

Q. Now, just what did the sheriff say when he went up over the bank there? What were the words he used?—A. He said, "Stop; surrender," was about all I heard him say.

Q. Did you see the man Smith, the Indian?—A. Not at that time.

Q. Did you see Brown, the Indian?—A. No, sir.

Q. How many of the Indians were shot?—A. I could not say.

Q. How many did you see that were shot?—A. Four.

Q. Four killed? How many were wounded?—A. One.

Q. Do you know how many more were wounded?—A. No, sir.

Q. You had no knowledge of but one?—A. One.

Q. They afterwards fled and left their property—their wagons?—A. I expect they did; yes, sir.

Q. You didn't see this man, Jesse Little War Bonnet, fire any shots, did you?—A. Yes, sir.

Q. That was after the shooting had become general?—A. Yes, sir.

Q. The posse were all firing at the Indians—were they—and the Indians were firing at the posse, then was when you saw him shooting?—A. No; he was shooting after we were all through.

Q. Where was he?—A. He was up the creek.

Q. Did you see him before you saw him at that time?—A. Yes, sir; I saw him before.

Q. Where was he when you first saw him?—A. I think he was near the lead.

Q. He had fled from near the lead to near the rear?—A. Yes, sir.

Redirect examination by Mr. Mecum:

Q. He didn't start toward the rear until after these wagons, up where he was, turned and fled?—A. The wagons had all pulled out when he was doing the last shooting.

Q. Did I understand you to say a girl was driving the ponies?—A. No, sir.

Q. You say he was over southwest from you when you saw him shoot?—A. Yes, sir; he was toward the south, as near as I can tell, a little west maybe.

Q. Do you know how long the Indians had been in this county previous to the time of this battle?—A. No, sir.

Q. About how many shots do you think the Indians fired?

Mr. BURKE. I object to the question; it is not a matter of guess; if he knows—

Q. Say about how many shots you say you heard the Indians fire?

Mr. BURKE. I object to the form of the question.

A. About 150, something like that.

Q. (By Mr. BURKE.) You are guessing at that, are you not?—A. No, sir.

Q. Do you know what kind of guns they had, whether they were repeating?—A. Yes, sir.

Q. (By the COURT.) Do you mean to say the Indians fired 150 shots?—A. Yes, sir.

Q. Was it one of these shots that killed Sheriff Miller?—A. Yes, sir.

Recross-examination by Mr. BURKE:

Q. Was there anyone killed or hit after you saw Jesse Little War Bonnet shoot?—A. No, sir.

Re-redirect examination by Mr. Mecum:

Q. You say there were 4 Indians killed; where were they hit? Did you notice them after they were dead?—A. No, sir.

Q. Didn't make an examination?—A. No, sir.

STEPHEN FRANKLIN, called as a witness on behalf of the prosecution, and being duly sworn according to law to testify the truth, the whole truth, and nothing but the truth, testified as follows:

By Mr. Mecum:

Q. Where do you reside?—A. Hatereck, Wyo.

Q. Were you acquainted with Sheriff William H. Miller, of Weston County?—A. Yes, sir.

Q. Look at these men before you and see if there are any of these Indians you recognize as having seen before.—A. No, sir; there is not.

Q. Where did you first meet the sheriff; that is, were you with him the first or the second day?—A. I was with him the second day.

Q. You were not with him the first day?—A. No, sir.

Q. Where did you join the sheriff?—A. At the Fiddleback ranch.

Q. You were working for the Fiddleback Company?—A. No, sir.

Q. State where you were when you first saw the Indians that day.—A. I was on Lightning Creek, just above Jake Mills's cabin.

Q. Was that after it was reported that the Indians were coming?—A. Yes, sir.

Q. How far away were you from the Indians when you first saw them?—A. Between 400 and 500 yards.

Q. Could they see the men that were with you plainly?—A. They could.

Q. How many were in your crowd?—A. Thirteen in all.

Q. That constituted the sheriff's posse?—A. Yes, sir.

Q. About how many Indians did you see?—A. As for sure, I could not say, but I think anywhere from 20 to 25.

Q. How many wagons did you see?—A. I could not say definitely. I think there was 10 or 12 wagons to the best of my knowledge.

