THEIR "CASE."

The Commonwealth Rests.

W. H. RUPPEL, ESQ., MAKES A BRILLIANT OPENING FOR THE DEFENSE, AND

Joe Nicely Takes the Witness Stand.

THE "LITTLE MAN" SAYS HE WAS AT HIS OWN HOME ON THE FATAL NIGHT.

A PRAYER-MEETING WAS HELD AT THE ZION CHURCH THE NIGHT OF THE MURDER, BUT NOT MANY OF THE WITNESSES ATTENDED.

THE DEFENSE IS AN "ALIBI."

DAVE NICELY IN THE BOX—HIS STORY OF THE PATCHED OVERCOAT.—SAYS THE POCKETBOOK HE GAVE THOMAS WAS HIS OWN—AND THAT IT IS NOT THE POCKET-BOOK IN COURT.

HE IS CORROBORATED IN THIS STATEMENT BY THOMAS AND MENOHER.

From Wednesday morning's DAILY HERALD.

The appearance of David and Joseph Nicely, the prisoners, would not indicate that they are the hardened criminals they are generally believed to be. They are a very different kind of looking men from the four convicted for the robbery of Mr. Yoder. If placed among one hundred other men in the Court House, not one in twenty would point them out as probable murderers. Joseph's face is round, nose prominent, eyes dark and clear, forehead high and smooth, hair on his head thin and fine. He wears a somewhat heavy and long moustache. His gaze is steady, and bears the continued and close observation of the hundred of spectators, and there is no more interested person of every question asked and answered, and point raised and settled in the room. Not a word uttered by counsel, witness or Judge escapes his attention. Dressed in a neat fitting black coat, vest and pants, with clean, white collar and cuffs, his appearance is that of a somewhat shrewd business man. Immediately on his right sits his wife, neatly and fashionably attired in black. She is a modest and unassuming lady, with a rather thin and pale face. Like her husband she bears the fixed stare of hundreds of eyes without the least sign of embarrassment.

On her right is the chair occupied by David, the other prisoner, by whose side his wife with a four-month-old babe in her arms is usually to be seen. "Dave" as he is called, is a taller and slenderer man than his brother, and quite as inoffensive in appearance as his brother. With a thin visage, a straight large nose, clear blue eyes, smooth short hair and small thin moustache, he sits with head usually resting on his hand, quietly and somewhat indifferently listening to the proceedings. Unlike Joe he seldom says a word to his counsel.

To the right sits the mother with a neat black dress on, and her head and face almost covered with a large black bonnet, shaped in the customary style of those allowed by the Dunkard Church. Her face is emaciated and strikingly pale, indicative of feeble health. Apparently she never loses sight of anything going on.

On her right the father is always to be seen; a patient and close observer of everything said and done. He is a short, spare man of some 60 years of age. His side and chin whiskers are quite gray, also his long hair on the side and back of his head. His forehead, owing to baldness of his head, appears to be higher than it really is. No one can fail to recognize a strong, if not striking, family resemblance among the parents and the two boys.

Court convened at 7:30 o'clock Tuesday morning. Some matters of minor importance were disposed of, after which the examination of witnesses in the murder case was resumed. Only two witnesses were called on the part of the prosecution when Mr. Kooser announced that their testimony in chief was all in and for the present the Commonwealth would rest.

Mr. Ruppel went to the jury for the defense. His opening was highly complimented by all who heard it. If what he stated in his opening, in a clear, calm and dispassionate manner, can be proven, the jury will have no trouble in arriving at a verdict. The case is an intensely interesting one, and the *verbatim* report of the evidence submitted, published each day in the DAILY HERALD, is read with the greatest eagerness by its thousands of patrons. Following is a full report of yesterday's proceedings:

Noah Serena—Was at Kimmel's on the 27th of February; Dave Nicely was there; said he could not help him on Tuesday; could not be back for a few days.

Mrs. Watson Menoher—Am sister of the Nicely boys; remember the day of the arrest; my husband gave me a pocketbook that week sometime; laid it on the table; did not see it taken away; was there when the officers got the same pocketbook that had been given to me by Mr. Menoher. The pocketbook was then given to the Court.

The Commonwealth then rested their case.

THE DEFENSE OPENS.

The defense was opened by Mr. Ruppel; said they would show that the tracks could not be produced by the boots shown in court; will show that the testimony of the two Vaniers is not reliable; will show statements made in regard to the coat and hat; will show that the hat was doctored for the trial; will show that the pocket-book submitted is not the one that was taken from Nicely's, will place the two defendants on the stand, will prove an alibi.

THE LITTLE MAN ON THE STAND.

