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 fix the date as February 27th by the fact that the boys were arrested on the following Monday and also that there had been prayer meeting at Zion church that night. Cannot say how often I saw Joe that week.

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; 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; fix the date by my hauling wheat and the fact that the two boys were arrested on Monday after; 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; saw Dave on Thursday; he came over to my house to help haul wheat, it was early in the morning.

Ella Menoher and Hettie Nicely, sisters of the prisoners, testified that Joe had eaten supper with them, at their father's on the evening of February 27th. Fixed the day by prayer meeting at Zion church; none of the family attended the prayer meeting.

John Barron saw Joe Nicely on the morning of Feb. 28th. Fixed time by prayer meeting.

DAVE NICELY ON THE STAND.

Live at Ligonier; have a wife and three children; am 35 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 Hettie came to the house in the evening; probably nearly 7 o'clock; saw Lewis Paine in the evening; next morning went to father's; helped him to measure some wheat.

Lewis Paine testified that he had seen Dave Nicely at his home on the afternoon of February 27.

William Thomas testified that Miss Stern had told him in the presence of a young man he did not know, that she could not identify the men; handed the pocket book to Watson Menoher.

Watson Menoher a brother-in-law of the Nicelys, testified to receiving pocket book from Thomas, but said pocket book in evidence was not the same one.

Other relatives of the Nicely boys, who had seen Dave's pocket book testified that the one in evidence was not his.

Mrs. David Nicely swore that her husband was at home on Wednesday night the 27th of February; I patched his overcoat Thursday night; he was arrested the following Monday; the pocket book exhibited in court is not my husband's; she identified the overalls and handkerchiefs as his.

Dr. Brubaker testified as to Dave's physical condition and had the prisoner bare his breast in the presence of the jury, and show his abnormally developed heart. The object was to convince the jury that the prisoner's condition would not permit him to walk a distance of 32 miles.

A number of witnesses were called who testified that the Vanzer's who testified that they had seen the Nicely boys going up the mountain the day of the murder had made contradictory statements, and that they could not have seen persons on the road from where they where working.

John Kaylor testified that he had followed the tracks from Umberger's on the morning after the murder and that they could not have been made by the boots in evidence.

IN REBUTTAL.

The commonwealth called a number of witnesses who testified that some of the witnesses who swore they had seen the Nicely boys, at home on the 27th, of February, had told them that they had not seen them on that day.

Elmer Snyder, testified that he rode with Thomas and Ella Stern from Umberger's to the hearing and that Miss Stern had not said she could not identify the men.

Witnesses were called and testified that Dave Nicely had always been able to do a full day's work.

A large number of witnesses testified that John Kaylor's character for truth and veracity was not good.

Several other unimportant witnesses were examined after which the case was declared closed.

Mr. Keaser went to the jury at 2:30 o'clock Thursday afternoon on behalf of the commonwealth. He began by congratulating the jurors and himself that the labors of several weeks were drawing to a close; congratulated the jurors on their intelligence and undaunted courage, who would be able to render a verdict in accordance with the evidence; that the name of Umberger was now known all over the land because of the peculiar brutality of the murder, and the magnitude of the sum of money secured by the murderers and robbers; that while their duties were grave and responsible, they would ever recollect their connection with this historical case. He traced the prisoners step by step from their homes to the farm house of their murdered victim; described in a striking manner the scene of the murder and impressed on the jury the truthfulness of the eye-witnesses of the crime; dwelt at length on the tell-tale articles of clothing found on the prisoners, and the incredibility of the witnesses for defendants. Argued that Dave Nicely was capable of doing a hard day's work, and was capable of making a distance of 32 miles; pointed out that bullets were found at Joe Nicely's house exactly corresponding with those that had been taken from the body of the dead man, and in conclusion asked that if the evidence satisfied the jury beyond a reasonable doubt of the guilt of the defendants, that they be courageous and faithful, leaving the consequences where they belonged.

Mr. Keaser was followed by Mr. Koontz, in behalf of the defendants. He spoke until after 9 o'clock that evening, when the court adjourned.

A. H. Coffroth, Esq., commenced his argument to the jury at the opening of the court Friday and consumed the entire morning session; his argument was forcible, logical and argumentative and was listened to with marked attention by the jury and the vast audience. He spoke for three hours and 32 minutes. John Cessna, Esq., made the closing argument for the Commonwealth. He spoke for two hours and thirty-five minutes and his speech was the most powerful marshaling of facts ever heard in a Somerset county court. It was a speech befitting the high reputation of Mr. Cessna and the importance of the cause for which he pleaded. The court room was crowded with friends and admirers of the justly celebrated lawyer, all of whom were eager to hear him in one of the greatest efforts of his long and busy life. They were more than satisfied.

