

SUPREME COURT.

The Murder Case.

JANUARY 23.

INDICTMENT—COUNSEL.

The Queen vs. James Millner and Louis Johnston. Indictment for murder. For the Crown, the Attorney General, Mr. Peters and Mr. F. L. Hazard; for the prisoners, Charles Palmer, Q. C. (for Millner), and E. J. Hodgson (for Johnston).

ARRIVAL OF THE PRISONERS.

Shortly after eleven o'clock the prisoners were brought up and placed in the dock. Imprisonment has not much altered their appearance. Both were flushed with the air and exercise. But they were not long seated before Johnston became decidedly pale. Neither showed any other symptom of unusual agitation.

THE JURY SELECTED.

Henry McGregor, foreman; Edward Davy, James Elliott, James Downey, Frederick Horne, Samuel Martin, James Farquharson, Angus McKinnon, Jonathan Smith, George Warren, Hector McKinnon, William Jewell.

WITNESSES ORDERED OUT OF COURT.

On motion of Mr. Hodgson, the following witnesses for the prosecution who were present, were ordered out of Court while the examination progressed:—Mary Ann Ryan, Rose Chiverie, Susan Inglis, Hugh McDonald, Francis Cusack, John A. McKenna, Pius McKinnon, Robert Hughes, Mary Brown, Minnie Byers, Patrick Hand, jr., Francis P. McCarron, John Larier, James McAleer, Emily Byers, W. H. Mitchell.

WITNESSES NOT PRESENT.

The following witnesses were "called," and not being present, the Attorney General gave notice that an attachment would be issued against them if they did not soon appear:—John Higgins, Peter Bradley (policeman), Robert Small, Archd. McDougall, Philip Bolger, Matthew Curran, David Inglis, John Hughes, John Flood, Hugh McDonnell (policeman), Richard Keating, Edward Strain, Isaac H. Smith, Archibald McKinnon, Patrick McCallum, Lavinia Larier, Minnie Larier, Charles Hackett and Thomas Lynch.

MR. PETERS' OPENING.

Gentlemen of the Jury—The prisoners at the bar stand charged with the crime of murder; and I need hardly tell you that you have a very serious duty to perform. You have to see that they have a fair trial; and, on the other hand, you must allow no feelings of kindness or anything else to tempt you to shrink your duty, which is to convict them should they be proved to be guilty. Gentlemen, although there will be a good many witnesses examined the facts are very few and simple. On the evening of the 11th day of August last the deceased, George Kelly, a boy of some sixteen years, was on Rochford street about half past nine o'clock. While he was there a wagon came driving along from the direction of St. Peter's Church towards Dr. Hobkirk's corner. About the time they reached the corner they turned and drove back and stopped opposite a cross street running between the corner and the Church. There will be some conflict of evidence as to whether or not the persons in the wagon entered into conversation with two women. But this is not material. While the wagon stood there a stone which some say struck the wagon, and others say did not; but which, at all events, did not strike either of the persons in the wagon. Immediately after the stone was thrown, they whipped up their horse, went a little way up the street, turned round, and drove back towards Dr. Hobkirk's corner. When again passing the cross street one of the people in the wagon deliberately fired three shots—causing the death of Kelly in about ten minutes. The wagon then drove on. It will be told you in evidence that one of those in it was heard saying, "I have shot one son of a bitch, and I'll shoot another." Patrick Hand, who lives opposite Dr. Hobkirk's corner, came out of his house after hearing the shots fired; and he will testify that while the wagon drove by he heard those in it making statements as to whether or not they had shot the right man. From this evidence two facts will appear: 1st, that the boy was shot, and, 2nd, that he was shot by the persons in the wagon.