Q. Just what did the sheriff and his posse do, and just what did the Indians do after you first saw them?—A. We saw them there; some of them had stopped inside the fence, and a runner started back, as we supposed; went back to distribute the news after we came out of the timber around the bend. Quite a number of them mounted their horses after we got into the creek and came to the fence. They scattered out there ready for a fight.

Q. Go on, and tell everything that happened there.—A. They rode up to the fence, and they dismounted, and they scattered along up the fence for as much as 75 yards.

Q. (By Mr. BURKE.) Was it up the fence or creek?—A. Up the creek as we were fronting the fence. We came over the bank, and Mr. Miller and Owens both demanded a halt of them, and they didn't, and the battle took place.

Q. Who fired the first shot?—A. To the best of my knowledge, the Indians did.

Q. How far from the fence were you up the creek?—A. I should judge as much as 75 yards.

Q. What direction was it from you you heard the first shot you speak of?—A. It came a little to the left of in front of me of where I stood.

Q. How many buck Indians did you see after you got to that place where this shot was, or after you got up through the wire fence?—A. I could see as much as four or five or such matter scattered out there.

Q. Do you know where they had gone, where the Indians you could not see had gone?—A. No; I do not.

Q. Where were the wagons?—A. The wagons were strung all along the road.

Q. What did they do after the fight began?—A. Started the other way as fast as they could go right back.

Q. Did I understand you that the Indians, when they saw you, got off their wagons and ponies?—A. Yes, sir.

Q. When they left the battle ground, how did they leave the battle ground?—A. Went out on wagons or horseback, what I saw.

Q. Was that after they had done their firing?—A. Yes, sir.

Q. About how many shots do you think the Indians fired?—A. I could not say definitely for sure, but a good many shots.

Q. Did they make a stand there, or fire as they were running?—A. They fired as they were running. They made a stand first before it opened up, and fired as they were running off.

Q. Did you see Black Kettle?—A. I could not say; I don't know the man; I could not say.

Q. Did you see any of the Indians that were killed?—A. No; I did not.

Q. Did you see what white men were killed?—A. Yes, sir; I did.

Q. Who was killed?—A. Mr. Falkenberg and Mr. Miller.

Q. Were they killed at this time and place?—A. Yes, sir; they were.

Q. Where was Mr. Miller shot? Where was the wound inflicted?—A. In the left thigh.

Q. Near the hip, was it?—A. It was just a little below the hip; right in there.

Q. Did you examine the wound to see what kind of a wound it was?—A. No, sir.

Q. I will ask you whether or not it was the result of that wound that caused his death?—A. I think it was.

Q. Any other wounds upon his body?—A. Not that I know of.

Q. Did the sheriff at this time make any statement, after he was shot, in your presence?—A. No, sir; he did not.

Q. Now, where had you been for the few days previous to this—where had you been working or located?—A. Had been working for Flato. He has no permanent ranch.

Q. Did you examine any of these Indians' wagons after the battle, after they left them on the battle ground, or any other place?—A. Yes, sir.

Q. Where was that and when?—A. I examined it Sunday morning—Smith's wagon—at the ranch.

- Q. Any other wagons you examined?—A. No, sir; I didn't pay any attention.
- Q. Did you follow the trail that the Indians took after the battle—where they left the ten wagons?—A. No, sir; I didn't.
- Q. What was in this one wagon you examined?—A. Dried antelope meat, dried meat supposed to be antelope meat, and antelope hides.
- Q. In what condition was that meat?—A. Cured meat.
- Q. The hides, how many were there of those?—A. I think about 18.
- Q. You say there are none of these Indians you can positively identify as being in the battle?—A. No, sir; there is not.
- Q. What was the condition of the hides, were they tanned hides?—A. No, sir; they were not, they were dried hides.
- Q. Was the meat all cured?—A. Nearly so.
- Q. About how much of it was there?—A. I rather think there were five or six sacks of meat.
- Q. Did you hear the sheriff demand the surrender or halt of the Indians before there was any firing at all?—A. I did, sir.
- Q. How far was the sheriff from the Indians at the time he made this demand?—A. I suppose anything from 65 to 75 yards.
- Q. From the tone of voice he used do you think the Indians who heard him understood what he said?—A. Yes, sir.
- Q. Did you see him when he made the demand?—A. Yes, sir.
- Q. In what manner did he make it?—A. Called on them to stop.
- Q. Make any motions?—A. Yes, sir; he did.
- Q. Was it immediately after this motion that you heard the first shot?—A. Yes, sir.
- Q. In what direction do you say that shot was from?—A. A little to the left in front of me.