Judge Baer commenced charging the jury at 10 minutes past 5 o'clock and it was precisely two minutes past 7 when he closed. Counsel for the prisoners asked for an exception to the charge, which was granted, and a bill sealed. The Judge's charge was one of the most impartial ever delivered in a court of justice.

WITH THE JURY.

After listening to the charge of the court the jury in the Umberger case went to their room for consultation and deliberation. A short time after reaching their room a ballot was taken which stood nine in favor of a verdict of murder in the first degree, and three in favor of acquittal. During the night one other ballot was taken which stood eleven in favor of a verdict of guilty in the first degree and one for acquittal. Just before court called a third ballot was taken, which resulted in a unanimous vote for a verdict of guilty of murder in the first degree. The prisoners were brought into court and the jury came in and handed to the clerk a verdict, which he handed to the court, who handed it back to the clerk, who read "guilty of murder in the first degree."

The scene in the court room when the jury handed in their verdict was a remarkable one, and one that will be long remembered by all present. For the first time the iron nerves of the Nicely boys gave way and a perceptible tremor was noticed in their faces. The look of blank amazement that spread over the faces of the counsel for the defense showed how much of a surprise the verdict was to them. Notice was promptly given that a motion for a new trial would be made, and the famous Umberger trial was at a close.

THEIR RELATIVES HEAR THE VERDICT.

The scene at the Somerset House when the news of the conviction of the Nicely boys was received was one to touch the heart and excite the sympathy of the most bitter denunciator of the murderers of Herman Umberger. The wives and aged mother of the prisoners had been at the hotel all week. A messenger was sent to the court house and as soon as the verdict was announced sped back to the hotel. No thought of a verdict which would condemn their loved ones to the gallows had evidently crossed the brains of these poor women, and their heart-rending cries when they realized the awful truth brought tears to the eyes of more than one strong man.

A Scene at the Trial

The appearance of David and Joseph Nicely, the prisoners, would not indicate that they are he hardened criminals they are generally supposed to be. 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 hundreds 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 sat 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-months-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 black eyes, smooth short hair and small, thin moustache, he sits with his head usually resting on his hand, quietly and somewhat indifferently listening to the proceedings.

To the right sits the mother with a neat black dress on, and her head and face almost covered with a large black bonnet, shapped 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 short, angular man of some 60 years of age. His side and chin whiskers are white; also his long hair on the side and back of his head. His forehead, owing to the 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.

Sentenced to Death.

Monday August 19th Judge Baer refused the application of the Nicely boys counsel for a new trial and on motion of the District-Attorney "that the prisoner be immediately sentanced," directed the motion filed, then turning to the prisoners asked: "Have you, Joseph Nicely, anything to say why the sentence of the law should not be pronounced upon you?"

In response, the prisoner addressed arose and said in a clear and distinct tone of voice, "I would just simply say I am not guilty."

"Have you, David Nicely, anything to say why the sentence of the law should not now be pronounced upon you?" asked his Honor.

The prisoner, without rising from his seat replied: "I have nothing to say."

"Joseph Nicely, stand up," said Judge Baer. Continuing he said: "The sentence of the law is that you, Joseph Nicely, be taken to the jail of Somerset county, whence you came, and there, within the walls of the said jail, on such day and time as may be appointed by the Governor of the Commonwealth, you be hanged by the neck until you be dead, and may God have mercy upon your soul."

While the awful sentence was being pronounced the prisoner stood erect with his head slightly bent forward. Not a muscle of his face twitched. His countenance never changed expression. His nerves of steel stood him in good stead.

"David Nicely, stand up" said his Honor, and the miserable, doomed wretch raised slowly from his seat, placing his right hand upon the table in front of him.

"The sentence of the law is," said Judge Baer, "that you, David Nicely, be taken to the jail of Somerset county, whence you came, and there, within the walls of the said jail, on such day and time as may be appointed by the Governor of the Commonwealth, you be hanged by the neck until dead. And may God have mercy upon your soul."

The condemned man bore up bravely under the terrible strain, and resuming his seat by his brother's side they engaged in conversation with their counsel.

The ordeal was a most trying one to Judge Baer and the sympathies of the audience went out to him much more than to the prisoners. His well known sensitive and sympathetic nature, and great goodness and kindness of heart, acquainted everyone with the painfulness of the solemn duty which his position entailed upon him.

AN APPEAL TAKEN.

Counsel for the prisoners took an appeal to the Supreme Court the same day sentence was pronounced.

THE LOWER COURT SUSTAINED.

On the 11th of November the Supreme Court handed down an opinion sustaining Judge Baer. The decision begins: "But four of numerous specifications of error in this case require notice; none of them need extended discussion. It concludes as follows: "We have closely examined all of the assignments and find no error. The judgement in the case is affirmed, etc."

Before the Pardon Board.