Joseph Nicely—Live in Ligonier township, Westmoreland county, about three and one half mile from Ligonier; am a man of family; have seven children; my wife is living; am thirty-nine years old; was living at home last February; live about one-half miles from my father and about one-quarter of a mile from my brother Dave; farm some and labor; on the 27th of February was at home about noon; between 12 and 1 o'clock there was a Load of coal brought there by Gilbert Ross; he works for Mr. Knox; he was there about an hour; I went over to the road to close the fare after him when he left; then went back to the house; stayed there an hour and then went down to Aaron Maras; went to see him about painting his house; that was between 3 and 4 o'clock; was there about an hour and then went back home; passed John Koontz's house on the way back; got home about 9 o'clock; my family were all at home; I went out and fed the cattle; supper was not quite ready and I said I would go over to see my father; got to my father's house about half-past six o'clock; met Dan Geeting on the way near the Dunkard Church; he had a dinner bucket and a cant hook in his hands; talked with him four or five minutes and then went on to my father's; supper was just ready when I got there and they asked me to take some; I sat down at the table and took supper with them; my father, mother and two sisters were at the table; left there for home about 7 o'clock; passed Dave's house and saw him setting at the window; did not have any conversation with him; when I got home my son Lorenzo had left the house; he came after I was in about half an hour; I told him to put the light out before he went to bed; on Thursday morning went down to John Barron's blacksmith shop; Dan Geeting was there getting his cant hook fixed; James Jones was there and I believe John Geeting, Dave's brother and Joseph Barron were there also; I was there probably two hours; first heard of the Umberger murder when I was at the mill on Friday; there was prayer meeting at Zion church Wednesday night in every Wednesday night; was arrested on Monday the 4th of March following the Wednesday spoken of; was arrested on the road half way between my house and the blacksmith shop; we went from there to my house; was arrested by John Rauch; said they wanted to go up and search my house; I don't know what they found, except what I saw Mr. Rauch take as he kept me with him; found a pocket book in the bookcase; he took the money out and put it in his vest pocket; there was $63.00; he has never returned it; found a revolver and satchel; he put the revolver in the satchel; I had not used the revolver for several years; (witness was shown lantern, which he said was his or one like it) never used the lantern but once; used it in cutting down a bee tree; the day I was arrested the lantern was on top of the cupboard; it had been there for sometime; (witness was shown the brown hat.) the hat is the color of mine; if it is my hat it is changed; there was a wire rim around my hat, and there was no piece out of it; the wire had got loose and I got my wife to sew it up; bought two pistols in Greensburg sometime last fall; one for myself and one for my father; needed pistol for shooting hogs; kept mine until after I butchered. I think in January and then sold it to my father; have never seen it since that time, the cartridges that were found were what was left over; I got a box with each pistol; did not have over coat on when I was arrested; had on a gum coat belonging to my father; did not have the overcoat on at the time of the hearing at Squire Rauch's. (gum boots shown to witness and identified as his.) one sole was put on about 5 week before I was arrested, and one about 10 days before I was arrested; put on a pair of leather boots after I was arrested; was at Jennertown in a buggy last summer, either in July or August; went there to see Daniel Peterson in regard to fire insurance case at Greensburg; drove to the hotel. Peterson lives across the street from the hotel; saw Peterson; was not there again from that time until the hearing at Squire Rauch's; should say the distance from Jennertown to Ligonier was about 13 or 14 miles; I live 31 miles from Ligonier; did not go up the mountain on the 27th of February; did not know anything about the the murder until I was told of it.

Cross-examination—Have lived near my father for about eight years; the farm belongs to me; it is about 18 to 20 acres; lived before that time in hous where my brother Dave lives; lived there 3 or 4 years; have lived in the Ligonier valley nearly all my life; have been west; was west in '82; was in Youngstown; was in Ohio 5 or 6 months, was arrested when I was in Ohio; was not arrested for impersonating an officer; on the 27th of February was at home in the forenoon; Gilbert Ross brought me a load of coal; he came there after 12 o'clock; he left before 2 o'clock; it was probably a quarter of one when he came and a quarter of two when he left; he was there about an hour unloading the coal; I went down to Mark's about 3 or 4 o'clock; was reading at home before that; was at Mark's I suppose about one hour; it is about a mile and a quarter from my place to Mark's; got back home between five and six; fed the cattle after I got home; I have eight head of cattle; went over to my father's a little after six and got back about 8 o'clock; saw my brother Dave about dark on Monday evening; on Tuesday I got a load of straw from my father; first heard of the Umberger murder at the mill on Friday; was arrested on the Monday following Friday that I heard of the murder; never told O'Connor or anyone else that I had never heard of the murder at the time I was arrested; probably had the hat about two years; the hat had a wire around the rim; at the time I was arrested; it had gotten loose and my wife sewed the wire down about ten days before; the hole was not in it when I had it; when Constable Rauch took the $63 out of the pocketbook no one else was present except myself; there were six tens and one five; I worked some for my father in last December; cannot tell where I worked in January or February; the pocketbook had been in the cupboard since last fall; I have had the cupboard for four or five years; bought the lantern for fishing; never used it as a signal light; my brother Dave put the soles on the boots; they were not put on after the 27th of February.

Re-direct—The lantern was not taken from home the day that I was arrested that I know of; was arrested in Ohio concerning a whiskey case; I demanded a hearing; no one appeared against me and I was discharged.

