

In the Probate Court of Ada County, State of Idaho.

The State of Idaho, Plaintiff,
vs.

Ellis Curts, Defendant.

Preliminary examination had on October 17th, 1891.

Milton Burns being duly sworn upon his oath deposes and says:

Q. State your name, residence, occupation or profession.

A. Milton Burns, Ada County, Idaho, Farmer.

Q. Whereabouts in Ada County, Idaho, did you reside on or about 30th the ~~xx~~ day of August, 1891.

A. On Five Mile about thirteen miles west of Boise City.

Q. Did a fire occur on your place on or about that time.

A. Yes.

Q. State fully what burned? A. Some wheat stacks and hay stacks and barn and hen-house.

Q. How many wheat stacks? A. Two wheat stacks and five hay stacks.

Q. Whose property was this? A. Mine.

Q. Now in what county and state did this burning take place?

A. Ada County, Idaho.

Q. About how far from your ~~barn~~ ^{house} is the nearest hay stack that burned? A. ~~65 steps.~~ *about 8 feet*

Q. How far from the hay stacks to the wheat stacks that burned?

A. Ten steps.

Q. Were the five hay stacks that burned all stacked in a lot together? A. No.

Q. State the distance from the hay stacks which you say were eighty five steps, to the other set of hay stacks which you say were burned? A. Twenty five steps.

Q. Describe where the other set of stacks were that were burned?

2 2

A. I have answered that question.

Q. What time in the night did you first find this fire? A. Between eleven and twelve o'clock.

Q. How far had it progressed in burning when you discovered it.

How much had it burned? A. The wheat and all the hay seemed to me like it had been burning five minutes.

Q. How many separate fires were there at the time you first discovered it? A. There were seven.

Q. You may state whether or not when you first discovered it, there was a fire at each separate set of stacks? A. Yes.

Q. On what side of the stacks were these fires with reference to your house in which you live? A. On the opposite side.

Q. State whereabouts on the stacks and the height from the ground was the fire on each set of stacks. State that in detail.

A. I couldn't tell. The blaze came up about ten or fifteen feet above the stacks. The east ones I don't think was quite as high as them further west. There was a barn betwixt the hay stacks and a ditch of water. Was the barn on fire at the time you first discovered the fire? A. No.

Q. Was the stack- was the two stacks between which the barn sat both afire at the time you first discovered the fire? A. Yes.

Q. Had you had any fire about those stacks or the barn that day?

A. No.

Q. Do you know of your own knowledge of any one being about those stacks or near ~~wik~~ them with fire that day? Did you have fire out on your place during that day or night? A. No.

Q. How far does the defendant, Kurts, live from the place of the burning? A. It is angling across forty acres.

Q. Is there anything ^{between} ~~near~~ Mr. Kurts House and the stacks to intercept the view? A. No.

Q. How long was it after you discovered the burning until others

came to the place of the fire? A. About ten minutes.

A. Who came? A. Rigdon, Brown, Akin.

Q. Did Mr. Kurts come to the fire? A. No.

Q. At all? A. No.

Q. How far did Mr. Akin live from your place? A. A little over a mile.

Q. How far did Mr. Rigdon and Mr. Brown live? A. Mr. Rigdon about three hundred yards. Mr. Brown was up the road about a mile coming down the road when he saw the fire.

Q. Did you upon the next morning after the fire, see any tracks of persons running between the defendant's house and those stacks? A. Yes.

Q. Now take your time and state fully what you saw in the nature of a track and the investigation which you made there?

A. There was a lane betwixt his place and mine. The stock was turned outside there that night and people passing around I couldn't see any tracks in the lane until I got very near his fence. Then I saw a barefooted track a running towards Mr. Kurt's house. I followed a little ways, then I came back and sent for the neighbors to come in to help track, to see where the tracks went to. Well after they came in, we followed the tracks a ways and then we come back to see whether we could find the way the tracks had come. Then we found the same track, or seemed to be, coming from his house towards the stacks. We tracked it right on to about sixty steps of the hay-stacks. Then there was a clover meadow and we couldn't track them any further. By that time several others had come in and we went and tracked him way on to his house- run the track through to his house. We measured his tracks along in places. There was several of the boys measured the tracks, I didn't measure them myself.