Now, we say that the persons who were in the wagon are the prisoners—Johnston and Millner. It will be proved that, on the night in question, Millner hired a wagon from Stumbles, the livery stable keeper, and, further, that there was tackled in it a small black horse, known to belong to the prisoner Millner's father. Curran, a boy who stayed at Millner's, drove round with him until he picked up Johnston about eight o'clock. We shall prove by three or four witnesses that these two men were afterwards seen driving about the streets. Now, we will go a step further. Immediately after the affair the City Marshal hastened to the scene and measure the tracks of the wagon. The measurement tallies exactly with the tracks of the wagon in which Millner and Johnston were driving. Further, Patrick Hand, who is a person well acquainted with horses, will testify that he is almost certain the horse driven by those who fired the shot is a horse owned by George Millner. We will produce another witness who will prove conclusively that the prisoner Millner was one of those who were in the wagon. When they first drove past a little girl named Emily Byers was playing with other children upon the street; and she, as children will

sometimes do, hung on behind the wagon. One of those in it turned round and put his hand back to pat her off, and that one was the prisoner James Millner. She knows him well, for she lived next door to his father's for a considerable length of time and has often seen him. Then, gentlemen, it will be in evidence that after the occurrence some policemen went to Millner's house; and the prisoner appeared at an upper window with a pistol in his hand. At the same time there was in Millner's yard the very wagon hired from Stumbles. A day or two after the occurrence Johnston was found by the police hiding in the hold of a schooner; and the policemen will tell you what Johnston said to them at the time of his arrest. Then, Mr. Higgins (with whom Johnston boarded), will prove that he had a pistol in his possession—which has since disappeared.

Now, from this evidence, we allege that the persons engaged in the shooting of Kelly were Millner and Johnston—that Johnston fired the shots, while Millner drove the horse. Now, the question is, "Is Millner as guilty as Johnston?" It is my duty to tell you that he is. The law lays down, that when a crime is committed by two or more persons, all are equally guilty with the actual perpetrator of the deed, if it be proved that they all acted with the same intention; and the fact that in this case Millner drove the horse in such a way as to render the shooting easy, shows that at Millner's intention was precisely the same as that of Johnston. No one can justify the use of such a deadly weapon as a pistol, except upon the greatest provocation; and in this case there was scarcely any provocation at all. If the shots had been fired directly after the stone was thrown, then there might, perhaps, be some mitigation of the guilt; but, having allowed a space of time to elapse, it was murder and nothing else.

THE EVIDENCE.

MARY ELLEN BYERS called—Mr. Hodgson asked that witness be interrogated as to the nature of an oath Mr. Justice Hensley put several questions among others—"what will become of you if you swear falsely?" to which witness replied, "I would go to hell." Judge decides to admit her evidence and she is duly sworn.

Examined by the Attorney General—I now live at the Rankin House. Last August I lived with my father in the West Bog. I remember the night Kelly was killed. I knew Kelly. He was about sixteen years old. He was killed about 9 o'clock. On that night myself, Mary Brown and George Kelly were on our doorstep, which is on the side of Rochford street opposite the late Mr. Ralph Peake's dwelling. Our house is nearest the corner. It is the house nearest to Dr. Hobkirk's. There is a good wide gangway between it and Ryan's. Emily Byers, my sister, was out on the street with other children playing at the time. I saw a horse and wagon there. It was coming from the direction of St. Peter's Church and going towards Dr. Hobkirk's. It passed our place and went as far as Dr. Hobkirk's corner and returned. It crossed by Fitzroy and Rochford Streets. There is a covered sewer at the corner of Rochford and Fitzroy Streets, leading to Government Pond. The wagon passed over that and stood about the centre of Fitzroy Street. Rose Chiverie and Suse Inglis went on and commenced talking to them. They stood about four or five feet from the wagon. I could hear them talking, but could not distinguish the words. They talked between ten and fifteen minutes. Francis Cusack was near them. He was cooling and going from the pump. One of them "hallowed" out "Son—one of the men in the wagon. I don't know whether he had any conversation with them. All I saw in the wagon was two men. It was a dark horse in a single-seated wagon. The seat was nearer the front than the back. I saw them when they were coming back from Hobkirk's corner. One had a light coat and hat; the other had dark clothes and a cap, called a "bucco." I could not tell who was driving. The one with the light coat was nearest me as they drove towards St. Peter's Church. I was on the west side of the street. I did not notice any difference in their size. I could not tell whether they had whiskers. The next thing I noticed after Sonny Cusack was Kelly left us and was going down past Mrs. Ryan's. He was about Ryan's, or past it, when a stone was thrown. The stone was thrown from Ryan's corner. Kelly was about there. I saw the person in the act of throwing the stone. The person who threw it was at Mrs. Ryan's corner. He was not on the platform. It was not Kelly who threw the stone. It was thrown towards the wagon. It did not strike the wagon, but struck the board fence around St. Peter's Church. After the stone was fired they gave the horse a cut and drove long enough to turn. They turned the horse fully around and fired. I could not tell which fired. Three shots were fired. The shots went off as quick as— The horse was moving when they fired. The flash went toward where Kelly was killed. The persons in the wagon could see Kelly. The shots were fired towards the pond, and Kelly was between the pond and the wagon. After the shots were fired I heard somebody hollering out. I went right into the house after the shots were fired. I don't know what way the wagon went. I could hear one of the men saying something when the shots were firing, but I could not tell what it was. I saw Kelly afterwards at his mother's. He did not live long after.