Cross-examined—Was not arrested for assuming to be a government officer; was in jail for a couple of days.

Gilbert Ross—Live in Ligonier township, Westmoreland county, about one mile from Ligonier; was driving my uncle's team in February; know Jos. Nicely; hauled a load of coal to his house on the 27th of last February; his house is about 3½ or 4 miles from Ligonier; got there after 12 o'clock; saw Mr. Nicely there; was there about an hour with him; I fix the date by my memorandum book; the witness produced the memorandum book and showed the entry in it; have known Joe Nicely for six years; drove for my uncle William Knox; left with the coal a little after nine and arrived at Nicely's a little after 12 o'clock; say from 15 minutes to 30 minutes after 12; left there after one o'clock; told several different stories about the time to different parties as I did not want to appear in the case.

Aaron Marks—Live in Ligonier township, about one and a quarter miles from Joe Nicely's; saw him in February; saw him on the 27th of February; he came to my place about 4 o'clock in the afternoon; came to see me about painting my house; he remained there about one hour and then started home; there was prayer meeting that night at Zion's Church; that is the way I fix the time in my mind; it was the Wednesday before Joe Nicely was arrested.

Cross-examined—Am a stone mason; have about 9 acres of land; I live about a quarter of a mile from the church; learned of the murder on Thursday; heard of it from Anthony Nicely about 3 o'clock; Anthony Nicely told me not to tell anything I knew about two or three days after; when I saw him at his home; he did not send for me; told him that I saw Joe on Wednesday; three or four days after the arrest know Isaac Sevena; told him that I saw Joe Nicely on Thursday; do not recollect talking to Noah Shanlin; have known Joe Nicely ever since he was a boy; was not arrested for stealing sheep; the case was compromised by paying for it; I got the money from Joe Nicely; I saw Joe Nicely on Thursday, but did not say anything to him about the murder as I had not heard of it at the time.

Re-direct—Learned of the murder on Thursday about 3 o'clock in the afternoon; heard of it from Anthony Nicely; it was several days after the arrest; when old Mr. Nicely told me not to tell anything about it as it was nobody's business.

TUESDAY AFTERNOON SESSION.

John Koontz—Live in Westmoreland county, not one-fourth of a mile from Joseph Nicely; was home 27th February last all day; have known Joseph Nicely for 12 years; saw a man that day that I took for Joseph Nicely; couldn't say what time of day it was; judge it was about the middle of the afternoon; he was going towards home; the way I fix that it was the 27th it was Wednesday, our prayer-meeting evening at the Zion church; I was at prayer-meeting; I know Charles Vaneer.

Cross-examined—Have lived near the Nicely's 7 or 8 years; am a carpenter by trade; live between Mark's and Joe Nicely's; couldn't tell whether I saw Joe on 26th, 20th, or 13th; don't know that there was prayer-meeting on the 13th or 20th; I was in my yard when I saw him; I took it to be Joe Nicely; it was a short one-fourth of a mile to his home; I don't recollect of having any conversation with Joseph Deeds the day the Nicely's were arrested; I wasn't at the consultation at old man Nicely's house two weeks from yesterday.

Dr. John Ascom—Live in Ligonier; am a dentist; know Charles Vaneer; on Sunday before the boys were arrested we were standing on the corner at the Ligonier House; he said he saw a couple persons go up the mountain; he said one favored Hoffman; I said to him, was the other Joe Koontz; he said, since I come to think of it, he looked more like John Koontz; he had a swinging walk.

David A. Geeting—Sworn, and asked to retire for the present.

Lorenzo Nicely—I live in Ligonier township, Westmoreland county; am a son of Joseph Nicely; am 15 years old; was at school on 27th of February last; came home between 4 and 5 o'clock; saw my father a half hour or more after I came; he was in the barn feeding the cattle; I was shelling corn for the chickens; I went up to the house and he came up and said he was going to grandpa's; this was 6 o'clock or after; he went to grandpa's; I went to prayer-meeting at Zion church; think I stopped at the house of John Koontz; saw him at prayer meeting; it was twenty minutes past nine when I got home; father was in bed; I talked to him; the light was burning and he told me to blow it out; I know it was Wednesday because we have prayer meeting every Wednesday night; know it was the 27th of February because it was the week before father was arrested; saw father next morning; ate breakfast with him; suppose it was between 6 and 7 o'clock; have seen father wear a brown hat (hat shown) his hat was about the color of this one; the wire wasn't out of his; and I don't think that piece (pointing to piece out of rim) was out of his.

Cross-examined—Was 15 in April; I left my books in the house and went out to the barn; I had just got there a couple of minutes when father came in; he fed seven or eight head of cattle; he came to the house; I couldn't tell how long he was in the barn; it was 6 or a little after when he came in the house; he didn't eat when we did; he said he was going to grandfathers; I didn't go in to ask father about my staying with Ferry; I heard of the murder Friday at school; father was arrested on Monday; nobody told me that father had gone over to grandpap's for supper.