Q. You saw them measured? A. I saw them measured, yes.

Mr. Kurts met us out about sixty yards from his house and Mr. Davis asked him if he had any objection to measuring his feet - the length of them. He said he didn't. Then we went back to his house and there he pulled his boots off and ~~measured~~^{they} his feet. Then we had him to trot off a little ways - to run - so we could measure his feet ~~while he was~~^{after} running. He run off and the boys measured the tracks then. All the tracks I saw measured corresponded with the last ones he made. I noticed in particular, Akin measuring his tracks before we come to the house. Afterwards he measured the tracks and they corresponded to the tracks he measured before. We took a circle around each way to see ~~xxxxxx~~ whether any tracks left the house - Kurst's house; but we didn't find any barefoot tracks. Then we came around and struck his tracks and tracked him down toward the hay stacks. There was about seventy or eighty yards from there that I didn't see his tracks - I didn't look for them.

Q. Where with reference to Kurt's house did you first find the tracks going from his house toward the stacks? A. About 140 yards, I think.

Q. Was there anything in the line which the tracks seemed to be going to prevent you from discovering tracks in this 140 yards?

A. I think as we wnt up we put the tracks out along from the ditch to the house. Then there was meadow off to the left a little ways. There was nothing else to obstruct the view of a track.

Q. How near to the house did you run these tracks or find them, stacks going from the ~~stacks~~ toward the house? A. About 25 steps.

Q. ~~Wax~~ How far apart was these tracks going from the stacks toward the house? A. I think about four to five feet.

Q. How far apart were those going from Kurt's house to the stacks? A. About two feet and a half.

5

Q. You may state if there was any difference in the appearance of the tracks going from his house to the stacks and from the stacks toward his house, with reference to the impression made upon the earth and the nature of the tracks &c.?

A. The tracks coming from the stacks to his house set digging or clawing - that is generally. The tracks going from his house to the hay stacks seemed like just a moderate walk.

Q. Did you see any one at the fire that night bare-footed?

A. No one but my boys.

Q. What was there between the two sets of hay stacks, to prevent fire running from one set to the other? A. There was a ditch of water.

Q. Was there water in it? Yes, there was water in it.

Q. When you first got to the fire that night, could you discover any traces of fire having run along from one set of stacks to the other? A. No. I didn't look. I went to try to get the horses out of the barn.

Q. Well was the fire when you first saw it, at such points or places on the stacks as they would necessarily have been, had they caught from each other? A. No.

Q. State the facts so that the court can get more fully your reasons for knowing. A. The wheat stacks were setting side by side and then the hay stacks, two of them were setting sideways that way. Then the wind was coming from the south east. I don't believe that the wheat stacks - or the stack setting over on the east side by itself - would have caught from the four stacks of hay that was together.

Cross-examination by Gray.

Q. Where were you Mr. Burns on this 30th day of August? A. I was at home.

Q. Where were you at the time you discovered this fire?

A. I was at home - at the house.

Q. Whereabouts in the house? A. I was sleeping in a wagon right in the yard.

Q. Whereabouts was this wagon in which you were sleeping with reference to the house and these stacks? A. Five steps east of the house.

Q. Was it between the house and the stacks? A. No.

Q. Well you fail to tell me yet and give me any definite idea as to which side of the house you were sleeping on with reference to the stacks? A. The stacks was north of the house, and the wagon was east of the house in plain view of the stacks.

Q. How many feet were you sleeping from these stacks? A. I was about eighty five steps.

Q. You were alone were you not? A. Yes, I slept there myself.

Q. Were any of your folks sleeping in the house at this time?

A. No.

Q. Nor in the barn? A. No.

Q. Were your family at home? A. Yes.

Q. Where were they? A. Four little boys slept out there by the stacks.

Q. How old were these little boys? A. They ranged from ten to fourteen.

Q. Where were they when you first discovered there was a fire?

A. The oldest one came and waked me up.

Q. These stacks you say were on the north side of the house. Were they arranged in a circle or were they in a direct line from the house north? A. They were rather of a circle. They were north of the house.

Q. Then they must have been running east and west? A. East and west.

Q. Then in what direction was this wind? A. South east.

Q. At which stacks were these boys of yours sleeping? At the east or the west end of the row of stacks? A. About half way.

Q. On which side of the stacks from the house were they sleeping?

A. On the south side.

Q. That is towards the house? A. Yes.

Q. Now this wind was a little more to the east than to the south wasn't it? A. No, I think not.

Q. Was it a strong wind? A. No, it was what you might call a slight breeze.

Q. Now, would it not have been possible for the fire to have been conveyed from one stack to the other? Was there not wind enough? Weren't these stacks close enough? A. I think not.