To a Jurymen—I was at the doorstep and the wagon was in the middle of the street—about as far from witness stand to the first seat in the Courtroom. Cross-examined by Mr. Hodgson—This was after nine o'clock in the evening—nearly ten—about half-past nine. It was not a dark night. The moon was shining. When Kelly went down to Mrs. Ryan's I could see him all the way. I could see him walking almost as far as Miss Harvie's school. It was a dark wagon; the seats were nearer the front than the back. There was no wagon shown to me at the Police Station. The wagon they had looked different from other wagons, from having so much

space behind. I saw Johnston at the Coroner's Inquest and at the trial before Mr. Fitzgerald. I could not swear that Johnston was one of the men in the wagon. The horse was a dark one. I did not see a whip. If they had one, it was light enough for me to see it. Kelly was going in the direction of the pond when the shot was fired.

Cross-examined by Mr. Palmer—I could not swear who were in the wagon. I saw James Millner. I would know him if I met him. It was light enough that night to see Kelly as far as Mrs. Harvie's school, although I might not know him. I could not tell who was in the wagon, although it was "so handy." I don't know where the girls were when the shots were fired. I did not see any one near the wagon when the shots were fired. I was sitting on our own doorstep that time. I don't know where the girls went after the stones were fired. Mary Brown was with me on the doorstep. She saw the shot.

To Judge—The horse's head was turned towards St. Peter's Church when the stone was thrown. When the stone was thrown they made a sweep and just as they got around they fired.

MARY BROWN sworn—Examined by Mr. Peters—I live on Rochford Street, in Mrs. Ryan's house, in the lane between Ryan and Byers' houses. On the north side of Rochford Street there are Byers and Ryan's. Ryan's is right on the corner, and Byers is further from the corner. I remember the night Kelly was killed. Myself, Mary Ellen Byers and George Kelly were playing on the step of Billy Byers' door. Mary Ann Ryan was also there. We saw Rose Chiverie and Suse Inglis while on the street. Emily Byers and Patrick McCullin were on the middle of the street playing. That was all I saw. I saw the wagon pass St. Peter's Church from the Square. Two people were in the wagon—men. The one sitting near Byers' house had dark clothes on, and wore a cap with a long peak—a "bucco" cap. I could not tell who the other was dressed. The wagon was single seated, they sitting more in front. They drove near Dr. Hobkirk's corner and turned round and drove towards Owen Connolly's warehouse. When they stopped at the corner of the street the horse's head was turned towards Hobkirk's. They stopped about twenty minutes. While they stopped these girls—Suse Inglis and Rose Chiverie—were talking to them. Kelly went towards the wagon. He said he wanted to see who these girls were. My brother and McCullin were then playing on the green. A stone was then fired from Mrs. Ryan's corner at the wagon. It hit the fence. The wagon then turned around and they shot the boy. They fired three shots. The flashes of fire went towards the pond. Kelly was between the pond and the wagon. I could not see Kelly when he was shot. They then gave the horse a couple of cuts and drove towards Hobkirk's. That was the same wagon I saw first—the one from which they were talking to the girls. After they said "How, you black son of a whore, how!" three shots had then been fired. I don't know which of the men said that. I did not hear them say anything else. Sonny Cusack was going to the pump. I did not hear anyone speaking to him. When the wagon passed first Emily Byers jumped on the back of it. The wagon was then going towards Hobkirk's, a little past Byers'. She didn't stay long. While she was on the wagon a fellow who sat near Billy Byers' tapped her on the head. She did not hold on long. Kelly told her to let go the wagon, or she might get a cut across the eyes. It was the man next to Byers' fired the shot when the wagon was turned towards Hobkirk's. The fellow who fired it was dressed in dark clothing, with a cap on. It was a small black horse. When they came first they were not driving very fast.