AFTER-DISCOVERED EVIDENCE.

During the months of February and March, 1890, depositions were taken to lay before the Pardon Board for the purpose of securing a pardon or commutation of sentence. The case was argued on March 20th, when a number of affidavits were submitted. One by J. W. Beck, a juror who sat in the case, stating that he had been forced by his fellow jurors to agree to a verdict of murder in the first degree. Another witness said that Constable Rauch had confided to him that he had fixed up the evidence on which the Nicely boys were convicted. Several testified that a mysterious stranger had visited a saw mill where they were working, in the mountains above New Florence, on the second morning following the murder and told them about it. From his suspicious actions the witnesses were led to believe that he was the guilty party. A letter was also submitted signed "F. R. S." and mailed at Chicago which proclaimed the innocence of the Nicelys and admitted the writer's guilt.

The Commonwealth's attorneys presented affidavits assailing the character of some of the witnesses for the defense. Early in May the Board refused to grant a pardon or commutation.

ALLEGED CONFESSION OF JOHN BEECH.

Shortly before dusk Sunday evening, June 8th, a stranger of good address and rather fine appearance appeared before Esquire Elijah King, of Upper Turkeyfoot township, and requested that officer to swear him to a paper he took from his pocket. Justice King reminded the stranger that it was the Sabbath day, and that he could not administer the oath as requested. The stranger replied that he would assume all responsibility for the legality of the transaction and insisted that the Justice grant him the favor. Subsequently the oath was administered, the stranger swearing by the uplifted hand. Taking a package from his pocket the stranger opened it and put the affidavit in it, and then carefully tied it up again. After conversing with the Justice for a short period he inquired if he could not let the package with him over night, saying that it was bulky and inconvenient to carry and that, as he was going to spend the night in the neighborhood, he would call for it in the morning. Justice King put the mysterious package into his desk and the stranger took his departure, after paying the customary fee for administering an oath.

Monday morning came and passed, but the Squire's caller of the previous evening did not appear to claim his package. Later in the day, the stranger continuing to absent himself, the Justice opened the package and found it contained a manuscript, reciting at length the life of one John Beech and what purported to be a confession of the complicity in the murder of Herman Umberger, and implicating one Miller. The package also contained a note requesting the Justice to forward the manuscript to A. A. Nicely, father of the condemned murderers. Justice King forwarded the manuscript to General A. H. Coffroth, counsel for the Nicelys.

John Beach Confesses to the Murder.

In connection with my confession, I will say that I started east in the fall of 1886 from Gaylord, Kansas, in company with four other men. We expressed our valises to Scottdale, Westmoreland county, Pa., and started to beat our way through. We all went together as far as Atchison, Kansas. There two of them left the crowd and the other two and I went together to Kansas City. One of their names was William Burkholder and the other Sipe. I forgot the other men's names. They were all from Fayette and Westmoreland counties, and well acquainted with each other. When we got to Kansas City, I was to get a boat, and we were all to go down the river as far as the mouth of the Missouri. I left Burkholder and Sipe at a certain place in the evening, until I would get the boat. I got caught in getting the boat and was locked up for ninety days and could not meet my partners. Here I changed my name and have kept my new name ever since. I did not want my real name in the papers or that John Beach was caught stealing a boat. I stayed in Kansas City until the next June and then started east after my partners. I got as far as St. Louis; stayed there till next summer, then started east, got as far as Cincinnati, Ohio, and stayed there about six months. My next move was to Pittsburgh, and from there I got on a freight train, to stop at Greensburg, but it did not stop until it got to Johnstown. There was plenty of work of all kinds and I liked the place and gave up hunting for Burkholder and Sipe. After I was there about four or five months I got acquainted with a man by the name of Miller. He worked about town and done odd jobs, dug out cellars and cleaned wells and did errands for boarding house men. After I was acquainted with Miller some time, we started west again to Michigan; was in Detroit and other places; from there to Wheeling, West Virginia; from there we went to Cumberland; from there we started through the country to Johnstown. On our way we met with one of Miller's old chums. He was a book agent and looking out for something, as he called it, and said he had some good ones spotted in Somerset county. He gave us the names of several Farmers. One was Bernard Miller, near Garrett, and Umberger, near Jennertown, and others. We appointed a place to meet at and after several meetings and about a year's time, we concluded on Umberger. Miller and I went in, the book-agent and his man stayed out. When we got the money there was a big scuffle Miller shot three or four times with his revolver. Mine was a 22 seven shot. I lost my big revolver when I shipped my valise east with Burkholder and Sipe. There was no need of the shooting. When we got out of the house we all started toward Latrobe. We all went together for several miles until we came to the forks of a road. Here we divided the money and throwed the one pocketbook away and parted, Miller and me taking one road and the other another way. We kept the other pocketbook until we got to a small stream and throwed it in. We then went to the railroad. We eat our lunch and hid our money and appointed a place to meet at, and begged our way.