Q. I believe you stated in your direct examination that you did not notice whether there was any traces of a fire having run from one stack to the other? A. I didn't notice any at that time.

Q. But now you are very particular to have noticed that the fire was set on the opposite side of the stacks from the house, aren't you? A. I am very positive that the fire was coming up from the opposite side.

Q. I believe that you stated that you saw no tracks round about these stacks? When you first discovered the fire? A. I didn't look for any tracks when I first discovered the fire. I didn't look until the next morning.

Q. Well what was the first thing you did. A. Got the horses out of the barn.

Q. What then did you do? A. I started to tear the top off ~~the~~ the stable- the barn.

Q. Well aside from trying to save the property there, what else did you? A. I tried to save a rick of wheat after it had burnt about an hour. There were several come in and some of them mentioned that the property could be saved- a portion of it. So we-

8

Q. What is your first impression as to the origin and cause of this fire? A. Well, I don't know that I had any particular impressions- I kind of thought a little it might be Kurts that had done it.

Q. You didn't think it possible for any one else to have done this did you. A. I thought it was possible for any one to do **it**.

Q. What reason did you have to think Kurts could have done it?

A. He is about the only fellow I knew of that had any feelings toward me- that I knew of.

Q. Did you think he had any hard feelings towards you. Who told you? A. Mr. Lewis was the first one told me.

Q. When did he tell you? A. He said Kurts blamed me for his wife leaving.

Q. Well had he ever made any threats? A. I hadn't heard of any at that time.

Q. Now why was it that the first thing you did was to go to Kurt's? A. The tracks went that direction.

Q. Well you told me there was no tracks to be seen round about your place? A. About forty yards from the east stack I discovered these tracks a running towards Kurt's house.

Q. But I thought you didn't discover those tracks running towards Kurt's house until you got down- until you discovered those tracks running- I understood in your direct examination that you didn't discover any tracks until you got near Kurt's House

A. Well, I didn't say that any how- what I aimed to say and what I did say was after I crossed the lane near his fence, discovered these tracks and then they went right toward his house- about.

Q. How far from your place was it where you first discovered these tracks? ~~xxx~~ A. About thirty five steps east.

Q. How far did you follow them? A. Followed them clear on to

the house, not at once- I sent for the neighbors to come in and I wanted them to see the affair. So then we went and took the tracks and followed the tracks up that time about 80 yards, I think; and then I knew there would be more in, so we left that and went to see if we could discover the tracks where they came in- came towards the stacks. We found these tracks where they crossed the lane about three hundred yards from the stacks. He came down to the lane one hundred yards, near his fence, and then crossed over into my field and then we tracked him from there on down sixty yards to the stacks. There is a clover meadow there and we couldn't track him any closer.

Q. Now the sum and substance of this whole thing is that you found some tracks? A. I found some tracks.

Q. That is all you did find? A. I saw where it looked like they were running.

Q. Then you got a whole posse of your neighbors to go down to Mr. Kurts because you knew he did it? A. No sir. I wanted to see where the tracks lead to.

Q. Were you with the crowd when they went down to Kurt's? A. Yes.

Q. Could you track him continuously from the place where you first struck the tracks from the place thirty five steps from your stacks to Kurt's? A. We could trace him from about thirty or thirty five steps of the stacks on to a ditch about seventy five or eighty yards from his house. Then after we crossed the ditch there, ^{others} ~~a man~~ had got on ahead of me and I didn't see the tracks till we got about forty yards from the house. Then I saw a bare-footed track, which seemed to be the same track there in the field, going across a potato patch, it seemed to be walking.

Q. You simply thought the tracks you saw in one place and the tracks you saw in another place were the same tracks made by one and the same man? A. We had measured the tracks along several times- Mr. Reed there measured that track there in the Potato

patch and it corresponded-

Q. As I understand, when you first started out you followed these tracks a certain distance when somebody else had come in ahead of you and obliterated these tracks for a distance? And then you found the trail again- were the first tracks and the last ones the same tracks- did you measure them?