Cross-examined by Mr. Palmer—I am going on 19 years of age. My mother is dead. I told all I knew when I was examined before. I forgot about Emily Byers holding on to the wagon when I was examined before. There was no one talking to me about it. I was not talking to Emily about it. How I knew they patted her on the back was because I saw them. I had a child since I was last examined. I don't know the meaning of the word "prostitute." I know the meaning of an oath. It means if you take a false oath you will go to hell. My mother taught me that. The child I had was a colored one. I did not swear about the threats they made from the wagon before the Stipendiary Magistrate. It was a couple of days after Kelly was shot that I was examined. I forgot about the threat. I could not tell who was in the wagon. I could not say James Millner was in the wagon.

To Mr. Hodgson—I was sworn in the little Court one time about my father being drunk. I was never up before that Court as a defendant. I did take an oath about that colored child. I did not swear it on anybody. I don't pretend to have a good memory. I was examined two days after the shooting, and I forgot all about Emily Byers getting on the back of the wagon. I don't remember going before Dr. Jenkins, the Coroner. I know Dr. Jenkins. (Counsel here reads witnesses' deposition taken before Coroner.)

Re-examined by Attorney General—I think I was at the little Court two days. I think I was only sworn once.

The Mail says:—"The people of the snug little Island of Prince Edward are agitating for a reduction of the amount of indemnity paid to a Provincial legislator to \$100 per session. The opposition platform includes this plank, and others in the direction of retrenchment and economy and the abolition of the Legislative Council. It is singular that, despite the clamors of Reformers for reforms when in Opposition, they resist any attempt in that direction when in power. In both Nova Scotia and Prince Edward Island the abolition of the Legislative Council is proposed. In the former case it is proposed by the Conservative Government, and in the latter by the Conservative Opposition."

Report of Audit Committee.

To the President and Members of the Charlottetown Temperance Reform Club:—

We, the undersigned committee appointed to audit the financial accounts of the Executive Committee beg to submit the following report:—That we have carefully examined the different accounts, both of receipts and expenditure, and also the vouchers for the same, and find them thoroughly correct.

We also consider that the Finance Committee deserve and are entitled to the thanks of each and every member of the Reform Club for the businesslike manner in which they have conducted the affairs of the club since their appointment to office.

We find by the accounts examined that at the time the Executive Committee assumed charge that the club was deeply in debt, and that now the whole or greater portion of said debt is paid off, and that the Executive Committee have carefully and economically conducted the business of this club. The whole of which is respectfully submitted.

DANIEL MORAE, J. W. HODGSON, DONALD MCINNIS.

Free Trade in Germany Doomed.

The Berlin correspondent of the Daily News writes:—

The Protectionists are exultant over Bismarck's letter. The Free Trade organs show reluctance to close with the enemy. This last is the worst sign of the situation. It shows not only that they are on the defensive, but also that the defence is losing ground, is sensible of the fact, and is in no hurry to compromise itself with the future. There can be no doubt that free trade, as it now exists in Germany, is doomed, and what this means to England will at once occur even to the unthinking. No change need be feared for, say, a year hence, since the formalities of legislation will exact no little time, and even a dissolution may eventually be tried before the end is reached. But in all human probability a great and pretty general increase in German frontier duties will ultimately be made, and the Empire will return to the company of protectionist States.

