BREATH AFTERWARDS THAT CAN NOT BE JUSTIFIED AT ALL [space] BASKIN BY DECLARATIONS OF THE PARTY IT CAN NOT BE JUSTIFIED ONLY BY SELF DEFENSE OR IN *DISPLAY*[?] OF PROPERTY NOW THEN BECAUSE ANY ADMISSION AND EXPLANATION WHAT THE INTENTION OF THE PARTY WAS ACT HAS BEEN PROVEN HOMICIDE HAS BEEN COMMITTED A —*GESTAE IF THE*[?] CRIME IT IS THEN BECAUSE IN ALL THEN BECAUSE IN ALL THESE CERTAIN CIRCUMSTANCES SHOW AND EXPLAIN INTENTION OF THE PARTY WAS NOT THE WHOLE PRESUMPTION IT WAS DONE WITH MALICE LEAVING OUT THE VERY STATEMENT ITSELF THE PARTY MAY EXPLAIN AND SHOW THERE WAS NO MALICE ENTERED INTO THE HOMICIDE AT ALL IT WAS NOT IN SELF DEFENSE BUT FROM SOME OTHER CAUSE THE MALICE DID NOT EXIST SHOWING THERE WAS NO CRIME COMMITTED BY THE PARTY IF THE GENTLEMAN'S THEORY IS CORRECT THE LAW PRESUMES AND IT CAN ONLY BE REBUTTED BY SHOWING SELF DEFENSE ON THE CHARACTER OF THE DEFENSE THE GENTLEMAN HAS *STOOD*[?] THERE ONLY BECAUSE THE DEFENSE IS ENTIRELY UNNECESSARY THEY HAVE NOTHING TO DO BUT SAY HOMICIDE WAS COMMITTED AND THAT JOHN D. LEE THE DEFENDANT ON TRIAL *OUR THEORY*[?] THE FEEBLE HE HAS SHOT OUT OF IN SELF DEFENSE IN PROTECTION OF HIS HOUSE HIS DOMICILE HIS CATTLE EVERY STATEMENT OF THE LAW IS REFUTATION OF IT IN MY JUDGMENT. HE MAY NOT HAVE CONSIDERED ALL THE LAW WHICH WILL EXCUSE THE PARTY. DECLARATION UNDER WHICH THE HOMICIDE WAS COMMITTED CAN'T EXPLAIN THE EVIDENCE IN THIS CASE SHOWS THE KILLING WAS INTENTIONAL THE WHOLE PRECLUSIVELY SHOWS MALICE AFORETHOUGHT. UNDER THE LAW WILL JUSTIFY HOMICIDE AND MAKE IT JUSTIFIABLE. BASKIN I THINK YOU GO LITTLE OUTSIDE IN ASSUMING THAT THESE THINGS FULLY BEEN PROVEN  $\Leftarrow$ BASKIN $\Rightarrow$  JURY DID NOT MISUNDERSTAND ME THE JURY UNDERSTANDS THEY ARE TO DECIDE THIS CASE WITH WEIGHT OF THE EVIDENCE I MAY STATE HYPOTHETICALLY BECAUSE WHERE KILLING HAS BEEN PROVEN AND IT WAS WILLFULLY DONE LAW CONCLUSIVELY PRESUMES IT WAS DONE WITH MALICE AFORETHOUGHT [space] AND DON'T MAKE ANY DIFFERENCE WHAT INTENTION OF PARTY WAS IN COMMITTING UNLESS HE CAN SHOW IT WAS