Cross-examination by Mr. BURKE:

- Q. You say that somebody rode back toward the Indians upon seeing you or the posse coming around the curve there; who was that, a girl, or boy, or an adult Indian?—A. I suppose it was a male Indian.
- Q. Did you notice whether it was a boy or not?—A. No, sir; I could not say.
- Q. They were coming along driving the ponies when you first saw them?—A. The bigger part of them. Some of them had stopped.
- Q. The bigger part of them were coming along driving their ponies, some in their wagons, some on horseback?—A. Yes, sir.
- Q. And they were headed by a bunch of ponies that were being driven by somebody?—A. No, sir; not as I know of for sure.
- Q. Did you notice any ponies at the head of the bunch?—A. No, sir; I didn't.
- Q. How many were there at the head of the bunch on horseback or on foot, any?—A. Yes, sir, there were.
- Q. What were they?—A. They were on horseback—had their horses with them.
- Q. How many were there?—A. I suppose ten or twelve men, to the best of my knowledge.
- Q. What became of them, did they turn and go back?—A. They turned outside the fence and took position.
- Q. Scattered back?—A. Yes, sir; to position.
- Q. Then how many men did you see fire, of the Indians?—A. I seen as much as four or five.
- Q. You saw four or five fire; the rest of them were taking care of the horses?—A. I would not say for that; I suppose they were all firing.
- Q. You didn't see but four or five?—A. That's as much as I had my eye on.
- Q. What did the sheriff say; what were the words he said?—A. Ho holloed to them to stop there; and motioned them down.
- Q. He didn't say, I am the sheriff and I arrest you?—A. No, sir; not that I heard.
- Q. Did you see Smith or Brown there at that time?—A. I could not recognize them.
- Q. You don't know that there were any Indians there within hearing distance understood what he said?—A. Yes, sir; there was; they could hear.
- Q. Was there any Indians within your knowledge that could understand English, within hearing?—A. As for that I could not say.
- Q. You say he had barely said that, when there was a shot a little to the front and left of you?—A. Yes, sir.
- Q. How general was the shooting then—very generally?—A. Very generally.
- Q. On both sides?—A. Yes, sir.
- Q. Right away?—A. Yes, sir.

Q. How many Indians were shot?—A. I suppose 4, as I have been told; I didn't see them; I didn't go around to look at them, for I left.

Q. You don't know whether Black Kettle was shot?—A. No, sir; I didn't go to see.

Q. You say you were down in the creek bottom when the shooting commenced?—A. No, sir.

Q. Where were you?—A. I was on the bank.

Q. How far were you from the fence, south?—A. As much as 75 yards.

Q. Where was Sheriff Miller from you?—A. He was to my left.

Q. To your left?—A. Yes, sir.

Q. When you were facing west, up over the bank, he was off to your left?—A. Yes, sir.

Q. And the shooting took place off in that direction?—A. Yes, sir.

Q. Did you see Sheriff Miller from where you stood?—A. I saw Sheriff Miller when I turned around as he was shot. That was the only time after the thing took place that I saw him.

Q. You are unable to say who fired the first shot?—A. The Indians.

Q. Why do you say it was the Indians?—A. Because I saw it.

Q. Did you see the shot?—A. I saw them open up.

Q. What do you mean by opening up?—A. When they first commenced shooting, it came from that way.

Q. You say Sheriff Miller was up in that direction where you heard the sound? You heard the shot; that is what you mean by opening up?—A. Yes, sir.

Q. You didn't see the flash or see smoke when the first shot was fired?—A. I seen the smoke.

Q. And it was right over in the direction of Sheriff Miller?—A. No; I say it was off to my left, on the other side of there.

