

from which he died a few hours after, it is impossible to believe that he could have invented a story against the defendant. His condition precluded it. On the contrary, as the acts of men are judged from common knowledge and experience, the statement commends itself as the instinctive utterance of a man in extremity, which not only discloses his condition, but is compelled by it. That which is recognized by such common experience as the instinctive outcome of an act is, for this reason, deemed to be a part of it, whether the time of the expression be five or fifteen minutes after. Words and acts, in this respect, stand upon the same footing; and the latter go without challenge.

The defendant further contends that the admission of this evidence violates his constitutional right to be confronted by his witnesses. But this is not so. The deceased is not the witness; not are his statements, merely as statements, reproduced in evidence. What he said and did in natural consequence of the principal transaction, became original evidence, concerning which the witnesses are produced. This point is fully covered in *State v. Waldron*, Index CC, p. 1.

Exceptions overruled.

UNITED STATES CIRCUIT COURT.

CALIFORNIA, October, 1889.

Coram SAWYER, Ch. J., and SABIN, D. J.

In re NEAGLE.

Constitutional Law—Power of Government to protect Federal Judges on way to Court.

[Continued from page 352.]

Mr. Neagle, in his testimony, stated that before the train arrived at Fresno, he got up and went out on the platform, leaving the train, and there saw Judge Terry and his wife get on the cars: that when the train arrived at Merced he spoke to the conductor, Woodward, and informed him that he was a deputy United States marshal, that Judge Field was on the train, and also Judge Terry and his wife, and that he was apprehensive that when the train arrived at Lathrop there would be trouble between those parties; and enquired whether there was any officer at that station, and was informed in reply that

there was a constable there: that he then requested the conductor to send word to the officer to be at Lathrop on the arrival of the train, and that he also applied to other parties to induce them to endeavor to secure assistance for him at that place in case it should be needed. The deputy marshal further stated that when the train arrived at Lathrop Justice Field went into the dining-room, he accompanying the justice; that they took seats at a table; that shortly after they were seated Judge Terry and his wife entered the dining-room, his wife following him several feet in the rear; that when the wife reached a point nearly opposite Justice Field, she turned around and went out rapidly from the room, and as appeared from what afterwards followed, she went to the car to get her satchel. When she returned from the car the satchel was taken from her and it was found to contain a pistol—revolver—containing six chambers, all of which were loaded with ball. This pistol lay on the top of the other articles in the satchel. The witness further stated that Judge Terry passed down opposite Justice Field to a table below where they were sitting; that in a few minutes, while Justice Field was eating, Judge Terry rose from his seat, went around behind him—the justice not seeing him at the time—and struck him two blows, one on the side and the other on the back of the head; that the second blow followed the other immediately; that one was given with the right hand and the other with the left; that Judge Terry then drew back his hand with his fist clinched, apparently to give the justice a violent blow on the side of his head, when he, Neagle, sprang to his feet, calling out to Terry: "Stop! stop! I'm an officer;" that Terry bore at the time on his face an expression of intense hate and passion, the most malignant the witness had ever seen in his life, and that he had seen a great many men in his time in such situations, and that the expression meant life or death for one or the other; that, as he cried out those words, "Stop! stop! I'm an officer," he jumped between Terry and Justice Field, and at that moment Judge Terry appeared to recognize him, and instantly, with a growl, moved his