DONE UNDER SUCH CIRCUMSTANCES REDUCE IT TO JUSTIFIABLE HOMICIDE HE IS GUILTY. SUPPOSE CASE THIS KIND SOME FANATICAL MAN SUPPOSED HE SHOULD CUT HIS NEIGHBOR'S THROAT WHATEVER WILL SHOULD HE GO AND CUT HIS NEIGHBOR'S THROAT AND SAY I HAD NO MALICE AFORETHOUGHT BROTHERLY LOVE MY DUTY TO GOD LEAD ME TO DO THIS ACT SUPPOSES HE HAD DECLARED <sup>[[18]]</sup> THAT FACT BEFOREHAND WOULD SUCH DECLARATION BE TAKEN I SAY NOT. ANY DECLARATION WHATEVER IT MAY BE WHO WILLFULLY KILLS MAY NOT BE *CAN'T*[?] EXCUSE LAW CONCLUSIVELY PRESUMES HE IS GUILTY OF MURDER UNLESS HE BRINGS MEN AND SHOWS THAT HE ~~DID NOT~~ DID IT IN SELF DEFENSE OR SOME OTHER MATTER WHICH NATURALLY WOULD MAKE IT JUSTIFIABLE HOMICIDE THAT IS MY APPRAISAL WHAT GENTLEMAN WHOLLY MISAPPREHENDED. IN RELATION TO WHAT CONSTITUTES RES GESTAE *KRK/KRG*[?] AND GREENLEAF SEEM TO LAY DOWN GENERAL RULE THE COURT IN ITS DISCRETION MUST APPLY IT TO FACTS IN EACH CASE IS IT RES I GRANT YOU IT IS JUDICIAL DISCRETION. IF THE COURT DON'T ALLOW TESTIMONY IT MIGHT BE SUBJECT OF REVIEW. BUT WHAT IS OPPORTUNITY OF RES GESTAE ANY SHAPE OF DECLARATION CAN ONLY BE DETERMINED BY THE FACTS IN EACH CASE. MY BROTHER SUTHERLAND HAS GIVEN FOUR IN HIS ILLUSTRATION OF IT AND I GAVE ONE IN CASE OF STRONG MAN WITH THE WEAK. ANY DECLARATION JOHN D. LEE MAY HAVE MADE WHILE HE WAS DOWN THERE CAN'T SHED ANY LIGHT ON CUTTING THROATS OF THESE VICTIMS IF JURY SHOULD CONCLUDE FROM THE EVIDENCE THAT WAS DONE. [space] BY BISHOP ~~BY COURT~~ IF THE COURT WILL PERMIT ME TO SAY FEW WORDS I WILL INTRODUCE FEW AUTHORITIES BY COURT HE HAS TAKEN UP NEARLY ALL AFTERNOON. [space] SUTHERLAND *IT IS/OUR FV*[?] POSITION BISHOP THIS IS THE FIRST TIME IN MY LIFE I EVER HEARD ATTORNEY FOR PROSECUTION ASSERT THAT THE INTENTION IN WHICH THE THING THAT WAS COMMITTED WAS NOT MATERIAL TO PROVE IN THE CASE. BASKIN I SAY NOTHING DERIVED FROM ANY DECLARATIONS BEFORE THE FACT CAN BE SHOWN ON THE SIDE OF INTENTION. *STILL/WHILE*[?] I THINK IT IS SUFFICIENT SIMPLY TO CALL WITNESS TO COURT BUT ARGUMENT MADE WAS *OFF*[?] WHERE HE SAYS INTENTIONS OF FACTS ARE NOT MATERIAL THE COMMISSION OF THE DEED AS SOON AS HAS ONCE HAS BEEN PROVEN. NOT ONLY WILL CONTEND THAT IS THE LAW AND HE SAYS AND THEN IT WAS IT MAKES NO DIFFERENCE WHAT HIS INTENTION WAS AND IF IT WAS DONE WITH MALICE AFORETHOUGHT DRAW IT DOWN TO THAT ONE ELEMENT AND THEN THE GENTLEMAN IS RIGHT BECAUSE IF DONE WITH MALICE AFORETHOUGHT HE CAN'T FORTIFY HIMSELF WITH ANY PREVIOUS EXPRESSIONS NOR COULD HE PROTECT HIMSELF WITH ASSERTIONS MADE AFTERWARDS THE REASON WE SEEK TO PROVE WHAT WAS DONE AND SAID IS TO REBUT PRESUMPTION OF THE MALICE AFORETHOUGHT WE CLAIM WE HAVE THE SAME RIGHT THAT THE PROSECUTION HAS. TO ENTER INTO FACTS IN THAT CASE [space] WE CLAIM IF THE PROSECUTION <sup>[[19]]</sup> CAN PUT



