

way he was tied; I slackened the rope a little on his arms; I asked Lightner if he thought that was a bullet mark in Brown's cheek; he said it was; said if he had done it himself, his face would have been powder burnt; I went to the house to Brown, and asked him to let me look at his cheek; then he commenced telling me when he left the furnace; he did not know who it was; it was a smallish man in his shirt sleeves; when he stepped down he called out, "You d—d rascal," etc., and threw down his load, and started to run towards the barn; he said he could see a glimpse of him as he ran across the mow; as he jumped on to the barn floor he just got a glimpse of him; as Brown went along he showed me where he was when he saw the man jump on the floor; they were both running at the same time, as I understood him; he had got to the spring-house when

he saw him jump on to the floor; he saw him no more; he said he was so stunned he could not tell who it was, but it was some man about the size of Robert McConaghy; he never told me that it was McConaghy that shot at him; after George was found he told me he blamed Robert for the deed; I heard Robert ask Brown if he blamed him; Brown said he did.

*Peter Hare.* Came to Brown's about a quarter of an hour after dark on Saturday; asked him if he knew who shot him, and he said not; a little while after, about a quarter of an hour, he saw a man jump down off the mow; he said he supposed it to be McConaghy; he had a blue or black jacket on.

*John McConaghy.* Robert came down to Brown's with willingness, on Sunday morning, as far as I know.

The *Counsel* for the Prisoner and Commonwealth addressed the jury at length.

#### THE CHARGE OF THE COURT.

**JUDGE BURNSIDE.** The prisoner is on his trial for murder, which the law defines to be the killing another with malice aforethought, either expressed or implied. Our law declares that "All murders which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of wilful, deliberate and premeditated killing, or which shall be committed in the perpetration or attempt to perpetrate any arson, rape, robbery, or burglary, shall be deemed murder of the first degree; and all other kinds of murder shall be deemed murder of the second degree; and the jury before whom any person indicted for murder shall be tried, shall, if they find such