After the Nicely boys were arrested we went and got our money and I started west, to Kansas City, and Miller went to Cumberland. I got several litters from Miller while he was in Cumberland. In his last letter he said the Nicelys were in jail yet, and he was going back to Johnstown and rent a billiard hall and go into business. In about a week I heard of the Johnstown flood and never heard anything of Miller since, so I came east to Johnstown to look after Miller. I suppose he was lost in the flood. Here on the train I heard a stranger say the lady in black is the mother of the Nicely boys. I looked at her. She had the saddest face I ever saw, and I will never forget that sad look to my last hour, and which I can always see before my eyes; and I have put off this statement as long as I could, with her looks before my face, and trouble of the Nicely family, and the two boys in jail, waiting to be hung innocent. If they can find Burkholder and Sipe, they will tell you of my intention of coming east.

JOHN BEECH.

I ask the justice of the peace to take a copy of this and send it to the Nicelys' family and keep a copy of it—

Little attention was paid to this alleged confession by the attorneys for the Commonwealth from the fact that no one living in the neighborhood of Squire King's had seen the self confessed murderer on the Sunday of his visit or at any other time. On the strength of this confession, however, counsel for the Nicelys again appealed to the Board of Pardons for a commutation of sentence. They procured testimony from two or three residents of Fayette county setting forth that they had known a man named John Beech in Kansas, but none of them had seen him since.

DAVE NICELY OFFERS TO CONFESS.

Among other testimony taken to lay before the Pardon Board, at this second hearing was that of Sheriff McMillen, who stated that soon after the murderous assault made on Deputy Sheriff Milt McMillen, Dave Nicely sent for him and handed him a sheet of paper on which the following propositions were written. It was directed to R. S. McMillen, Sheriff of Somerset county, Pa. It began, I do hereby agree that I will tell all I know concerning the Umberger murder, (if anything) on certain conditions hereinafter to be named:

MIGHT KNOWN HIS CONDITIONS.

First, That you will use your best efforts to have me pardoned, or sentence commuted to imprisoned for life.

Second, That if any of my friends should be implicated, that you will use every effort to protect them.

Third, That I will write all I know concerning the Umberger murder (if anything) to be published in pamphlet form for my benefit.

Fourth, I will not agree to any of the above without first having a consultation with my father and mother.

[Signed] DAVID NICELY.

Subsequently the prisoner said to the sheriff, after learning that he intended to testify against him, "I did not think you would try to destroy the last spark of hope I have for my life."

A RE HEARING REFUSED.

Argument for a re-hearing was heard on the 15th of November 1889, counsel made protracted argument and insisted that in face of the Beach confession, they could not see how the Board could refuse to grant their request. The mother of the condemned men was permitted to address the Board, and in a broken voice tried to establish the innocence of her boys. The Board wrestled in secret session for four hours with the question of granting a re-hearing and finally refused the application.

Another Plea.

GOVERNOR BEAVER ASKED TO WITHHOLD THE DEATH WARRANTS.

On the 9th of January 1891, attorneys for the Nicelys appeared before the Governor and appealed to him to withhold his signature from the death warrants. The attorneys declared they were not working for money and that their labor was one of mercy. They reviewed the entire history of the case and agreed that the Supreme Court had erred and that the Pardon Board had been most unfair in requiring them to absolutely prove the innocence of their clients, and insisted in their belief of the prisoners innocence.

The Death Warrants Signed.

ONE OF GOVERNOR BEAVER'S LAST OFFICIAL ACTS.

On the 19 day of January, Governor Beaver affixed his signature to the death warrants of Joseph and David Nicely and designated April 24 as the day for their execution. The news was a terrible shock to the prisoners, both of whom had been led to believe that the Governor would refuse to sign the warrants for their execution and that his successor would certainly not do so.

THE WARRANTS READ TO THE PRISONERS.

Thursday morning, January 29th, Sheriff Good read the warrants to the doomed men. When he had finished reading the official paper to Dave, the prisoner solemnly said, "if they execute me it will be far what some else did. That's what I said first, and that's what I say now."

"I knew you had the warrants," said Joe when the Sheriff entered his cell. He quietly listened to the Sheriff while the document that meant so much to him was being read, but made no other remark.

THEIR LAST HOPE GONE.

Tuesday, March 10, counsel for the Nicelys appeared before the new Board of Pardons and asked for a rehearing. Their application was refused.

Tuesday, 23d, counsel appeared before Governor Pattison and presented a certificate signed by the jail physician, Dr. H. S. Kimmel, stating that in his opinion Joe Nicely was insane. The Governor declined to grant a respite until after he had examined testimony taken as to the prisoner's mental condition.

