

without reason. But let me ask, why are not the Dockendorfs on the stand? Where were they that night? What sort of a horse had they? Let them give an account of themselves. Gentlemen, looking carefully at these facts, I have no hesitation in telling you that what Hand states is, in my opinion, a downright deliberate falsehood. There is another witness of the Crown—Robert Gordon—who could throw no light on this matter. The officers of the Crown examine this man; they see he can throw no light on the matter, and one of them tells him something to the effect that he need not appear. Gordon is well acquainted with the city, and is also acquainted with Millner, the prisoner. On the night of the murder, he was standing with his cart on Euston Street, near St. Peter's Road. He was attracted by a rattling noise coming towards him on Euston Street from the direction of McKinnon's tannery. Presently a horse and wagon came dashing up on a rack and canter. Two men were in it. It passed him, but he could not say which way they went. If those were the fellows who fired the shot do you think they would go through town? Don't you think they would go to the country? Don't you think they would dodge out St. Peter's Road, turn up Mount Edward, and go down to town the road opened by Mr. Smith, on the Malpeque Road, and then return to town? That's the way a trained villain, a daring assassin would do it. Gordon is well acquainted with Millner, and I asked him what Millner that was in the wagon which passed him on that night. He said he did not think it was. If it was he would recognize him. There is no doubt that Millner and Johnston took their evening drives. They often drove together, and were together that evening, and were met by several persons; but look, gentlemen, at the evidence of these young women who come here and testified that they saw Johnston, with whom Millner was driving, at Mr. Higgins' door, a half mile from the Bog, at the very time the murder was committed. Then, look at the testimony of Hand, who comes here to swear the lives of these young men away. I say, a more thick-headed fellow never before mounted a witness stand. His mind was made up, and he was as stubborn as a bull in a stall. He would make the most absurd statements imaginable and stick to them through thick and thin. I come now to deal with two beauties—two villainous, rascally policemen—fellows that stood by like bull dogs and saw poor Kilboy—a man whose wife and family we have now to support—strangled to death within four feet of them. These fellows—Bradley and his twin-brother Shea—stood there at the post mortem examination of that poor unfortunate man—stood up as brazen as brass and answered the questions put to them as unconcerned and hardened as if he who strangled himself through their neglect, under their nose, was a beast of the field. If I had been at that inquest I would ask Shea, "What caused the marks on the breast of that man," and similar questions, and insist upon answers. True, Shea had one of the Connellors up for libel, because that gentlemen, while in the discharge of his duty enquiring into the cause of Kilboy's death, made a charge against Shea. The trial took place before this Court, and what was he awarded as the true value of his character? What! but the small sum of eighteen pence. Gentlemen, are we to be asked to expect simple justice at the hands of such men as those. Emily Byers presumes to identify James Millner. I know what that little vixen would state when she would come into court. I asked her if she knew James Millner. "O yes, sir." If she knew Dave Inglis? "O yes, sir." If she knew Rose Chiverie? "O yes, sir; she lives down at Shepherd's." She knew everybody. I asked her how she knew Millner, or where she saw him? "O, sir, I saw him while I was shaking carpets for Mrs. Burris. Now, we have brought Mrs. Burris here. You have heard her evidence. She swears that there are twenty-seven yards of carpet in her parlour, and that Emily Byers never shook a corner of it. Now, that woman must have greatly falsified herself, or else there is not one scintilla of truth in Emily Byers' statement. Which are we to believe? The Attorney General made a very strong point, when Mr. Millner was examined regarding Emily Byers asking "Which of the persons was Millner?" when he suggested that the defence treated the witness as if she was paid to come and give evidence against the prisoners. Now, I will venture to say that, for twenty-five cents a piece, I could get as many witnesses as I wanted out of the Bog who would come up here and, on oath, answer any question I put to them. I am very sorry to see the Attorney General and the junior Counsel associated with them. I will now refer you, gentlemen, to an important piece of testimony, i. e., regarding the time the murder was committed. Dr. Hobkirk swears that the shots were fired about half-past nine, and at twenty minutes to ten they went to his house and told him to go over to the Bog—that the boy was shot. Coupling that with Hughes' testimony, who says that he left his house at half-past nine, and when he arrived at Ryan's corner—a short distance from his own house—the shots were fired. These facts go to show that the fatal shot was fired nearer half-past nine than twenty minutes to ten. What does Mr. John Higgins say? He says, gentlemen, that the prisoner Johnston came home that night at half-past nine. I have no doubt the Attorney General, in view of this, will say that he may have fired the fatal shot, and then, like the trained blood-thirsty villain, drove to the house immediately to escape detection. But Mr. Higgins goes further; he tells you that there was nothing extraordinary or noticeable in his appearance; that he was dressed in dark clothes, and that his father sent him to the Post Office shortly after he came in. He went. Gentlemen, is this the way a murderer would act? Do you think, if he had the misfortune to shoot that mulatto