Harriet Nicely—I am the wife of Joseph Nicely; one of the defendants; was at home on the 27th of February last; Mr. Gilbert Ross brought us a lord of coal that day; my husband helped him put the coal away; he was at home till between 3 and 4 o'clock; when he left he said he was going to Aaron Marks'; he was gone two hours and a-half, may be three hours; it was after 5 o'clock when he came home; he went to the barn and did the feeding; when he came into the house he said he was going over to his father's; it was after 6 o'clock when he started for his father's; it was about 8 o'clock when he came back; we talked for a little while and then went to bed; it was not later than half past 8 when we went to bed; Lorenzo came home after we had been in bed about three-quarters of an hour; I heard the conversation between him and my husband; my husband was at home the next morning; we had breakfast between 7 and 8 o'clock; he left home about 8 o'clock.

[The brown derby hat was then shown to the witness.] Did your husband have a hat like this? he had a hat the color of this one; I don't think this is his hat, it isn't the same as when it left our house; the wire in the rim of my husband's hat had broken and I stitched the ends together; it had no such piece out of the rim; I hung it up after he was arrested.

[The dark lantern was shown the witness.]

My husband used lantern in the fall to cut a bee tree; it was setting on the top of the cupboard, and was covered with dust; when Ambrose took it down he brushed the dust off; I know my husband had a pistol; he talked of lending it to his father, who got it after we had butchered; I never took any notice of the pistols; the second time they came to search they got his overcoat, overalls, and gum boots; they got the hat Monday night, and got the other things Wednesday; Monday night Mr. Rauch came back to the house and got the hat; I heard him tell my son his father's hat had fallen out in the mud, and had been run over by the carriage; they came back Wednesday and searched the house; Ambrose and two other men who I did not know; the fourth time they didn't search; Rauch said he heard there was a cave that we kept our potatoes in, and that he wanted to search it; I told him we had no cave; the fifth time Rauch and Ream came, Rauch read a warrant and said he wanted to search the chicken-coop and hog-pen; said the warrant was to search the out buildings; my husband was wearing his derby hat prior to his arrest; I can't say for how long; he had it on the day he was arrested.

Cross-examination—Took dinner on Wednesday, February 27th, at 12 o'clock; Ross came with the coal before we had finished dinner; he stopped below the barn and threw part of the load off; am sure that Mr. Ambrose got the lantern off the cupboard; never told John Rauch that my husband was not at home on that afternoon and until late at night; it is not the same hat that they took away; it was not taken away at the time they took my husband; Rauch came back after the hat; it was hanging in the kitchen on a nail above the wood box; there was no piece out of the hat when it was taken away and there was a wire in the rim; it looks rougher than the one worn by my husband; there were three men there when my husband was arrested; John Rauch and two men whose names I don't know.

David A. Geeting—Live in Ligonier about one-fourth mile from Joseph Nicely; am 23 years old; have known Joe Nicely 12 or 14 years; saw him on the 27th of February; saw him between his place and Anthony Nicely's, his father; met him near the church; the church is about one-fourth mile from Joe Nicely's house; he was going towards his father's house; it was between 6 and 7 o'clock in the evening; had a few minutes' conversation with him; I had been working at the saw-mill about one and a quarter miles from that place; he was going up the road towards his father's house; it was between six and seven o'clock; had a few minutes' conversation with him; he was dressed in his ordinary clothes; I brought my cant-hook home that evening to get it fixed; took the cant-hook the next morning to the blacksmith shop about 7 o'clock; Joe Nicely came there somewhere between 7 and 8 o'clock; Joel Baron and John Geeting were there; Joe Nicely stayed for about an hour or more; learned of the murder Friday evening or Saturday; the arrests were made on the following Monday.

Cross-examined—Have known the Nicely boys for 12 or 14 years; have worked with both of them at jobs of different kinds. (Witness was asked if he was not arrested for robbery with David Nicely in the Ligonier Valley. (Objected to by the defense and the objection sustained by the Court.) It was a mile and a quarter from the mill where I worked until I met Joe Nicely; had worked ten hours and one-half that day; the place where I met him was between a quarter to half a mile from Joe Nicely's; saw the Nicely boys an Monday after they were arrested; do not remember seeing them on Saturday; do not recollect seeing them on Friday; saw Joe Nicely often; cannot fix any particular time when I saw him except on this particular day; Wednesday night, February 27th; know David Brant; think I saw him the day after the arrest and had some conversation with him; do not remember saying I could not clear Joe Nicely because I did not remember what night I had seen him; was at the meeting of the witnesses at Anthony Nicely's two weeks ago.

Re-direct—After the arrest I told Mr. Brant that I was not sure of the date, but afterwards fixed the date as the 27th of February by the fact of my taking my cant-hook home that night to get it fixed.