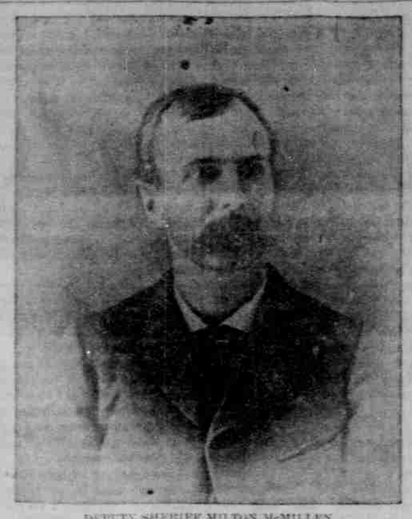
Daring Breaks for Liberty.

THE ATTEMPTS TO ESCAPE MADE BY THE NICELY BOYS—DEPUTY SHERIFF MILT. MCMILLEN SHOT.

When the Nicely boys were first brought to Somerset they were confined in a jail that was a disgrace to the county and to civilization. It was a prison in name only, and was no better adapted for the keeping of criminals than an old-fashioned country sheep-pen. It was provided with one steel cell, which at times contained as many as six desperate men who were supposed to be secure when locked in it. Humanity required that the Nicely boys be permitted to have access to other parts of the prison, and they were allowed the freedom of the corridors by the sheriff, who had been assured that they (the Nicely boys) would not leave the jail if the doors were thrown open.

Their friends and relatives were permitted to visit them whenever they chose to do so, and hundreds of curious people were permitted to pass inside the insecure old prison each week. The prediction was freely made that the murderers would never be executed, and that long before the day set for that event would make good their escape.

That this prediction was not without reason became evident on the 28th day of August, 1889, when deputy sheriff McMillen discovered that the prisoners had made every preparation to leave their insecure quarters that night. A cell on the upper corridor was kept locked at all times because of its unsafe condition, and it was by mere accident that the deputy looked inside.



DEPUTY SHERIFF MILTON McMILLEN

A hole had been dug in the wall, only the outside course of brick remaining to be removed; a number of sheets were found tied together, making a rope long enough to reach from the cell to the ground; chisels, braces and bits and other tools were found. Above the hole in the wall was written, "Good-bye, Milt, old boy; we can't stay with you." McMillen was not ready to have his prisoners bid him adieu in this manner, and going below he locked the two Nicely boys and two others in the steel cell.

A guard was placed in the jail thereafter.

DEPUTY SHERIFF MCMILLEN SHOT.

The Umberger case reached its highest degree of horror and excitement at 12 o'clock Monday, September 16, 1889, when Joseph and David Nicely made a murderous attack upon deputy sheriff McMillen, shooting him twice through the body, and made their escape to the woods east of town.

Just at noon on that day persons on Union street were startled by the report of a revolver. The next moment Joe and Dave Nicely were seen rushing down the jail steps and around the east corner of the building. Both cleared the iron fence of the jail yard at a bound and ran down the alley as fast as their legs could carry them.

"The Nicely's have escaped!" shouted those who saw them leaving the jail. The cry was taken up by all within hearing of their voices, and nearly every man who heard it started in pursuit. The best runners were close at the heels of the fleeing murderers when they disappeared in the woods, and a clergyman who was one of the pursuers fired a shot from his rifle at their retreating figures. Then came the shout, "The deputy Sheriff has been shot!" and an expression of horror crept over the faces of the hundreds who had collected about the jail. In a few minutes dozens of horsemen with guns over their shoulders went galloping in the direction of the ten-acre patch of woodland in which the criminals had taken refuge. Hundreds of men and boys, with all conceivable sorts of firearms, from a toy pistol to a repeating rifle, followed on foot. Women and little girls were running here and there, screaming and crying. Almost the entire population, excepting those who had gone in pursuit, collected in the Academy square, whence a full view of the woods was to be had.

Guards were speedily stationed at convenient points surrounding the thirty acres of woods, while the more venturesome commenced searching among the timber for the escaped murderers. The thought that they would ever permit themselves to be captured alive never entered the mind of anyone. Suddenly a rifle shot rang out on the still air, and with its echo came the cry, "here he is!" Dave was discovered up among the thick branches of a pine tree. It didn't require a second summons to him to come down, for, letting himself drop from the branches to the ground, he held up his hands and pleaded "for God's sake, don't shoot." At this juncture a pistol was thrust in his face and the question asked, "Who shot Milt?"

"It wasn't me; here's my revolver with all the loads in it," pleaded the miserable wretch.

The prisoner was conducted to town and at every step was greeted with the jeers and threats of the infuriated people who lined the road.