Q. Sheriff Miller was to your left in front of you?—A. He was to my left beyond me. He was up the bank.

Q. This first shot came from up the bank to your left?—A. In front to the left.

Q. Practically in the direction of Sheriff Miller?—A. No, sir; it was more in front of him.

Q. You can't say who it was?—A. No, sir; I can't say for sure that is the man.

Q. The shooting was all done in a very few minutes?—A. Yes, sir.

Q. How long, do you think?—A. In two or three minutes, I think.

Redirect examination by Mr. MECUM:

Q. You say you didn't see Black Kettle or any of these Indians that were shot?—A. No, sir.

Q. Did you see them any time during the firing?—A. I could not recognize them off in there.

JOHN OWENS, called as a witness on behalf of the prosecution and being first duly sworn, according to law, to testify the truth, the whole truth, and nothing but the truth, testified as follows:

By Mr. MECUM:

Q. Please state your name and residence.—A. John Owens; I live at Newcastle, Wyo.

Q. Were you acquainted with William H. Miller, of Newcastle?—A. Yes, sir.

Q. What official position, if any, did he hold?—A. Sheriff of Weston County, Wyo.

Q. I will ask you if you were with the sheriff on the 30th day of October, 1903?—A. That is the day of this occurrence; that is the day of the battle.

Q. The day they went to the Indian camp?—A. No, sir; I wasn't with him.

Q. Were you with the sheriff on the next day, or the day of the battle?—A. Yes, sir.

Q. Where did you join the sheriff?—A. I was at 8 or 9 miles this side of the old Fiddleback ranch, if you know where that is, on the Cheyenne River, in this county. I was building fences about 10 miles this side of the ranch when a couple of men wanted me to go along with the party. They said, "Get on your horse and ride out to meet the sheriff." I got on my horse and met the sheriff at the road.

Q. Did he deputize you to go with him at that time?—A. Yes, sir.

Q. For what purpose?—A. He wanted to arrest some Indians, he said, for killing game.

Q. You went with him?—A. I did.

Q. Where did you go from there?—A. Went over to Jake Mills's ranch, on Lightning Creek.

Q. When and where was it you first saw the Indians?—A. Near Mr. Mills's ranch; I could not tell you exactly how far.

Q. Now, with reference to Mr. Mills's camp, will you please tell the court just which way the sheriff and posse went and where they went, and just what they did and what the sheriff said; tell all about it.—A. If you will let me tell you I will tell it in a very few minutes in my own feeble way.

Q. (Pointing to the map.) I will ask you if that is a fair representation of the country around there?—A. I believe I understand this as you have explained it to me. This is the ranch, this the road leading around, this is the wire fence. If I remember right we stayed in this cabin and came down this road; I may be mistaken. When we got over in here [indicating No. 2]—I think it was about in here that we saw these Indians; over here near this wire fence, coming down the road.

Q. What did you do there at the wire fence?—A. We was riding along down this road here and we saw the Indians coming, and I said to the sheriff, "There is your Indians." The boys came in and said there were eight of them riding in the lead. Eight of these men we saw. I said, "There are your eight men in the lead." But when the men saw us coming—probably there was three wagons inside the gate; I think probably as many as three wagons in the gate—the men in the lead turned around and went outside the gate. These men went off over there some place and got off their horses. I said, "Sheriff, I believe they are going to make a fight. Don't take your men down there and expose them; take your men and get down in the creek bank." He said, "I believe it." I said, "When we get behind the bank you can hollo." When we got to this wire fence we dismounted and went through the wire fence. I could not tell you how far we went from this fence.

The party got off their horses here. I should say six wagons, to the best of my judgment, were to our right. When we got to the top of the bank the sheriff commenced to hollo at them. He said, "Let's cut off this bunch of men." The bunch down here near the fence here and these wagons, if I remember right, which was to our right. We topped the bank along here, and the sheriff commenced to hollo to them to surrender, and he appeared to be out of wind and said: "You hollo at them"—he said, "You hollo at them." So I commenced to hollo at them myself at the top of this bank. I should judge, anyway, about six wagons to our right. While we was calling these six wagons and this bunch dismounted in here. There is a corral along up here some place called the Four I's corral. Right up there by that corral to our left this firing commenced, and there was general firing.

Q. About how far was the sheriff and yourself from the Indians when you called to them to halt?—A. I should not think we was over 70 or 75 yards.