Mrs. Elizabeth Nicely—Am wife of Anthony Nicely; am 52 years old and mother of the two defendants; did not see Dave on the 27th of February; saw Joe that evening at our house; do not know exactly what time it was; it was between six and seven o'clock; Mrs. Menoher, my daughter Hettie, my grandson, and Mr. Nicely were present; he came in just as we were about to take supper; I asked him to take supper with us and he did so; he left soon after supper; I fixed the date as February 27th by the fact that the boys were arrested on the following Monday, also that there was prayer meeting at the Zion Church that night; the church is about one-half mile from our house direct, but about one mile by the road; do not know whether I saw Joe the next day or not; do not remember seeing Dave on February 27; saw Dave next morning; saw him at the barn at our house helping to load hay; Mr. Nicely got a pistol from Joe sometime about the holidays; somewhere about the first of January; can not tell exactly.

Cross-examined—The fact that it was Wednesday evening and the night of the prayer meeting at the church when Joe took his supper at my house came into my mind after the boys were arrested; can not say how often I had seen Joe that week or the week before; he often came over for supper.

Anthony Nicely—Live in Ligonier township; am sixty-two years old and have lived there all my life and am the father of the two defendants; my son David lived a half mile from home and Joe about a half mile further; Dave has a wife and three children; and Joe has a wife and seven children; do not remember seeing Dave on the 27th of February; saw Joe on that day at my house in the evening; can't tell what time exactly; it was between 6 and 7 o'clock; I was in the barn doing my feeding and when I came in the house he was there; he took supper with us; he did not stay very long but went away soon after supper; fix the date by my hauling wheat and the fact that the two boys were arrested on the Monday after; I heard of the murder on the Friday following; saw Dave on Thursday; he came over to my house to help load wheat, it was early in the morning just a little after daylight; Joe bought two pistols last fall at Greensburg and gave me one but it was no good; he gave me the other one, I think about the first of January; saw Joe on Monday; can not say whether I saw him on Tuesday; he helped me on Thursday, Friday and Saturday; did not haul any wheat on Wednesday.

Cross-examined—Did not tell Joe to buy the pistol for me; do not know whether he had any other pistols or not; the pistol that I got was no good; I think it is still at my house; I put the last pistol that Joe gave me on the window sill of the room where I sleep; it was a revolver, I think a five shooter; I hauled wheat on Thursday, Friday and Saturday; first heard of the Umberger murder on Friday.

Ella Menoher—Am a daughter of Anthony Nicely; was living at home with him on the 27th of February; saw Joe on the 27th of February in the evening, between six and seven o'clock; he ate his supper there; I was at the supper table with him; he did not stay long after supper; know it was Wednesday night from the fact that the boys were arrested on the Monday following and that there was prayer meeting that evening at Zion Church.

Cross-examined—Did not attend prayer meeting and none of the family attended.

Hettie Nicely—Live with my father; saw my brother Joe on the 27th of February; it was in the evening; cannot tell what time it was exactly, but it was supper time and we had the candle lit; he took supper with us and was there ten or fifteen minutes after supper; fix the date as Wednesday evening from the fact that the boys were arrested on the Monday following and that there was prayer meeting at Zion Church.

Cross-examined—Was not at prayer meeting that night nor were any of the family; it was a damp evening.

John Barron—Live in Ligonier township, about one-fourth mile from Joe Nicely's; saw Joe Nicely on the 28th of February; he was in my shop in the morning between 8 and 9 o'clock; Dave Geeting, Joseph Barron and John Geeting were there; fixed a cant hook for David Geeting; Joe Nicely came between 8 and 9 o'clock; I was at prayer meeting the night before at Zion Church.

THE "RED-FACED MAN" TAKES THE STAND.