KLINGENSMITH UPON THAT STAND AND HAVE DETAIL EXACTLY WHAT WAS SAID AND WHAT WAS DONE UPON THAT FIELD IN ORDER THE PROSECUTION MAY DRAW ANY INFERENCES OF GUILT WE HAVE A RIGHT TO BRING OUT OF WITNESSES PLACE UPON THAT STAND BY THE PROSECUTION EVERY FACT *CONNECTED*[?] WITH THAT PROSECUTION IN ORDER TO REBUT PRESUMPTION THAT HAS BEEN RAISED BY THE WITNESS FOR THE PROSECUTION. IT IS THE FIRST TIME IN MY LIFE I EVER HEARD THE RASH RULE BUILT ON SOMETHING OR IS IT TO BE THAT *A/THE*[?] MAN SHOULD BE CONVICTED FIRST AND TRIED AFTERWARDS. MAY IT PLEASE YOUR HONOR GENTLEMEN CLAIM ADVANTAGE OF INSERTING ADDITIONAL AUTHORITIES I HAVE THE CLOSING IN THIS CASE HE IS CERTAINLY GOING BEYOND LIBERTY GRANTED [*space*] BISHOP HAVE NOT I RIGHT TO REPLY TO HIS ARGUMENTS IN THESE THINGS. BISHOP THIS ARGUMENT WAS IN REPLY TO JUDGE SUTHERLAND AND *AS HE*[?] COULD NOT UNDERSTAND [*space*] JUDGE SUTHERLAND CERTAINLY SAID NOTHING ABOUT MANY THINGS WHICH ARE MENTIONED IN THIS. BLACKSTONE COMMENTARIES HE INTRODUCED FROM READ BLACKSTONE IS PRETTY GOOD LAW I THINK APPLICATION MADE HERE IS NOT CORRECT. IT IS CONTENDED IN THIS CASE DECLARATIONS OF A MOB MAY BE INTRODUCED AND OF PARTIES COMMITTING TREASON THAT THEIR DECLARATIONS MAY BE INTRODUCED FOR THE PURPOSE OF SHOWING INTENTION WITH WHICH THEY DID THE ACT IF THAT BE SO HOW MUCH MORE NECESSARY THAT THE ASSERTIONS OF THE PARTIES SHOULD BE INTRODUCED IN EVIDENCE IN A CASE OF THIS KIND ONE THING HE REFUSED TO HEAR HE SAID SUPPOSE THESE DECLARATIONS ARE IN LEE'S FAVOR LET THAT BE AS IT MAY HE PLACED THAT WITNESS UPON STAND HERE THAT IS SUPPOSED TO BE UNFAVORABLE WITNESS PARTY THAT COMES HERE IN THE CHARACTER OF MAN WHO IS TURNING STATE'S EVIDENCE GIVING THE EVIDENCE *INNOCENT*[?] GUILTY HE IS UNDER THE PROSECUTION AND CERTAINLY AN UNFAVORABLE WITNESS TO US AND YET THEY SEEK TO FORCE US TO STOP HALFWAY IN OUR CROSS EXAMINATION AND PLACE THAT MAN UPON THE STAND SO WE SHALL BE BOUND BY HIS ASSERTIONS. WE CLAIM THAT WOULD BE UNFAIR. [*space*] ANOTHER THING. POSITION TAKEN HERE IS GENTLEMAN ASSUMING FOR PURPOSE OF ARGUMENT PERHAPS THIS CASE HAS ALL BEEN PROVEN EVERYTHING CONNECTED WITH THIS CASE IS A MATTER OF FACT TO BE FOUND BY THIS JURY I *SO/SAY*[?] *CONSIDER*[?] IT BUT HE HAS YET FULLY TO SEE THE FACTS OR RATHER STATEMENT OF A MAN WHO HAS SWORN UPON THE STAND JOHN D. LEE WAS BEHIND THE ALLIANCE MARSHALING INDIANS. [*space*] <sup>[[20]]</sup> THEN WHY SUCH AN ASSERTION AS THAT UPON LEGAL ARGUMENTS. REFERRING BACK TO 14TH CALIFORNIA IN THAT CASE WE CLAIM THAT IT LAYS DOWN THE RULE AND CLEARLY DEMONSTRATES WHAT THE RULES THAT THEY PROVING ARE BASED ON CERTAIN ACTS AND ASSUME AS A PROOF WATER ~~FLOWED~~ FLOW FROM THE FLUME WATER WHAT WAS THE MOVING CAUSE WHO PLACED THOSE MEN IN MOTION. WHO WAS IT THAT REQUESTED THEM TO GO TO THE