A. I didn't measure any tracks at all. I saw them measured.

Q. Now you say you asked him to let you measure his foot, or somebody did- he seemed perfectly willing to let you do it?

A. Yes sir.

Q. Did he act like a guilty man? A. Well I never saw anybody else treated in that way- I couldn't tell.

Q. Now you had measured these tracks you claimed were running tracks? A. I saw them measured.

Q. They were just the same size as his foot- weren't they?

A. The tracks that we aimed to get as far as we could was where they were lengthened out- the full bigness of the foot.

Re-direct examination by Mr. Borah.

Q. Did the boys sleep near the wheat stack ~~or~~ the hay stacks?

A. The hay stacks.

Q. Which set of hay stacks? Half way between the whole business of the middle set of stacks.

Q. Now then, Mr. Gray asked you something about why you supposed Mr. Kurts did it. Did you know of his wife having left him? A. Yes.

Q. How long before the burning was it, she left him? A. I think it was about six or seven weeks, I think. I am not positive about that.

Q. Who took her to town when she left him? A. I did.

Q. Did you say you heard Kurts blamed you for his wife leaving him? A. Yes.

Milton Burne

12.

J. A. Davis being first duly sworn upon his oath deposes and says:

Direct examination by Mr. Borah.

Q. Give your name, residence and business or profession?

A. J. A. Davis, Boise City, at present, farmer at present.

Q. Where did you reside on or about August 20th, 1891.

A. On my farm about one mile and a half from Hunter, Ada County, Idaho.

Q. Do you know of some property being burned on Mr. Burns place about that time? A. I do.

Q. If you went to the fire, state when with reference to the time of the burning? A. I did not go to the fire, I went next morning about nine o'clock.

Q. What if anything did you do next morning in the way of tracing out and measuring any foot-steps you saw about the place?

A. Mr. Burns sent his boy and asked me to come to his place.

I went and there met, I think, eighteen more of the neighbors gathered there to ascertain, if possible, the parties, if any one, who had set fire to his stacks. When I went, they had already discovered tracks of some one bare-footed coming toward the place and also leaving it. The whole crowd started on the tracks leaving, which is not discernible until after we had crossed the travelled part of the lane opposite the stacks burned, from which place we followed them until we arrived within probably seventy five or eight yards of Mr. Kurt's house, and we could discern them no longer. Mr. Burns and the other gentlemen present asked me if I would be spokesman and ask Mr. Kurts if he would permit us to measure and examine his feet and also if he would make tracks for us so that we might see if they corresponded with the ones we had been following. He did so, that is permitted us to examine them and I measured

hi s foot. It corresponded in length and width with the tracks we had followed and measured. After which, we had him come out and run and make tracks on a similar kind of ground which tracks we measured and they proved to be the same width and length as the ones we had followed. I suggested to the men present that we now disperse and make a careful search to see if possible we could find similar tracks coming or going in any other direction. We did so, but found no tracks. Myself and Mr. Rigdon went out in the road north of his residence and walked around his field in the road until we came to where we intercepted the other men coming back across the field. There we found tracks going toward Mr. Burn's that measured the same as the ones we had followed there. The party had crossed the fence and they corresp onded with the tracks we had followed. After crossing Mr. Kurt's fence the tracks went down the road perhaps a hundred yards and crossed the lane and into Mr. Burn's field and we followed those tracks until we were within perhaps sixty or seventy yards of the stacks that had been burned, there we could find them no longer. I omitted one thing in regard to the tracks that left there. The party had evidently been running for the first one hundred and fifty to two hundred yards from the burning. I judge he had ran on account of the tracks being much farther apart for that distance, than the rest of them. They were about five feet I should judge. We measured a great many of those tracks, they were made in soft dirt where it would give a full impression of the foot and they all corresponded both in length, width and general outline. After we returned, Mr. Burns asked me what steps I thought best-

Q. Then I understand the only set of tracks you found about there was the set running from Kurt's house toward the stacks and from the stacks toward Mr. Kurt's house, answered to the description of ~~the~~ bare-footed tracks? A. They were all.

Q. Did Mr. Kurt's say anything to you or in your presence in regard to the fire in any way? A. He did.

Q. What was it? A. He said he went to bed quite early that evening preceding the fire and knew nothing of it until he arose the next morning and went out doors. Also showed us his bed room he occupied that night. It was in the north west part of the house. That was all he stated in my presence.

Q. How near to Mr. Kurt's house was the nearest tracks that you found going toward it? A. Perhaps about one hundred yards.