"For God's sake don't let them lynch me," he would whisper as rapidly as he could catch his breath. "Wouldn't you have tried to escape if you had been convicted innocently and the chances were all against you. I never did any shooting. Please don't let them shoot me," and like a wild beast run to the wall, he would turn his head from side to side as swiftly as the muscles of his neck would permit, while the terrorized expression on his face showed that he was in constant fear of an attack from the rear.

"It wasn't me that did the shooting. I never fired a shot, as my revolver shows. Don't let them kill me," he pleaded every step of the way back to jail.

THE CAPTURE OF JOE.

A line of men, placed six feet apart, were marching slowly and guardedly through the woods, when a man's body partly concealed behind a log and covered with leaves, attracted the attention of one of the hunters. "Get up there, and hold up your hands" was the prompt command.

"THROW UP YOUR HANDS!"

"Don't shoot, for the love of God. I am unarmed," cried the cowardly cur, who had but two hours before shot Deputy Sheriff McMillen in cold blood. Getting on his knees, the convicted murderer who had always born himself with the fearlessness of a lion, begged that his life be spared him a little while longer.

LYNCHING PREVENTED.

"Let's hang him," "No, we'll torture a confession out of him first," "Get a rope." "He's not fit to live" and similar expressions were to be heard on all sides.

"You're among the Somerset county Dutch," yelled one, "and we always let the law take its course."

"The law's too slow," replied the excited mob.

The fellow who referred to the Somerset Dutch, struck a popular chord, and from that instant better council prevailed, notwithstanding the chorus of "get the rope." "Hang him." "He murdered two men and ought to die."

The march from the woods to the town was one of wildest excitement. The crowd increased at every step and the cries for vengeance grew louder and louder. The streets were crowded with women who anxiously asked "which is he?" and then in tones of deepest hatred, hissed "kill him, he's not fit to live." When the crowd reached the Academy square there was a scene of intense commotion, and for a few moments it looked as though the lynching suggested at the woods would be carried into effect right there. But cooler heads again prevented any such attempt from being consummated, and after comparative quiet had been restored, the "little man" was hurried up Union Street and back into the jail from which he had escaped.

"Joe" Nicely hung his head like a craven coward, insisting all the while that he had not shot McMillen and begged to be saved from the crowd who gibed and taunted him as he passed by.

A search of the jail, revealed four new Smith & Wesson revolvers, in addition to the two that were found on the prisoners in the woods, but their hiding place was not revealed until a confession had been choked from one of the prisoners, who was in the Nicely's confidence. A liberal supply of cartridges was also found.

A TALK WITH THE NICELY'S.

A HERALD reporter stepped up to Dave Nicely's cell after the brothers were returned to jail and was invited to "go to h—l and mind your own d—d business. You fellows have done all you could to convict us."

"Well, tell us when the revolvers came into jail?"

"That's none of your d—d business," was the curt reply.

Dave subsequently told one of the guards that the revolvers had been handed in before the attempt to break jail several weeks previous had been discovered; and that they were handed to Joe through the ventilator.

JOE'S OILY TONGUE.

"How's Milt? Where did the balls strike him?"

When told that the deputy sheriff was in a very critical condition and that the balls entered just below the heart, he quietly remarked:

"It won't kill him; they are too low."

"How did this affair occur, Joe?"

"Well, now, I'll tell you all about it. We were convicted when we were innocent, and as the chances were all against us, we determined to escape. Letters have been received, too, saying that the jail was to be blown up with dynamite, and we didn't want to be here when that happened."

"You have gotten yourself in a nice position by attempting to murder the deputy sheriff," ventured the reporter. "I can't understand why innocent men would made a break of this kind."

"We made up our minds to go about a week ago. The sheriff went away this morning; everybody in town was likely at dinner, and I thought we could scare Milt. Instead of that he grabbed me by both wrists when I jumped out of the door. I had never handled a self cocking revolver before and it went off accidentally. Milt held on to me and we kept on scuffling, when the pistol again went off. I'm sorry if the shot hit him."

"How does it come that Dave left you so far in the rear when you were running?" asked the reporter. "You know he's sickly."

"That's something I can't understand. I used to do three miles without stopping. I guess this long confinement is the reason. Dave run like a deer; I couldn't begin to keep up with him."

"This kocks your case in the Supreme Court high and dry," suggested some one standing by.

"I suppose it will," said Joe, "we've made a bad mess of it all around," and I'm mighty sorry for it."

"Were the boys close to you in the wood s?"

"I should say they were; one time I had to draw in my legs to keep some fellow's horse from trampling on them. Dozens of people passed within a few feet of me. When I first got into the woods and was running a bullet whistled by my ear that I think must have cut my hair. When we got to the far end of the woods we saw that escape was cut off."

"When were the pistols handed into jail?"

"Let me see; this is Monday; they were handed in through the ventilator Monday night."

When Dave Nicely was searched a loaded revolver and an unbroken box of cartridges were found in his pockets.