FIELD AND GAVE THEM COMMANDS WHILE THEY WERE UPON THE FIELDS BY WHOSE DIRECTION DID THEY MOVE WHO DREW THEM AWAY FROM FIELD FOR SLAUGHTER THE DEAD WHO TOOK CHARGE OF THE MEN WHILE THEY ACTED WHO DIRECTED THEIR MINDS TOOK CHARGE OF THE SPOILS AFTER THE MASSACRE HAD ENDED. WE CLAIM THAT THERE WE HAVE THE RIGHT ENTER ALL OF THIS FOR THE PURPOSE OF SAYING THIS WITNESS UPON THE STAND IS KEEPING BACK SUFFICIENT TO SHIELD HIMSELF IN ORDER THAT THE JURY MAY PLACE PROPER ESTIMATE UPON EVIDENCE AS GIVEN BY THIS WITNESS. FROM GREENLEAF PAGE 108 CERTAINLY FAILS TO SUPPORT THEORY OF THE GENTLEMAN CERTAINLY FAILS TO SUPPORT HIS THEORY THEN HE CLOSES HIS ARGUMENT AFTER WHAT HE SUPPOSED TO BE STATEMENT OF WHAT WE ARE UNABLE TO ANSWER. A MAN WHO FOR THE LOVE OF HIS FELLOW MAN GO OUT CUT HIS THROAT TO SAVE HIS SOUL COME INTO COURT MAKE THAT ASSERTION IN HIS DEFENSE WHAT WOULD BE THE RESULT IF MY BROTHER BASKIN ADVOCATED HE WOULD PLEAD INNOCENT TO CLEAR HIS SKIN NO JURY WHO HAS EVER SAT UPON *CASE*[?] UPON ACTS OF THAT KIND WOULD FIND THE MAN WAS INNOCENT WHEN COMMITTED THAT ACT *AS MUCH*[?] AS WHEN HE PLEADS IT IN HIS DEFENSE THAT IS WHAT MY BROTHER BASKIN WOULD DO [space] THAT IS OUTSIDE OF THIS CASE. WE CLAIM AUTHORITIES READ HERE WHILE GOOD LAW ARE NOT APPLICABLE. I WISH MAKE SUGGESTION IN PLACE I SUPPOSE THIS DECLARATIONS —[?] THERE WAS POINT IN MR. BASKIN AND SOME CASE I DO NOT CARE WHO IS CLOSING I DESIRE TO MAKE THIS SUGGESTION COUNSEL PLACES THOSE OBJECTIONS PROVING THE RES GESTAE DECLARATIONS THOSE THAT IS NOT ABLE TO FURNISH YOUR HONOR ANY OTHER PRETEXT FOR REJECTING OR ASK YOUR HONOR TO REJECT ON THE GROUND THAT THE MURDER HAS BEEN PROVED <sup>[[21]]</sup> I DO NOT THINK MY BROTHER ON SERIOUS CONSIDERATION WOULD ADVISE YOUR HONOR YOU CAN FOR GRANTED ANY FACT IN THIS CASE HAS BEEN PROVED OR PASSES WHILE MR. BASKIN GENTLEMEN WILL FILE APPEAL ON THIS PRESUMPTION BY COURT I UNDERSTAND I CERTAINLY HAD UNDERSTOOD COUNSEL TO SAY THEN THAT THOSE DECLARATIONS MAY HAVE ACCOMPANIED ACT THEY HAVE *CHARACTER*[?] IN AS MUCH AS YOUR HONOR MUST TAKE FOR GRANTED THERE WAS A KILLING HERE PROVED THEY TEND TO BE ADMITTED BECAUSE IN THE NATURE OF THINGS THEY TENDED TO ESTABLISH NO DEFENSE THE KILLING PRECLUDED IT UNLESS DECLARATIONS TENDED TO ESTABLISH DEFENSE OF PARTICULAR KIND YOUR HONOR CAN'T TAKE FOR GRANTED ANY FACT IN THE CASE HAS BEEN PROVEN JURY HAS TO DECIDE EVERY FACT OF THE CASE TESTIMONY IS TO BE ADMITTED UNTIL THE TRIAL CLOSES IN RESPECT TO THE POINT IN ISSUE JURY DECIDE WHETHER TESTIMONY PROVES ONE SIDE OR THE OTHER. IN THE END YOUR HONOR WILL BE OBLIGED TO SUBMIT THAT FACT TO THE JURY CAN'T STATE ANY FACT TO THEM AS HAVING BEEN ESTABLISHED. I HAVE ONE MORE SUGGESTION TO MAKE THAT IT IS ENTIRELY IMMATERIAL WHETHER DECLARATIONS SAY