boy, that he would appear so calm and collected before, and submissive to, his fate? No, gentlemen; he fulfills his father's errand; returns home and goes calmly, quietly, to his bed. Mr. Higgins tells you further that he was a model young man. If he was, and if he committed this murder, think you that he would conceal it from his father. No! He would go to him and throw his arms around his neck and say, "Father, I have sinned against heaven! I have murdered that boy! What shall I do?" But does he do this? On the contrary; he goes to seek consolation and contentment from two villainous (I can call them nothing else) policemen who were altogether strangers to him. Gentlemen, I ask you again is this the way things are done, after cold blooded murders are committed. I think not. I now throw Mr. Higgins' evidence aside, and bring you—not the out-scourings of the bog, the brothels, the waifs and strays of the city—but the daughter of the house and sinner of the country—the daughters of our most respectable mechanics. They were acquainted with young Johnston. They met him at a moonlight excursion, and, if they would not make his acquaintance, they must have been queer young girls. I want to know if the evidence of these fine and virtuous young ladies will not be taken in preference to that of Mary Brown with her black child, Mary Eden Byers with her white one, Lily Ryan or Emily Byers. They, one and all, swear positively that they saw Johnston on Prince Street at the time the murder was committed. Gentlemen, this Johnston must be a queer fellow if he could be in the bog and appear at Higgins' on Prince Street the same time. (Council here quotes extensively from the evidence of these young ladies in question, and resumed):—There must be something, rascally in the mind of the Attorney-General, if he can shake our case in the face of this testimony, which is, in itself, a clear *alibi*. I would like to know what argument he is going to pursue in order to rebut it. He may be ungenerous enough to say that it is a concocted story. He may say that the murder was committed at the time his father sent him to the Post Office, but wasn't these young ladies on their way to the Post Office, and did they not see Johnston standing at Higgins' as they passed to and from it. He may say there evidence was shaken in the cross-examination. We admit it was in some weak points, but in the most essential points, the Crown officers could not attempt to shake it. There was a little capital made about the time the mail arrived; the closing of the Post Office, etc. But if we confine ourselves to these points, we are off the track entirely. The question is: Was the illuminated town clock wrong or was it right when these young ladies looked at it after passing through the square. This is what you have to confine yourselves to, and they were not shaken in their testimony regarding it. Don't think for a moment that these young ladies came in to this court with a concocted story—a perjury on their lips. Ah! gentlemen, be charitable, and don't draw any comparison between these intelligent young ladies and the poor, miserable, and illiterate creatures from the bog. It may be held that these men committed the murder, and immediately rushed from the scene to screen themselves. This is not the case. If they did commit the murder, what would you find them doing? Don't you think they would rush to all the public places and call all the attention they possibly could, with the idea of proving an *alibi*. That is the way the trained villain would perpetrate a crime. I will convince you before leaving that panel that there is not one item of suspicion against these men. Robert Roddy, who is well acquainted with James Millner, comes here and swears that he saw him standing at Rieley's old corner, between ten o'clock and ten minutes past ten. He spoke to him. He did not see any unusual difference in his appearance, and he said "hello Roddy." The prisoner in the dock has his mouth closed. If he was on the stand he might render an account of his whereabouts that night. He does not remember what time he put his horse in. There was nothing occurred by which he could mark the time, and he did not hear of the murder till the next morning. The Attorney General may say to you that these young women who gave evidence here—and so clearly proved an *alibi*, as far as Johnston was concerned—were mistaken in the evening they saw Johnston. I say they are not mistaken, because they swear positively that they saw the account of the murder in the papers next morning; that they heard Johnston's name was mixed up in it; and that they remarked "it was not Johnston, because they saw him that night." In face of such strong testimony as this, what argument can the Crown have for conviction. Is she going to hang these men on the conflicting statements of prostitutes? No! She wishes to hang no man on the evidence of the brothels of the town and the out-scourings of the West Bog. I will now direct your attention to the wagon. I am very glad it has been brought into Court. Marshal Flynn says that, in the execution of his duty, he went forward with an old piece of tallow candle and a broken rule, to measure its tracks. He got down on his knees, with the candle in one hand and the rule in the other. He then placed the rule at the outside, and from outside to outside he found the distance to be four feet ten inches. He afterwards put two men in the wagon and measured it again, and found it to be four feet, nine and three-quarter inches. Now, we had an accurate measurement of the wagon in Court, and what do we find the real measurement to be? Mr. Johnston, who is a leading mechanic, testifies that the wagon varies from four feet five to four feet, seven and a half inches. Marshal Flynn also tells us that the fore wheels and hind wheels makes one exactly simultaneous track. Now, in measuring them, we find that the fore wheels vary from one inch to one inch and a half more than the hind. Now, if this is correct—and correct it is—what weight can you attach to the evidence of the Marshal when he makes such statements. The Marshal also measured the horses feet. He tells you he did it for curiosity. He paid no attention to that because he found they did not correspond with the tracks in the bog. Nothing could be made out of them. So no attention—mark you—was paid to them. Now, gentlemen, I will return to the confessions. When I asked this guardian what Johnston said, he repeated to me that he said "I am sorry for what I did. He puts the stress on the 'I'—the policeman's turn. He might have said, 'I am sorry for what has been done.' But no, this spotless lamb from the fold could not remember that, because, gentlemen, I suppose, it was not strong enough—it would not connect. The poor boy was hunted down by the officers, arrested at the dead hour of the night, among strangers, on board of a ves-