Joe had thrown his revolver away before he was captured, and it was picked up a few feet from the spot. Two chambers had been discharged. A large number of loose cartridges were found in his pocket.

Shortly after 4 o'clock four stalwart blacksmiths appeared at the jail with sledges slung over their shoulders, and in a short time the Nicely brothers, the Rockwood burglars, and Lehr, who shot and killed young Scott at Confluence, were in chains, secured to the floor of their cells.

THE ATTACK

"I unlocked the door," said Deputy McMillen, "to permit the watchman to take a bucket of water into the prisoners. As soon as the door was thrown open Joe Nicely leaped out and flashed a revolver in my face. I noticed one of the prisoners inside had drawn a revolver on the watchman. I grabbed Joe and we commenced a scuffle; all of my efforts were directed to keeping him from getting a shot at a vital spot, but as soon as he got the muzzle of his pistol over my heart he pulled the trigger. In about a minute he got another shot in the same place. Dave had run out in the meanwhile, and as I was playing a losing game I left Joe go and staggered back to the jail door and turned the key. Then I went to my room adjoining the hall for my rifle. By this time the women came running in, and seeing that I was shot, made me lie down.

JOE SHOT TO KILL.

"Do you think Joe meant to kill you?" asked a HERALD scribe of the wounded officer.

"Of course he did; there can be no doubt of it," was the reply. "While I was struggling to keep the muzzle of his revolver away from my heart, his every effort was directed toward getting a shot at a vital part. He kept watching his revolver much more closely than he did me, and then, when he was told where the bullets had struck me he said at once that it wouldn't kill me; that it was too low; showing that he had full knowledge of where to shoot to kill.

"The instant it covered my heart, he pulled the trigger. The second shot was not fired till eight or ten seconds afterward, when he got another crack at the same spot. That he was shooting to kill and what he was aiming at, is shown by the holes in my side. They are scarcely half an inch apart, and if it had not been for my pass-book, I would not be talking to you to-day.

THE PASS-BOOK SAVED HIM.

"For a long time I have carried this book in my upper left vest pocket. The first bullet struck the book, which deflected its course, or it would have gone straight in, and probably struck my heart."

The book was produced and showed clearly that the bullet had been slightly turned in a downward direction by coming in contact with it. A clean hole was made through the top cover and the first few pages, while only the outside edges of the other pages, and the lower cover was cut by the bullet.

"Oh, Joe is an old-timer at this sort of business, and an expert shot," continued the Deputy Sheriff. "Did the similarity of the way that Herman Umberger and myself were both shot ever strike you? Umberger must have wrestled with Joe much the same as I did, and the balls entered his body almost precisely at the same place they entered mine, only Umberger didn't have a friendly pass-book to divert the course of one of the balls, and it passed through his heart and killed him. The revolvers used were of the same calibre and pattern. If I had had my revolver Joe would never have shot twice. He got the drop on me, but I would have had the second shot," and the brave young officer, his face contorted by the intense pain he was enduring, sank wearily back on his pillows.

Mr. McMillen recovered, although his life was despaired of for some days and was one of the death watch placed over the doomed men ten days ago.

A QUIT NOTICE SERVED ON A. A. NICELY, THE FATHER OF THE MURDERERS.

Anthony A. Nicely, father of Joseph and David Nicely, arrived in Somerset on the noon train, just a few minutes before his two sons made their felonious assault upon Deputy Sheriff McMillen. He stopped at the Somerset House and went at once to his room. A few minutes after he had reached his room the alarm of the escape of the prisoners and of their shooting the Deputy Sheriff was spread. The clerk at the hotel rushed to Mr. Nicely's room and told him of the occurrence. When he was told that his sons had escaped he seemed pleased; but at the further announcement that they had shot and probably killed the Deputy Sheriff, he broke down and wept bitterly. He said that he had always counseled them against committing any act of violence and expressed great regret at the assault upon Mr McMillen, whom he said had always treated the boys and their relatives who came to see them with the greatest kindness.

A large crowd repaired to the Somerset House and served notice on Mr. Nicely that he must leave town at once. He became greatly alarmed and sent to a livery stable for a team to convey him home, but before it arrived an influential citizen came upon the scene and succeeded in dispersing the excited crowd, and persuading them to allow the old, gray-haired father of the murderers to remain quietly at the hotel.

There is no doubt that friends of the Nicelys knew that this attempt to escape was to be made because telegrams were received two days before from different places.

TAKEN TO INDIANA.

March 31st the Nicely boys were taken to Indiana county and placed in the custody of Sheriff Mack. They were kept there during the summer of 1890 and until about the middle of October, when the keys of the new jail were handed over to the county Commissioners, when they were returned to the custody of Sheriff McMillen. The new jail is believed to be one of the best adapted and most secure county prisons in the State. It has but one defect—and that a glaring one. A trap-door in one of the upper corridors leads to the garret and holds out a constant invitation to prisoners to escape.

