with a pistol—but not intending to use it—was neither cocked nor unguided. The guard was on the lookout. He wished the guard to have been off—so it was. He had his intention to shoot L. when the chamber had been cleared. He could not see the examination. He did not dare to approach him. He fired his pistol while L. was putting his pistol—tried to cock his pistol—both before L. got his and afterwards. His pistol was primed and loaded with powder and ball. He had come intending to shoot Lythe aton.

Tho. Ames's evidence—

That he did not know about the first gun. Benton came and told L. that he was ready for him. It was meant to L. that B. must have a trick. L. got Mr. Baker to come with him. It was meant that A. B. might be concealed or that B. might have a knife or pistol. Baker took the pistol and put it into his pocket. The shooting followed when they went out. B. & Lythe got into the middle of the group. B. stepped and challenged L. to strike if he wished to strike L. said it was not a fit place. B. after abusing L. pulled out the pistol. was seized.