ANYTHING BENEFICIAL TO DEFENSE OR ANY TRANSACTION HAS BEEN PROVED IN ITS ENTIRETY DECLARATIONS CONSTITUTE A PART OF IT BUT THE TRANSACTION IS NOT SUBMITTED TO JURY UNLESS DECLARATIONS ACCOMPANIED THE ACTS ARE PROVEN DEFENSE IS AT LIBERTY TO PROVE THEM WHETHER THEY MAY GO IN HIS FAVOR OR AGAINST HIM IF HE IS DESIROUS OF PROVING THEM HE IS NOT ENTITLED TO HAVE THEM PROVED ALTHOUGH THEY TEND TO ESTABLISH HIS GUILT AND CERTAINLY HE IS ENTITLED IF THEY TEND TO EXCULPATE HIM OR EXTENUATE HIM BASKIN I DISLIKE GENTLEMAN TO -M-S[?] NECESSITY OF MAKING ANY EXCEPTION IN WHAT I SAY I MIGHT BE UNFORTUNATE IN MAKING MYSELF UNDERSTOOD I REFER TO TESTIMONY BECAUSE UNDER/NO[?] AUTHORITY IN GREENLEAF IT IS DISCRETION TO BE DECIDED BY YOUR HONOR AS TO FACTS IN CASE. AND COURT IN APPLICATION OF THIS DISCRETION MUST LOOK TO THOSE FACTS. [space] BY COURT [space] NO DOUBT STATED RULE DEFENSE CAN'T GET ANY EVIDENCE OF HIS OWN DECLARATIONS PROSECUTION CAN GIVE THOSE DECLARATIONS IN EVIDENCE THOSE ARE WELL SETTLED NO DOUBT ABOUT IT. IN THIS CASE QUESTION IS WHETHER THE STATEMENT MADE BY DEFENDANT AT THAT TIME CAN BE ADMITTED <sup>[[22]]</sup> THEN THE QUESTION MIGHT COME UP WHETHER IT WOULD BE PART OF RES GESTAE OR NOT IT IS NOT NECESSARY FOR ME TO DECIDE THAT AT THIS TIME M. UNDER DECISIONS OF SUPREME COURT OF THE UNITED STATES I AM SATISFIED QUESTION OF THE OTHER BRANCH OF THE ARGUMENT REFER TO CROSS EXAMINATION QUESTION WOULD NOT BE PROPER THAT IS THE POSITION I TOOK THIS MORNING MORE THOROUGH I HAVE EXAMINED IT MORE SATISFIED AM I I WAS CORRECT STATEMENTS NOT DRAWN OUT BY PROSECUTION WHO MIGHT HAVE DRAWN THEM OUT DID NOT DRAW THEM OUT THE OTHER PARTY COULD NOT EXAMINE HIM ON THAT POINT OF ARGUMENT [space] I AM INCLINED I THINK GENERAL RULE EXCLUDING STATEMENTS OF DEFENDANT WOULD EXCLUDE THIS STATEMENT EVEN ON THE EXAMINATION IT SEEMS TO BE DESIRED I SHOULD MAKE SOME EXPLANATION/EXCEPTION[?] ON THAT POINT. [space] BUT THAT IS NOT THE CASE THIS IS A MERE QUESTION OF CROSS EXAMINATION WE DID NOT DECIDE WHETHER THIS STATEMENT COULD BE INTRODUCED BY THE DEFENSE OR NOT WE ONLY DECIDED THAT CAN'T BE INTRODUCED WHEN NOTHING BY PROSECUTION HAS BEEN DRAWN UP IN REGARD TO THEM AND I AM CONFIRMED IN THE OPINION WHICH I DELIVERED THIS MORNING CALL THE NEXT WITNESS