Q. What kind of a day was it, still?—A. Nice, sunshiny day.

Q. Could the Indians, from the position you were in, and loudness of your voice, have understood what you said if they understood English?—A. Yes, sir; those that understood English, I am sure could.

Q. In addition to your talk, did you make any signs or gestures to them?—A. No, sir; only to surrender.

Q. Did the sheriff make any gestures to them to halt?—A. If he did, I didn't see it.

Q. Did the Indians halt?—A. No, sir; they didn't.

Q. What did they do?—A. When we went in to cut off this little bunch here, we went there to try to stop them; then is when the firing commenced up in this direction.

Q. About how far were you from the creek at that time? About how far is the creek from the road?—A. I think it is about, to the best of my knowledge, from 50 to 60 yards.

Q. The road from the creek?—A. Yes, sir.

Q. How far were you from the creek?—A. We must have been 15 to 20 yards, to the best of my knowledge.

Q. Now, where was the first shot fired from; did you see it?—A. Yes, sir; I did.

Q. Where was it?—A. Over to our left, right up toward the corral some place. Is that the corral? Then it must have been up in there some place the firing was, between us and the corner of the corral.

Q. About how far from you was it?—A. Judge, I should guess it was between 60 and 70 yards; probably 70 yards; from 50 to 70 yards.

Q. Did any other Indians fire at that time?—A. Yes, sir; still another one off at our left firing, and another from over there some place fired.

Q. Did you see the Indians, or simply the smoke?—A. I saw the Indians.

Q. Where were they, on horseback or in wagons?—A. One of them on horseback and the other two afoot.

Q. Just describe to the court what transpired after the first shot was fired, as near as you remember.—A. I believe I have told you as near as I remember.

Q. Think you have told it all?—A. Yes, sir.

Q. About how many Indians were engaged in shooting at the posse; about how many Indians engaged in shooting at you?—A. Indeed, I could not tell you. The

shooting from my right, and that bunch I said we had tried to cut off; I didn't see any of that at all. The only thing I saw was at my left; I didn't see anything at my right, because I was pretty busy up this way.

Q. What caused you to be busy up this way; did you see any Indians point at you?—A. They were shooting, too, Judge.

Q. Was there any shooting to your right?—A. Yes, sir; quite a lot of shooting to my right.

Q. About how many shots did you hear from the Indians on the opposite side?—A. I could not say; there was quite a lot of shots fired from both sides—just how many I don't have any idea. I was busy at my left, down at my right I didn't see any of it. I knew that fighting was going on, but I never looked in that direction.

Q. Will you please describe to the court why your attention was directed to the south—to your left?—A. Quite a lot of shooting from that direction; the sheriff was killed from that direction, to the best of my knowledge; in fact, I am positive.

Q. What Indians were killed at this battle?—A. I could not tell you only but what I learned after they were killed—fifteen minutes after that; I never seen any of these Indians before that.

Q. What Indians did you find dead at the battle ground?—A. We found a man that was recognized by these four squaws to be Black Kettle and a dead Indian boy killed there. The one they called Charley Smith was shot and died the next day, and the girls buried one up in the corral.

Q. Did you see an Indian called Black Kettle that was killed that day?—A. Yes, sir.

Q. Where was he from where you were located?—A. He was south of me and to the left of me near the creek bank.

Q. Did you see him firing at the white men?—A. Yes sir.

Q. About how many times?—A. I think he fired only about three times.

Q. Was he by the road or between the road and the creek?—A. He was nearest to the creek, except one man.

Q. Did you recognize who the other man was?—A. No sir.

Q. Was he a man that was killed or got away?—A. He got away.

Q. Charley Smith, where was he when you found him killed or wounded?—A. Down near the gate to my right.

Q. Near the wire fence?—A. Yes, sir; as they were going north it was on the left to the south of the road.

Q. And the boy with reference to this corral, where was he?—A. This boy must have been 35 yards from Charley Smith; in between him and the corral; in between the other boys and the corral.

Q. And the other Indian that was killed—that you don't remember his name—where did you find him?—A. The girls had buried him; but I think I saw him fall off his horse. The women folks buried him that night. I am positive I saw him.