XXXXXXXXXXXXXKXXXXX

Q. What, if anything, prevented you from discovering the tracks from there to the house or was there any way he could have gone in on ground that was not impressionable? A. There is a narrow strip of land set to clover with a ditch running parallel along side of it. On the south bank of that ditch it seemed to be a beaten path, the ground quite hard, and unimpressionable.

Cross-examination by Mr. Gray.

Q. Mr. Davis what was the nature of the soil where you measured these tracks? A. It is in sage brush land. In some places it was quite hard and others very soft. Some tracks were quite plain, full and complete, whilst others were faint.

Q. Now these tracks that were full and complete, where did you find those? A. In soft ground, where it was bare, no tufts no grass growing.

Q. How about the track-did the foot-print seem to sink into the dirt? A. Some places it did other places it did not.

Q. Which ones did you take your measurements from? A. The ones that were the deepest where ~~you~~ could get a full length track.

Q. How deep were the deepest? A. Well, perhaps where the tracks were the farthest apart and where he seemed to have been running, the ball of the foot and toes dug in the ground perhaps in some instances a half or three quarters of an inch.

But ordinarily they were much shallower.

Q. But you measured these deep ones, did you. A. We measured all kinds.

Q. And they all corresponded? A. No sir- they did not. The shallow ones were very indistinct and evidently did not represent the full length of the foot.

Q. Then you base your accurate measurements upon these deep tracks? A. No we based our accurate measurements upon tracks that appeared to be full and complete, not where the party had apparently been running and dug his toes in the ground.

Q. I understand you that these tracks that were full and complete that they sunk into the ground from one half to three quarters of an inch? A. No sir.

Q. How deep then. A. The tracks where we took our measurement were from an eighth to a half an inch- perhaps a quarter would be a more accurate estimation.

Q. Now was the soil dry? A. Yes sir, very dry.

Q. Brittle, aint it- that is a good deal like chalk.

Q. In some places it is almost like flour and in others quite firm.

Q. In which kind of soil now did you take these measurements that you claim are accurate? A. I should say about a medium, somewhat soft.

Q. Well now don't you know Mr. Davis, as well as anybody else, that any kind of a track, made in that kind of soil, is not capable of any accurate measurement? A. No sir, I will have to plead ignorance on that, I wasn't aware of it. Neither do i believe it.

Q. Now do you think for a man running through this kind of soil you have described to us that the track is going to be left perfect without any of this soil rolling down into it and obliterating it? A. In some places and kinds of soil, yes.

16.

Q. Now you state that you measured this man's track and you measured his foot. What was the first track you measured, going or coming from Burn's? A. Going from Mr. Burn's to Mr. Kurt's place we measured perhaps from twenty five to thirty tracks- a great many. Very carefully.

Q. Then you measured the length and the width of Kurt's track, did you? A. I did.

Q. You don't mean to say that this track corresponded to Kurt's foot, do you? A. I do.

Q. Exactly? ~~A.~~ Did it measure- did Kurt's foot measure the same in length and width the track did? A. It did.

Q. I believe you stated these tracks were of a man running, didn't you going from Burn's to Kurt's? A. The tracks being about five feet apart, we supposed the party was running.

Q. Now isn't it a matter of fact that the measurement of a man's foot print while running is longer than his foot naturally is?

A. I never ~~had~~ measured any one's foot before- I am not an expert.

Q. Then you may possibly be mistaken in this? A. We did not take our measurement from the track's that were so far a part. And I don't think I am mistaken.

Q. How did Mr. Kurt's conduct himself when you asked him to allow you to measure his foot? A. He treated us in a gentlemanly and courteous manner.

Q. You have told us now all about the measurement of these tracks, now I would like for you to tell us when they were made, as to your opinion of that? A. I should judge from their similarity to the tracks we had Mr. Kurt's make when he ran for us that they were fresh.

Q. If they had been made for three or four days wouldn't they be the same, was there anything to hinder it? A. I do not think they would.

Q. You do not think they would be the same? What is your reason for it? A. The wind would have sifted more or less dust into them and they wouldn't have looked so fresh.

XXXXXX

Q. You stated you looked all around about Kurt's house to see if there was any other tracks going out. Did you do the same as to Burn's place? A. Yes sir, we looked around his place quite thoroughly.

Q. You found no tracks? A. No more bare-footed tracks except the childrens.

J. A. Davis

Mrs. May Kurts being duly sworn upon her oath deposes and says:

Direct examination by Mr. Borah.