**RT**

**RS**

**BT**

**PS**

<p>JUDGE SUTHERLAND ANNOUNCED THAT HE DESIRED TO EXAMINE AS A WITNESS IN THIS CASE BRIGHAM YOUNG AND GEORGE A. SMITH AND HE STATED THAT HE HAD RECEIVED ADVICES TO-DAY ACCOMPANIED BY THE AFFIDAVIT AND CERTIFICATE OF TWO PROMINENT PHYSICIANS IN SALT LAKE CITY WHO WERE ATTENDING UPON THEM THAT THEY WERE TOO FEEBLE TO TRAVEL, AND I ASK AN ORDER OF THE COURT, WITH THE CONSENT OF THE PROSECTUION, THAT THEIR DEPOSITIONS MAY BE TAKEN IN SALT LAKE CITY BEFORE A</p>	<p>SUTHERLAND. IF YOU HONOR PLEASE WE DESIRE TO EXAMINE AS WITNESS IN THIS CASE BRIGHAM YOUNG, GEORGE A SMITH I HAVE RECEIVED ADVICES ABOUT IT;  THAT THEY ARE TOO FEEBLE TO TRAVEL AND I ASK ORDER  WITH CONSENT OF PROSECUTION TO HAVE THEIR DEPOSITION TAKEN  BEFORE</p>	<p>BY SUTHERLAND: IF YOUR HONOYR PLEASE WE DESIRE TO EXAMINE AS WITNESSES IN THIS CASE, BRIGHAM YOUNG AND GEORGE A. SMITH. I HAVE RECEIVED ADVICES ABOUT IT  THAT THEY ARE TOO FEBLE TO TRAVEL. I ASK AN ORDER  WITH THE CONSENT OF THE PROSECUTION TO HAVE THEIR DEPOSITIONS TAKEN  BEFORE THE</p>	
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**RT**

**RS**

**BT**

**PS**

COMMISSIONER. ✓ <sup>257</sup> TO WHICH BASKIN REPLIED: WE DO NOT CONSENT TO THAT; WE WANT THEM TO APPEAR ON THIS STAND.	COMMISSIONER. BASKIN WE DO NOT CONSENT TO THAT WE WANT THEM TO APPEAR ON THIS STAND	COMMISSIONER. BY MR. BASKIN: WE DON'T CONSENT TO THAT. WE WANT THEM TO APPEAR ON THIS STAND <del>BY COURT:</del>	
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257. In the left margin.