Q. Do you know where these Indians had been hunting—where they came from?—A. I don't know whether I saw them or not. I have a ranch up on Antelope, near Buffalo, and there were a number of Indians came around there, but whether they were any of these Indians I don't know. There had been different hunting parties there; they appeared to me to be different hunting parties; they came along and camped at the water hole at my place one day, and the next day another one; it might be the same party, for all I know.

Q. What white men, if any, were killed at this time?—A. Sheriff Miller and Mr. Falkenberg were killed.

Q. Where was Mr. Miller shot; where was the wound?—A. I didn't see him at all after he was carried to the house; I just saw him when he was shot, lying by the tree. Of course he was all covered with blood. I could not tell exactly, as he lay; I thought I saw the hole near the pocket.

Q. Did he die as the result of that wound?—A. Yes, sir.

Q. This wound was received during the time the Indians were shooting?—A. Yes, sir.

Q. You saw the Indians pointing their guns that way?—A. I could not say who they were pointing at. They were pointing in that direction.

Q. The Indians were pointing their guns in the direction of the sheriff's men, and shooting?—A. Yes, sir.

Q. Now, when you were going from the cabin over to meet the Indians, about how far were you from the Indians when you first saw them?—A. I could not tell you exactly, but I should judge 400 yards.

Q. Could the Indians plainly see your company at that time?—A. Yes; see it very plain; a few big trees up where they were and none where we were.

Q. They didn't hide the view?—A. No, sir.

Q. Is that a generally level country, or hilly country, between the cabin and the battle ground?—A. It is a level bottom before leaving the cabin, only a few trees, and after you go a little further away there is no trees scarcely or no underbrush.

Q. After the Indians first discovered you what did they do?—A. Turned their wagons around and went out the gate. They had some horses ahead. When it began the horses scattered, and the men commenced to get off their horses after they were outside.

Q. Did you see them take their rifles out of their scabbards?—A. I saw them getting their guns; yes, sir.

Q. You say there is none of these Indians you can identify?—A. I can't identify any of these Indians at all.

Q. How far was the general body of Indians from you?—A. Part of them was quite a ways from us at our left. There was quite a lot wasn't close to our people; a lot of them wasn't close at all. The front ones was all the way from 50 to 75 yards away from us. Before the attack they scattered around to the right, and a lot of them turned around and went right back.

Q. How far were they from you?—A. All the way from 200 yards to 300. I could not tell exactly.

Q. How is the country back there?—A. Its open for a piece.

Q. Any trees or sage brush, or places for a man to hide?—A. Grass would do or high sage brush, but I don't remember many trees. On the right they turned and went back.

Q. Did you examine any of their wagons after the battle next day?—A. Yes; I believe I did; a couple of them.

Q. State what you found in the wagons in the way of game, if anything?—A. Quite a lot of meat in each wagon; dried meat, and some that wasn't dried very well. Of course, all of it was tolerably well dried, as they dry their meat.

Q. Were any of the Indians present who were in the battle that told you where they were from, or what they had been doing?—A. No, sir; there was not.

Q. Did you look at these men to see whether you recognize any of them?—A. No, sir; I have not.

Q. Will you please look at them and see if there are any of them you can recognize?—A. No, sir; I don't recognize any of them.

Q. Did you take any note of the number of wagons or number of Indians there that day?—A. No, I didn't.

Q. About how many wagons did you see?—A. Judge, I could not tell you; if I remember right, there were 6 that the sheriff and I had went up above; they had turned then and went off northwest.

Q. How long a string did the Indian wagons and horses make? About how long was that string?—A. It must have been 300 yards long; may be longer; but any way 300 yards long.

Q. Where was Louis Falkenberg shot?—A. Where was he when he was shot?

Q. Yes.—A. He was on top of the bank and to my right.

Q. During this shooting, were all of the white men up on the bank or down in the creek bed?—A. All on the bank. I could not say exactly, but I glanced back at them once and saw there was quite a few on top of the bank, I think all of them; but the boys told me afterwards one of them was behind the bank or behind a log.

Q. Did any of these Indians offer to surrender or make any signs that they would surrender?—A. Not that I could see.

Q. Do you know whether or not the sheriff had a warrant?—A. Yes; he had one.

Q. Did you see it?—A. Yes, sir.

Q. Did you have it in your hands?—A. Yes, sir.

Q. When you called out to these men, there were some of them you knew could speak English?—A. No; I don't know any of them could speak English, only what the sheriff and the posse told me.