David Nicely—Live in Ligonier township, about three miles from Ligonier, and have a wife and three children; have lived in house where I now reside two years next fall; am 25 years old; my health was very poor all winter; have been suffering from dyspepsia and heart disease; have been under medical treatment for about six years; have not been in fit condition to work all winter; on the 25th of February was helping John Kimmell to saw wood; on Monday Kimmell asked me to help him on Tuesday; I told him I could not do so, as I intended to go to Pittsburgh to see a doctor; on Tuesday I was sick and not able to go; on Wednesday I was at home until about 1 o'clock, or maybe a little after; I told my wife that I would go over to Mr. Barron's and if I could get an opportunity would ride to Ligonier and see a doctor there; I did not get a chance to do so, and returned home something after 5 o'clock; did not go any place else that day; my sister Hattie came to the house in the evening; probably nearly 7 o'clock; saw Lewis Paint in the evening; went out to put the cows in the stable and feed them, and on my way to the house Mr. Paint came along the road, going east; I spoke to him, it was the time of day; it was between 5 and 6 o'clock; next morning went to father's; helped him to measure some wheat; it was early in the morning, a little after daylight; fix the day of Wednesday from the fact that on Monday I was helping John Kimmell and on Tuesday I was sick, and it was on Thursday that I helped my father measure the wheat, and on Wednesday evening there was prayer-meeting at Zion church; I also remember that Hattie asked me if I was going to a serenading party the next night; I was arrested on Monday, the 4th of March, following. Jno. Rauch, Mr. Shaffer, Mr. Caulfield and another man were present at the time I was arrested; I was not at Ligonier on Wednesday; I was in Ligonier on the Saturday before I was arrested; my wife told me to come out as some gentlemen wanted to see me; I went out to the kitchen and there were two or three revolvers drawn on me; John Rauch told me to throw up my hands and consider myself under arrest, they then proceeded to search the house; as far as I know they got a pair of gum boots, a pair of overalls, a cap, some handkerchiefs, a pass book, and perhaps some other articles that I cannot remember, they also took a pocket-knife from me; I was left in charge of Mr. Caulfield; we were handcuffed together; the other men then went over to my brother's and arrested him; we were then taken to the National Hotel at Ligonier and remained there over night; was in the water-closet that night; was in it probably for five minutes or more; [witness identifies the overcoat] the patches were placed on it the Thursday evening of the week before I was arrested; it was burned in burning brush; it caught fire in the lining and burned a hole clear through; my wife put the patch on Thursday evening; I had the overcoat on the day I was arrested; [witness was shown the overalls]; they look like the ones that belonged to me; can not say positively that they are the same; I have seen other overalls just like them; [the witness identified the boots and was then shown the cap]; it looks like the one that I wore but threw away about a year ago; [the witness was shown a red handkerchief]; said he had never owned one like it; [witness was then shown a red handkerchief with white dots in it]; I had handkerchief like that or may be that same handkerchief; had it at the hearing before Squire Rauch; it was in my hip-pocket; at Laughlintown I asked Mr. Thomas if he would take my pocketbook and hand it to Watson Menoher to give to my father or my wife; there was one hundred dollars in money and some receipts in it; one twenty dollar bill and the rest in fives and tens; had been saving the money; had some of it probably for two years; got some of it from George Nicely, my father, and made a portion of it as a shoemaker; there was a good many standing around; I just handed it over to him and asked him to give it to Watson Menoher. [The pocket book was then shown to witness.] It is not my pocket book. [Witness pointed out the manner in which he could tell by the mark and the way it was made.] I never owned a pocket book like that; did not go up the mountain on February 27; first heard of the murder on Thursday afternoon; my wife went over to Joseph Barron's to get some butter and told me of the murder after she got back; have been in Somerset county only once that I can remember of; over a year ago I was at Lenry Picking's at the foot of the mountain; I was not in Somerset county again until the day after I was arrested; never heard of the name of Umberger until after I was arrested.

Cross-examination—On the 25th I worked for Mr. Kimmell helping to saw wood with a horse power; I was helping to lift up the wood; no heavy work; Harvey Stare was helping; began probably 8 o'clock in the morning; quit at half past 4 in evening; I got allowed for a day; there was no overly heavy work; helped father measure wheat; helped Ezra to husk corn last fall; helped to chisel out mortieses when he was building stable; have been farming at home for the past 5 or 6 years; plowed, mowed fence corners some times; binded for George Nicely on saw mill; am not very good on a walk; have long legs and take pretty good stride; weigh near about 125 pounds; am lighter than my brother Joseph; can not tell how much taller I am than he; on a guess would say 2½ or 3 inches taller; examined the coat; my wife put the patches on; all patches were put on at the same time; can't say that that is the handkerchief taken out of my pocket at Squire Rauch's; pocket-book is not mine; it is not the one I gave to Thomas when we started for Ligonier; Thomas was driving; sat in front seat; I sat in back seat; I gave Thomas the pocket-book at Laughlintown; there was no one else in the carriage but Thomas and I; there was lots of parties standing around looking at us; don't know who they were; Thomas is not a particular friend of mine; heard him to be an honest man; there was just a round $100 in the pocket-book; Thomas put it in his vest pocket; I told him to give it to Watson Menoher to give to my wife; can't say that any one saw me give it to Thomas; I had my pocketbook for about six years; got it from Mr. John Berkey in Ligonier; I wore a cap like that; wore it a year or more ago; I believe it is my cap; wouldn't say it is the one; may be one like it; have a penknife; was at home the evening of February 27th; was not at Joe's or father's that day; was at Joseph Barron's; he lives one-fourth mile from where I live, in the direction of Ligonier; he is married to my sister; I have another brother-in-law—Rolebaugh; Hettie came to my house late in the evening; had a little bucket with milk in it; suppose she came from home; she wasn't there very long, probably twenty minutes; she then returned; we were up stairs in our sleeping room when my wife put the patch on my overcoat; I first heard of the Umberger murder Thursday afternoon; was at home; saw Joe on Saturday after that; didn't talk to him about it; Joe did not ask O'Connor in my presence when the murder had been committed; O'Connor did not speak to me about the murder.

Lewis Paine—Live in Youngstown; in February last was living handy to Mammoth Coal Works; have known Joseph Nicely for 20 years; saw him on the 27th of February last at his home, in the stable yard; passed by his house between 5 and 6 o'clock in the evening; the fence was betwixt us; I bid him the time of day and asked how his family was; he said they were all well and asked after my family; have no book by which I can tell the time; fix the time by having been working only two days that week, Monday and Tuesday.