Q. State your name and residence? and business.

A. Mrs. May Kurts, I live at Mrs. Jacobs in Boise City.

Q. Are you working for Mrs. Jacobs? A. I am just making my home there.

Q. Are you the wife of the defendant, Ellis Kurts? A. Yes sir.

Q. Did you have a conversation with him the day you left him and came to Boise City with Mr. Burns? A. Yes sir.

Q. State what Mr. Kurts said in that conversation, if anything, about Mr. Burns? A. He said he would cause Mr. Burns trouble.

Q. Was that all he said? A. If it took his life and everything he had.

Q. Was that all the conversation you remember now in regard to Mr. Burns? A. Yes sir.

Cross-examination by Mr. Gray.

Q. How long ago was it that you left your husband? A. Since the 17th day of June.

Q. What day was it you had this conversation with your husband?

A. The 17th day of June.

Q. What circumstances brought about this conversation? A.

Why he was going to cause Mr. Burns trouble for bringing me to town.

Q. Mr. Burns hadn't brought you to town had he? ~~xxxx~~ At the time of this conversation? A. Yes sir.

Q. When was it he brought you to town? A. The 17th of June.

Q. Where were you when you had this conversation? A. We were in town.

Q. Here in town? A. Yes sir.

Meg Kurts

D. M. McMullen being first duly sworn upon his oath deposes and says:

Direct examination by Mr. Borah.

Q. State your name, place of residence and business?

A. Dave McMullen, about thirteen miles from Boise on the south side of the river. Farmer.

Q. Do you know the defendant, Ellis Kurts? A. Yes sir.

Q. Did you see him on the 17th day of June, 1891? A. I couldn't be positive as to date.

Q. Did you see him the day his wife came to Boise? A. Yes sir.

Q. State what, if any, conversation you had with the defendant, that day in regard to his wife leaving home and what, if anything he said about Mr. Burns? A. He came to my place in the morning and said his wife had been taken away the night before or that morning. He had seen the tracks of a light wagon going towards Boise. He wished me to let him have a horse to ride and go with him to see if he could find and bring her back. On the road we learned that Mr. Burns had taken her. ~~We or he~~ was in a hurry to come on for fear they would leave on the train. We came on straight to the depot and on inquiring found they had not left we came on into town and found his wife and he had a conversation with her. On going back I believe he told me that he expected they would leave the country together as soon as Mr. Burns could get his business in shape. That is all I believe that I know.

Q. Did you hear him make any threats against Mr. Burns? A. Not that day.

Q. Afterwards? Some- a week or two afterwards he heard that Mr. Burns had been to the place where his child was stopping- he thought he was watching a chance to get it away; and he ~~said~~ sometimes felt like gathering a crowd of neighbors and giving Mr. Burns a good mauling.

Cross-examination by Mr. Gray.

Q. When was the time you had this conversation with Mr. Kurts with regard to these threats? A. I think it was a couple of weeks after his wife had left.

Q. Where did this conversation take place? A. On a place I rented- Mr. Simpson's farm.

Q. Did Mr. Kurts say he was going to or he thought some time he would like to do this? A. He said he sometimes felt like doing it.

Q. But he said nothing that would indicate that he intended it?

A. No sir.

Q. He didn't seem at all to be vindictive? A. No sir.

Q. He simply made a passing remark as you or anybody else would make under the same circumstances, didn't he? A. Yes sir.

Q. There was nothing in the manner which he said this to indicate he ever had any idea of causing Mr. Bruns any trouble, was there? A. Nothing in his voice- it was after night, we had gone to bed.

Dave. McAllan

John J. Rigdon being first duly sworn upon his oath
deposes and says:

~~Cross~~-examination by Mr. Borah.

Q. State your name, place of residence and business?

A. John J. Rigdon, Ada County, Idaho, farming is my occupation.

Q. Are you acquainted with the defendant, Ellis Kurts? A. No, sir.

Q. Were you upon his place the night of August 30th, the time his stacks were burned? A. Yes sir.

Q. What time in the night did you get to the place of the burning? A. Between the hours of eleven and twelve.

Q. State the condition of the fire at the time you got there with reference to the time it had apparently been burning?

A. When I arrived the stacks had been burned all over. Every stack in the yard was burnt the same.

Q. What was there, if anything, to show the spread of fire from one stack to the other? A. There was litterment, dry hay, and that had not burnt especially between the stack on the east and the other stacks and the buildings, all the rest was on fire.

John J. Rigdon