sel to which he had been sent to look after his father's business. He is followed by a blood-thirsty wretch who had been arraigned on charge of murder in Liverpool a fellow who he sent to buy some cigars, and who gets drunk on the money which the prisoner gives him to buy them. On the way to the station he turns to this miscreant and says, "You made a big thing of selling my life." He goes to the Court and lays down to rest his weary head, while there, thoughts of home invade his mind, and he says, "Oh, my mother, I would not care so much but for you." His father enters the Court and says to the boy, "What have you been saying?" and the poor boy rises, as if out of a dream, and replies, "I don't know what I have been saying. He did not, gentlemen. The evidence proves he did not. What he said was pure imagination. Now, gentlemen, in conclusion, let me ask you to show your verdict which side of the evidence you believe. Bring your verdict, and let it be published in Yarmouth, and from Yarmouth to Ottawa—from east to west—whether or not you are going to send those young men to the gallows on the evidence of the thieves, prostitutes and out-scourings of the Bog; or whether you are going to believe or disbelieve the oaths of the daughters of our most respected citizens. The issue is now between the two. Those virtuous and undefiled young women on one hand; and the thieves and prostitutes on the other. Now, gentlemen, I will leave you to retire to your room, and, while there, I earnestly pray that God will direct and enable you to return a verdict of justice and righteousness to my clients.

The Attorney General's Address.