Q. That is, Mr. Smith could speak English, you knew?—A. Only what I had been told.

Q. You think they understood what you wanted?—A. Yes, sir; I think they did. Mr. Burke, I object to what he thinks.

Cross-examination, by Mr. Burke.

Q. On which side of you was Sheriff Miller at the time the shooting commenced, your left or your right?—A. He was to my right when the shooting commenced; I am not sure he was to my right.

Q. The shooting, as you understand it, was further to your left, and in front of you?—A. Yes, sir.

Q. As I understand you, immediately upon one shot being fired the posse began to shoot?—A. There were about two shots fired the other way.

Q. They were about somewheres near the corral or in that direction?—A. In that direction.

Q. Was Black Kettle up in that direction?—A. Yes, sir.

Q. Black Kettle is one of those that was killed?—A. Yes, sir.

Q. Now, then, you say there were quite a number of Indians and teams that were farther over to your left by the road?—A. Yes, sir.

Q. These you say turned and fled?—A. Yes, sir; I didn't notice the men going; but I noticed the teams. I thought the men were pretty well up toward these six wagons. That was my understanding.

Q. You saw, however, only five Indians participating in the shooting?—A. I think I saw more than that.

Q. How many did you see?—A. I could not tell exactly, because they were shooting very fast. Understand me, this shooting over to my right I didn't see at all, but what I saw was over this space to my left.

Q. How many to your left did you see shooting?—A. I could not tell you; they were dodging around shooting—I could not tell you how many.

Q. You would say there were anything like all the Indians there shooting?—A. I could not say there was all the Indians shooting, but all the Indians there were shooting.

Q. Just what was it the sheriff holloed first?—A. The sheriff in the first place I think holloed at them twice to halt and the third time—probably holloed at them different times, but the first words was for them to halt; then he commenced to hollo to them to surrender. He holloed a number of times, I couldn't say how many times; then he said "You hollo."

Q. What did you hollo?—A. Said halt and surrender.

Q. There was no saying, I am the sheriff and have got a warrant for you?—A. I don't think there was.

Q. They fled away, did they, quickly after the shooting commenced?—A. Some of them did.

Q. They were there with their wives and children?—A. I don't know in regards to that.

Q. Did you see some of the squaws?—A. Yes, sir.

Q. One of the squaws was shot?—A. Yes, sir.

Q. A little boy was shot?—A. Yes, sir.

Q. They had their ponies along?—A. Yes, sir.

Q. Which way were they going, east in a general direction; was that the road to go east?—A. I call it so; they were going down the creek.

Q. That is the road they would take to go home?—A. That is the road.

Q. There was no response from them?—A. They were holloing, but what they were saying I could not tell.

Q. It was Indian?—A. It was Indian.

Q. It was intelligible to you?—A. No.

Q. Considerable confusion, wasn't there?—A. Yes, sir; after the firing commenced and quite a little bit before the firing, kept galloping up and jumping off their horses before the firing commenced.

Q. Did you examine the wound of Mr. Miller to determine whether the shot entered in the front or at the back?—A. I didn't examine it close, but I am satisfied it entered from the front from the bullet hole the way it looked, where it went in and especially where it came out back near the pocket.

Q. You think the wound of entrance was in front?—A. Yes, sir.

Q. Was the corral on much higher ground than where you and Mr. Miller were?—A. It was on higher ground, not a great deal, but higher.

Q. How far apart were you and Mr. Miller?—A. I think he worked around on my left, but I would not say, not exactly how far.

Q. He was at your right when you went up over the bank?—A. Yes, sir.

Q. And you think he worked around to your left, so he was at your left when he fell?—A. Yes, sir; he was at my left when he fell.

Q. How long did the shooting keep up?—A. I could not tell, probably five minutes; but I could not tell just how long.

Q. You have no knowledge how many shots were fired?—A. No, sir.

Q. Were there 40 or 50 from the Indians?—A. It would be hard for me to determine. I wouldn't like to determine that, but quite a number of shots; dirt was flying around there quite lively for a while.