Cross-examined—Youngstown is about eight miles from Dave Nicely's; I went to coal works last fall and wasn't away from there until April; I was on my way home to get my brother to move me; I was traveling in front; got my dinner at my brother's; met people on the road but don't remember who; don't remember meeting anyone near Dave Nicely's; went from there down to Mechanicsburg; I saw Shoffen's boys there and lots of the boys I know; the last time I saw Dave before this was at Stonerville some time last year; Mr. Nicely brought me here; I didn't tell Peter Albright that I didn't see Joseph Nicely that day; didn't tell him that he was paying me more than I could make burning coke; didn't threaten any of the witnesses; didn't say I had a pistol to use on Vaneer; didn't tell him I was armed with a handy billy and revolver for this work.

Wm. Thomas—I was called as a witness for the Commonwealth; they asked me about the pocketbook that had been given me by Dave Nicely; I know Mr. Camp, the detective. (Pocketbook in evidence shown.) I wouldn't positively say it was, or that it isn't the pocketbook given me by David Nicely to give to Watson Menoher; the one I got from Dave Nicely was more stiff than this is now; I didn't examine the pocketbook close; this did don't look like the one on the pocketbook Dave Nicely gave me; to the best of my knowledge I don't believe this is the pocketbook.

At this point Mr. Camp was recalled and said:

I did not go to Mr. Thomas in Ligonier with a different pocketbook and ask him if that wasn't the pocketbook Dave Nicely had given him; this pocketbook is the one I had and showed to Mr. Thomas.

Mr. Thomas resumed—Mr. Camp drove up to my livery stable and called me out said: "Bill, here I have a pocketbook that I want to show you, to see whether it is the one Dave Nicely gave you"; it was a different one from this; he didn't show me this one; he had two pocketbooks he showed me; I told him they were not the pocketbooks; on the day these men were arrested I went down for Miss Stearn and Miss Horner; Miss Stearn said to me that she couldn't recognize the little man, for he had a mask on; she described the appearance of the two men.

Cross-examined—There was a young man in the buggy with me; I don't know who he was, or where he is; don't know whether he went west; Nannie Horner is the little girl who was in the carriage; don't think any one was by when Camp showed me the pocketbooks; I made no examination of the pocketbooks; from the time it was given to me by David Nicely till I gave it to Watson Menoher; I told no one that I had the pocketbook; I put it in my inside vest pocket and did not take it out till I gave it to Watson Menoher; I told you (Mr. Cessna) that I could not positively say whether this was or was not the pocketbook.

Watson Menoher—Mr. Thomas handed me a pocket-book; this is not the pocket-book handed to me by Bill Thomas; the inside was not so red as this, I examined it and know that this is not the pocket-book.

Cross-examined—I am a brother-in-law, that's right; I took the money out of the pocket-book and put it in the safe at the National Hotel; I didn't say that I took the money out for fear I might get into trouble; I told Mrs. Nicely the day I took the pocket-book up what I had done with the money.

The jury were given in care of Tipstaves Miller and Sufall for the night and Court adjourned to 8:30 Wednesday morning.

From Thursday morning's DAILY HERALD.

Although when Court adjourned Tuesday evening it adjourned to meet at 8 o'clock Wednesday morning, it was a quarter of eight when the bell rang and the surprised attorneys, witnesses and others hastened to the court room. The court house clock must be out of gear. It needs regulating, at least. The Sheriff and his deputies marched in with the prisoners and they took their accustomed seats at the table with their counsel. The aged father and mother of the prisoners were there, and in a short time Mrs. Joseph and Mrs. David Nicely, the latter with a six months' old child in her arms, came in and took their seats beside their husbands. Watson Menoher, a brother-in-law of the prisoners, was the first witness called.

WEDNESDAY MORNING SESSION.

Watson Menoher recalled—I had the $100 in my possession about two days.

Cross-examined—Showed the pocketbook to George Nicely.

George Nicely—Live in Ligonier; on Tuesday March 5 last, Watson Menoher and I went to Jennertown; on the way over we met Mr. Thomas and some men this side of the mountain; was present when Thomas handed the pocket-book to Menoher; saw it again the next morning at the National Hotel in Ligonier; the pocket-book exhibited is not the one; was present when Lewis Vaneer testified before Judge Baer at the hearing, on our way back went to the place where Vaneer had been cutting wood; the place where he claimed to have seen the Nicely boys pass on the pike; two went down to the stump and the others stayed up on the pike; could only see a part of their bodies; at the east end of the flat could only see about one-third of a man's body; other places could only see top of their heads; some places could not see any part of a man's body; could not recognize any one.