A Rotten Cord

PREVENTS ESCAPE AND CAUSES MANY BROKEN BONES AND ONE DEATH.

"Help! Help!" was the agonizing cry that came from the court yard shortly after dark Saturday, Nov. 29th 1890. A number of people started in the direction from which the cry proceeded, and were soon brought to the northeast corner of the jail, where they found a man writhing on the ground and insisting that he was bleeding to death. A glance sufficed to show that a general jail delivery had been accomplished, and the alarm was raised immediately. A light was procured before the excited townspeople had time to respond to the alarm, and by its dim light the features of Alex Queer were discerned in the poor creature who claimed that he was bleeding to death. At his side lay a large woolen blanket, while thirty feet above his head dangled the broken end of a quarter-inch rope, which explained how Queer came to be outside of the jail walls in such a pitiable plight. Very little sympathy was shown the unfortunate cripple, who had only been placed in jail one week before, charged with having set fire to his neighbor's, Mr. Abram Sevits', barn, and he was rudely gathered into a blanket and carried into the Sheriff's residence.

Meanwhile the Sheriff, accompanied by his deputy, the janitor and a number of citizens, had gone into the jail to make an examination, while the vast crowd gathered on the outside were giving vent to their indignation at the insecurity of the new jail.

The jail contained seven inmates, but two only were left, a colored man and a crippled boy—McCarty—McCarty told the following story: "Humbertson, the Rockwood burglar, sawed the lock off the trap door ten days ago and went up into the loft every day thereafter, where he could be heard working on the brick wall. The boy Keiser always stood guard and had plenty of time in which to notify Humbertson of the approach of any of the jail officials. At dark this evening the combination box was opened and the Nicely boys were soon released from their cells and had hid the saws beneath the dry closets. When the door of Humbertson's cell was opened, it required very little effort to crawl from it through the trap door above. Humbertson was the first to go up. The blankets and hammock in his cell were handed to him, and in a second Joe Nicely joined him. It was almost seven o'clock by this time, and the prisoners were greatly excited. Joe and Humbertson were engaged in making a rope by the light of a small hand lamp that had been handed up to them, and removing the outer layer of bricks from the hole that had been dug alongside the water spout in the northeast corner of the wall. "Everything is ready; come on, Dave!" whispered Joe from the hole in the ceiling, and the next minute Dave had joined his brother and Humbertson in the garret. Joe was the first to attempt to crawl down the hurriedly constructed rope, and it broke under his weight, letting him drop about ten feet to the ground. Humbertson followed next, and catching hold of the water spout, succeeded in reaching the ground in safety. Dave's turn came next, but he missed his hold on the spout, and fell more than one half of the entire distance from the rope to the ground. Keiser sealed the water pipe in safety. By this time Queer had crawled into the loft, notwithstanding the warnings given him by the darkey and McCarty, who told him that he could never crawl down a rope. Both of these prisoners say that Queer was greatly excited and was blowing like a bellows, and that Joe Nicely had ordered him from the trap-door above to keep still and stay where he was or he would kill him. But Queer said, "I am going to leave," and two or three minutes afterward the prisoners left behind heard his body falling to the ground, quickly followed by his cries of pain.

While the Sheriff and his party were in the jail the court house bell was rung by some of the more excited citizens, and when the Sheriff appeared among the crowd and asked that all of the men present follow him to the court room, he was accompanied by a small number of the great concourse of people.

The Sheriff announced that he would give a reward of $300 for the re-capture of the Nicely boys, and would pay the expenses of all the men present who would go in pursuit of them.

Not exceeding ten men enlisted in the Sheriff's posse, and soon as they could secure horses they were off in the direction of Ligonier.

Telegrams were sent to all of the towns in Somerset and Westmoreland counties telling of the escape, and dozens of messages were received asking for particulars.

The excitement continued until long after midnight. Few persons excepting the officers, seemed to care whether the Nicelys were re-captured or not, while hundreds of others expressed a hope, that they would escape.

The excitement of the people continued throughout the following day, and Monday morning a force of men were started in pursuit. McCarty had said that the escaped prisoners were to rendezvous at a point in the mountains above Ligonier, and nearly all of the pursuers started in that direction. The county Commissioners offered a reward of $300 for the capture of the Nicely boys.

CAPTURE OF DAVE NICELY.

There were not more than half a dozen people around the county jail at 9 o'clock Monday morning, when Wm. Ferner, a well known young farmer residing in the outskirts north of town, drove his trusty old black horse hitched in a buggy up to the jail door. Sitting by his side was an inanimate looking creature with a slouch hat drawn down over his eyes and a he