Q. You wouldn't want to say there were 50 shots fired?—A. No, sir; I wouldn't say there were 50 shots fired.

Q. You were about as cool a man as any of them?—A. I don't know that.

Q. You don't get excited readily?—A. I probably do; we all get excited.

- Q. You keep possession of your faculties pretty well?—A. I try to.
- Q. How many shots do you think the posse fired; could you have any idea of it?—A. No, sir; I could not determine.
- Q. They fired quite as many as were fired by the Indians?—A. They fired all the way from 2 to 3 shots aplece.
- Q. You say the firing was quite as rapid and general from the posse as from the other side?—A. I think it was; the posse all had pretty goods guns—repeating guns—and shot pretty fast.
- Q. How much higher was the corral, should you think, than where you were?—A. I could not say. I wouldn't try to say; but we was down on level bottom; the creek ran right along; this bottom was tolerably level, and when you come to this corral it is on rising ground.
- Q. About how far away was it from you?—A. To the best of my knowledge, 125 or 150 yards; probably 150 yards.
- Q. And the general ground where the Indians were was higher than where you were?—A. Yes, sir; up toward the corral; pretty well toward the corral here was pretty much level ground; all the way down to my right the ground was pretty much level.
- Q. And the Indians fled away from there, leaving their teams, some of them?—A. The wagons were all taken; they took all their teams away with them; but after they got away, probably half a mile, there were two wagons left; one in the creek, one up the draw.
- Q. Did you see Mr. Brown, an Indian by the name of Brown?—A. No, sir; I didn't see Mr. Brown at all. I may have seen him but I didn't know him. Mr. Brown might have been there, and I might have seen him, but I didn't recognize any of them.

Re-direct examination by Mr. MECUM:

- Q. You say that the firing, the first one or two shots fired, were in the direction of Black Kettle?—A. Yes, sir.
- Q. Was it at the place where Black Kettle was, where you saw Black Kettle, or was it beyond him?—A. I could not say as to that, but Black Kettle didn't fire the first shot. A man on horseback, with a canvas coat, fired the first shot.
- Q. On the road where the wagons were, on which side of the road was Black Kettle when he was shooting; was he between the road and the creek or on the other side of the road?—A. He was nearest to the sheriff; he was on the same side of the road the sheriff was on, and the nearest man to the sheriff, closest to our left; might have been somebody closer to our right, but I don't think so.
- Q. Did you see him shoot more than once?—A. Yes, sir.
- Q. How many times did you see him shoot?—A. Three times.
- Q. Did I understand you after the sheriff demanded them to halt, you heard the Indians say something in their own language?—A. Yes, sir.
- Q. Where was that from?—A. Generally along the line.
- Q. It wasn't one man, but a number of Indians?—A. A number of them.
- Q. There was some pause between the demand and the first shot?—A. Yes, sir.
- Q. About how much time do you think?—A. I could not say; only a short time.
- Q. Long enough to pass any word along the line?—A. They were hollering then, I think; one man kept hollering all the time; one of the other boys tells me it was a squaw doing all this hollering all the time; I thought it was a man.
- Q. Did you see where Mr. Smith was when he was shot?—A. I saw where Mr. Smith was after he was left lying on the ground.
- Q. Did you see him when he was shooting?—A. No, sir.
- Q. Where was he wounded?—A. Through the limbs.
- Q. Through his legs?—A. Yes, sir.
- Q. Can you describe how the wound was?—A. No; I don't think that I could. I didn't see the doctor dress his wounds, or anything.
- Q. I understand you to say the firing was about as general on one side as the other?—A. Yes, sir.
- Q. Were all the white men engaged in the shooting?—A. I think they were.

Cross-examination by Mr. BURKE:

- Q. About this wound of Mr. Miller's, the hole of exit, was that above or below the hole of entrance?—A. Where the bullet should have come out?
- Q. Yes, sir.—A. I didn't examine it closely. I stayed up on the hill while the boys carried the sheriff away, and the other man was left on the field. I stayed on the bank. They thought maybe the Indians might come back. I said, "I will stand guard; you carry the sheriff away and care for him." I never saw the sheriff after they carried him down to the house. I went to get a horse to carry this man that