Cross-examination—Am a second cousin to the Nicely boys; I saw the pocketbook handed to Menoher by William Thomas; I saw it again the next morning at the National Hotel; there was no money in it; there were some papers in it; some tax receipts; do not know what was in it when it was handed to Menoher as I did not see it at that time; went to examine the ground mentioned by the two Vaneers in their testimony; what is called the Sandy Flats; there were four or five stumps; do not know from what stump it was from which the Vaneers claim to have seen the Nicely boys pass along the pike; the track was in the middle of the road in February; Mac. Nicely was along; he is a half-cousin of mine and a full cousin of the defendants; also Jas. Barron; he is a brother-in-law of the defendant's; William Thomas and some others were with me; Mac. Nicely and I went down to the stump to look up; did not have any instrument to level; it was fifty-five steps from the pike to the nearest stump; I step pretty long; there was at least fifty feet of an elevation from the stump to the pike; cannot tell what day it was when we went there; it was about a month and a half ago; I have helped to work up the case; I subpœned some witnesses; was over in Bedford county to see a detective; did not go along with Ezra Nicely to Mark's house at night for the purpose of making some investigation; went with Watson Menoher on Wednesday evening after the Nicely boys were arrested.

Re-direct—I was acquainted with Dave Nicely's pocketbook before it was handed to Watson Menoher; I have seen him have that pocketbook for the last four or five years. (The witness identified the papers exhibited in Court as being the ones that were in the pocketbook at the time he examined it at the National Hotel.) Male examination of the land at Sandy Flat when we were going home from the hearing before Judge Baer; the day after the hearing; we examined the stump nearest the road; the pike is about forty feet wide at that point.

Cross-examined—I did not measure the width of the pike.

Mrs. Ella Menoher, re-called—There was a pocketbook handed to me by my husband. (The witness was shown the pocketbook and said it was not the one.) I examined the pocketbook when it was handed to me; had seen my brother Dave's pocketbook before; this is not the pocketbook.

Cross-examined—I looked at the pocketbook when Mr. Menoher handed it to me, and also looked at it the next day.

Elizabeth Nicely—Saw the pocketbook that was brought to our house by Watson Menoher. (Witness was shown the pocketbook exhibited in court and said it was not the same one.) Had seen Dave's pocketbook before at different times; it had receipts and a few other papers in it; that is not the pocketbook that I gave to the officers.

Cross-examined—Mr. Rauch and two other men were there when I handed the pocketbook to them; when I gave them the pocketbook did not say that I had seen the pocketbook before; never denied that there was a pocketbook in the house; I was in the kitchen when they came in; Mr. Nicely called me into the room and said there were some men there and they wanted to get Dave's pocketbook; I went up stairs and got it and handed it to them.

Re-direct—When I handed the book to them one of them said they would take it to Ligonier to show it to Mr. Thomas and would then give it to Watson Menoher to bring back.

Cross-examination—They did not say that if it turned out to be David's pocketbook they would return it.

A. A. Nicely, recalled—I was there when the pocketbook was handed to the officers; I think it was Dave's pocketbook. [The witness was here shown the pocketbook exhibited in court and said it was not Dave's pocketbook.] This is not the pocketbook handed to the officers; they promised to bring it back; said they wanted to show it to William Thomas to see whether it was the pocketbook that Menoher handed over to him; said they would then give it to Watson Menoher to bring back; they did not return it.

Cross-examined—Did not say they wanted the pocketbook and if they found it was Dave's they would return it; when they came there I did not tell them that there was no pocketbook there; they asked me if there was any money in it, and I said there was not; said I had the money after Menoher came in; there was Mr. Rauch, Mr. Camp and another man; they all three came back after ten or fifteen minutes from the time they left the first time; Watson Menoher came back with them; I had the money in my pocket; told them it was part mine and part Dave's; cannot say how much I had; might have had $740 to $100 in my own pocketbook; Watson Menoher handed me $60, and said he had used $10; I have never denied having the money; when the officers came there I denied that the money was in the pocketbook.

Re-direct—When the officers came there and asked for the pocketbook I told them that it was in the house, but I did not know where it was, but could find it for them; called Mrs. Nicely, and told her that the gentlemen wanted Dave's pocketbook; she went up stairs, brought it down, and handed it to one of the officers; I denied that there was any money in the pocketbook; when the pocketbook was brought there, there was no money in it; that is what I said.

Cross-examined—I got the pocketbook first; cannot tell when I got the money; it was some days afterwards; Mrs. Menoher told me that Watson brought the pocketbook; Watson brought the money.

Re-direct—The pocketbook was not in my possession, but the money was.

Sarah Barron—Live in Ligonier valley a quarter of a mile from Anthony Nicely; am wife of Joseph Barron; was at home, on the 27th of February; saw Dave Nicely on that day; he came to our house between 1 and 2 o'clock; he was there, I suppose about 1 hour and then started for home; did not see him again that day; did not look as if he was well; made inquiry as for beans to Ligonier; he asked me for some butter; I told him that I could not give him any that day, but that he could get some on Thursday evening; I fix the day as being Wednesday the week before they were arrested; his wife came for the butter the next day; was at my father's house when the pocket-book was taken away by the officers. [Witness was shown the pocketbook exhibited in court and said it was not the same pocket-book that was handed to the officers.]

Cross-examined—Live about one-half mile from Dave and further from Joe's; know it was Thursday night when Dave's wife got the butter, because I know I churned on Thursday and I