GENTLEMEN OF THE JURY—It now becomes my duty to address you on behalf of the Crown regarding the evidence which has been sworn to in this case. The prisoners have been charged with the murder of George Kelly, on the 14th of August last; but it is competent for you to bring in a verdict of murder or manslaughter. Murder is defined as killing with malice premeditated one of Her Majesty's subjects. The law says that if a man under strong provocation has his passions so roused that he, for the time, does not really know what he is doing, and suddenly kills another, the crime is manslaughter. The question for you to consider in this case is whether, in the first place, the prisoners at the bar are the persons who committed the deed, and then to decide whether the crime was that most terrible one—murder, or the lesser crime—manslaughter. It rests entirely with you to consider was there such provocation that this crime was committed in a moment of anger—when the prisoners had lost control of themselves. I will read the following extract from an address by Judge Harmer, of England, to define the difference between murder and manslaughter:—

"Now, murder is killing with malice aforethought; but though the malice may be harbored for a long time for the gratification of a cherished revenge; it may, on the other hand, be generated in a man's mind, according to the character of that mind, in a short space of time; and therefore it becomes the duty of the jury in each case to distinguish whether such motive had arisen in the mind of the prisoner, and whether it was for the gratification of such malice he committed the fatal act. But the law, having regard to the infirmity of man's nature, admits evidence of such provocation as is calculated to throw a man's mind off its balance—so as to show he committed the act while under the influence of temporary excitement, and thus to negative the malice which is the essence of the crime of murder. It must not be a light provocation—it must be a grave provocation; and, undoubtedly a blow is regarded by the law as such a grave provocation; and supposing a deadly stroke inflicted promptly upon such provocation, a jury would be justified in regarding the crime as reduced to manslaughter. But if such a period of time has elapsed as would be sufficient to enable the mind to recover its balance and it appears that the fatal blow has been struck in the pursuit of revenge, then the crime will be murder."

I have read this to you as it very clearly defines the difference between the two crimes. Now, if you decide that those two persons, or either of them, fired the shots when Kelly was killed, then you have to consider whether he received sufficient provocation to enable you to bring in a verdict of manslaughter. It has been argued by the counsel for the prisoners that no stone was thrown, but to my mind the evidence is clear that a stone was thrown. Now, if a stone was thrown and struck one of the parties, and, under the provocation, he had fired the shot, it would be for you to consider whether that would be sufficient provocation to enable you to bring in a verdict of manslaughter. I shall now address myself to the facts of the case to see whether the Crown has brought home the guilt to these persons. I shall deal with the evidence as calmly and quietly as my nature will permit me. I should never forgive myself if I allowed myself to use one adjective stronger than should be used against the prisoners; but I must remember that I have a duty to discharge, and I would be unworthy of the position which I hold, if I failed in performing it.

On the 14th of August last, there can be no doubt that a murder was committed between half-past nine and ten minutes to ten o'clock. It was no ordinary crime. On a bright moonlight night, on a public street a boy was shot. We cannot wonder at the concourse of people who have assembled in this Court-room day after day to watch the progress of this case. When a man is shot down in the highway, it is the duty of the officers of the law to use every means to bring the perpetrators of the crime to justice, to not omit calling any witness who can throw any light upon it; and then, having brought forward all the evidence, to leave the matter in the hands of the jury. There is no doubt about the murder. The next question is, Who committed it? We must limit our inquiries to the prisoners at the bar. Where were they that night? We have it established that Millner was out driving that night with his small black horse and a wagon borrowed from Stumbles. We have him first driving with a man named Curran, and afterwards with the prisoner Johnston. It is not denied that Millner and Johnston were out driving together that night; we

have the evidence of those who saw them several times. We have evidence that this wagon was near the scene of the murder, and the evidence of one witness who says she identified the prisoner Millner. Then we have the evidence of Hand, who said he believed it was Millner's horse from the gait, and a subsequent witness—Larter—said he also knew Millner's horse by his gait. The witness Hand could not describe the gait of the horse, but a person may know a horse by his peculiar gait, and yet not be able to explain how he does so. There is the evidence of Bolger, who closed the stable door at Millner's before he went to bed, that at that time the horse was not in. It was proved that Johnston reached his boarding-house between half-past nine and ten o'clock. Millner was seen standing on Prince Street a little after ten o'clock, after he had time to put up the horse and walk out. If the case rested here, there might be some doubt about the guilt of the prisoners, but there is also the confessions of those two prisoners, and out of their own mouths their guilt will be proved. We will now try to follow Millner the whole evening. First, Curran was sent to borrow a wagon, and Strain proves to the lending of the wagon and also afterwards seeing Millner driving in it. Larter met Millner the same evening; he spoke to him, and Millner answered him. Mitchell met him, and Flood also saw him driving on Pownal Street, with a "buco" cap on. On every point of vital importance the witnesses agree, and only on immaterial points do they vary, and not more than a number of witnesses usually do. There never was half a dozen witnesses called up to give an account of a riot or a murder where small discrepancies in their evidence did not exist. If, as has been suggested, a conspiracy had been formed to swear away the lives of those persons, then all the witnesses would agree in every particular. My learned friend dilated at some length on the fact that this one and that one did not see Emily Byers on the back of the wagon, but it was when the wagon was first coming up, and before it reached the place where several of the witnesses were, that this little girl hung on to the back of it; it was between Byers' house and Hobkirk's corner, and those persons could not see her. She says she knew James Millner; she saw him passing through the gateway when she was shaking carpets for Mr. Burris. It was proved that she had been shaking mats there every week, and it was not unreasonable that she should see him, so that her story is inherently probable. Mary Ann Brown and Lily Ryan corroborate her statement about hanging on to the wagon. A great deal has been said about this witness—Mary Ann Brown. She is an unfortunate girl, but it does not follow that because she is unfortunate, that she is a perjurer. Many a girl has fallen from her high estate, but let us be just and honest, and not make them out worse than they really are.

[The remaining portion of the Attorney General's address will appear to-morrow.]

THE MURDER CASE—VERDICT NOT GUILTY. FEB. 6, 1879.

Many remained in the Court-room, anticipating a verdict, till a late hour last night. Shortly after ten o'clock this morning the jury came down. Judge Hensley took his seat upon the bench. The moment was one of intense excitement. After the words "NOT GUILTY" were uttered the feeling found vent in applause. The applause was promptly checked. On motion of Mr. Hodgson the prisoners were discharged.

THE FORGERY CASE.

The Queen at the prosecution of the Union Bank vs. Charles Horriell and James Crosby. Indictment for forgery. Prisoners arraigned. Plead not guilty. Will be ready for trial on Monday.

ALLEY VS. DUCHEMAN.

Action for suppression of an alleged nuisance. For the plaintiff, Palmer & McLeod and F. Peters, for the defendants, E. J. Hodgson, E. Bayfield and W. A. Morson.

SPECIAL JURY.

George Wright, foreman; Ewen McMillan, John Crosby, Benjamin Wright, David Ross, Alex McMillan, Geo. Dixon, Peter Bourke, Duncan Kennedy, Hugh Finlay, Edwin Coffin, Francis McQuaid.

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John McPhee, Administrator. Charlottetown, Feb. 4, 1879.

NOTICE.

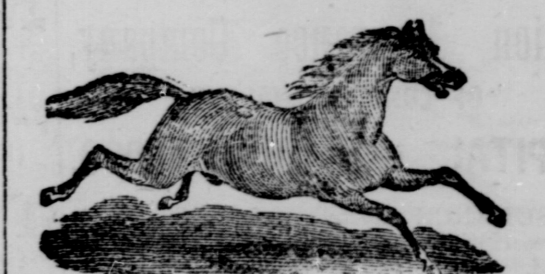
OWING to ill health I shall be unable to return to the Island before March, and I would respectfully request my customers to reserve their orders until that time. Meanwhile any party desiring to communicate with me can do so by addressing letters to me, Post Office box 188, Montreal. JOHN H. CATHRAE, Agent for Reinach's, Nephew & Co., Teas, London, England; Wilson, Matheson & Co., Dry Goods, Glasgow. Feb. 3, 1879—6i pat 2i

FINAL NOTICE.

ALL amounts due the Subscriber, not paid by the 15th February, will be sued for without further notice.

SIMON W. CRABBE, Sign of the Stove. Charlottetown, Jan. 31, 1879—4i

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