Excessive Representation.

(From the Toronto Mail.)

Mr. Hardy contended the other day, with his usual boldness, that our statement that this is the most-governed and most-represented country on earth, was untrue; and quoted the United States as having more representatives proportionately than Ontario. Here are the facts:

Ontario, with a population of 1,620,000, has 88 local representatives in the Local Legislature, or one to every 18,200 souls. New York State, with a population of 4,330,000, has 123 representatives in the State Assembly and 32 in the State Senate; in all 155 representatives, or one representative for every 27,400 souls. As regards general representation, Ontario has 88 Local representatives, 88 representatives in the House of Commons, and 24 representatives in the Senate; or 200 representatives in all, equal to one for every 8,100 souls. On the other hand, New York has 160 State representatives, thirty-three Congressmen and two United States Senators; or 195 representatives in all, being one for every 22,500 souls.

Ohio has a population of 2,670,000. She has 109 members in her State Assembly, and 35 in her State Senate; being 135 in all, or one for every 19,700 souls, against Ontario with one for every 18,200 souls. As regards general representation, Ohio has 135 State representatives, 20 Congressional members and two members in the United States Senate, being 157 representatives, or one for every 17,000 members, against Ontario with one for every 8,100 souls.

Indiana, with a population of 1,680,000, has 100 representatives in her State Assembly and 50 Senators, or 150 in all, being one for every 11,200 souls. Thus so far as Local government goes, she is more governed than Ontario; but when it comes to general representation we easily bear away the palm. Indiana has 13 Congressmen and two United States Senators, or 165 representatives in all, against 200 for Ontario, with 60,000 less people.

Missouri, with a population of 1,720,000, has 177 members in her State Legislature, Senate and Assembly combined, or double the Local representation of Ontario; but she has only 13 Congressmen and two United States Senators, making 192 representatives in all, as against 200 in Ontario, which contains 100,000 less people.

This list could be extended to the end of the chapter, but the above proves our case. It is true Mr. Hardy may find that some of the older States, like Virginia and Massachusetts, have greater local representation according to population, but in general representation we are ahead of even the oldest of the States, with two exceptions. In discussing this subject, moreover, regard should be had to wealth, i. e., paying power, as well as to population; and if the Provincial Secretary will make wealth a factor in his reckoning, he will find that the case of Ontario is even worse than the figures of population prove it to be. Reform in this respect is a pressing necessity. There are too many Local representatives by twenty-eight at least, and they are too well paid. The indemnity was never intended to be a salary, and yet there are not twenty members in the House who earn \$800 in three months at their own business, much less in six weeks.

The chief of the Chinese Legation in the United States was asked, it is stated, what would become of those of his countrymen who wished to live and work away from China, in case of the United States deciding not to receive them. "They will all go to Ireland," is the reply he is said to have given; "that is the only country that the Irish do not rule."

CHEAP CROCKERYWARE

ON hand, Five Crates Crockery-ware, which I will sell at much less than cost, for Cash.

WILLIAM DODD, Queen Square.

January 25, 1879.—31

"THE ENAMORADO"!

A DRAMA IN V. ACTS, BY HUNTER DUVAR

THE above interesting book is for sale at all the Bookstores on the Island. Col. Davar is happy in having selected for the theme of his drama, one of the most romantic incidents of a romantic and soldierly time. The scene is laid in Spain, amid all the accessories of grave and gay, love and chivalry, poetry and song, with room for the display of many types of character,—knights and ladies, priests and soldiers, courtiers and peasants, cooks and clowns. Many lyrics in the author's best style are interspersed in the dialogue, which is, in general, quaint and sparkling. Price: Paper cover, 50 cents; in cloth, 75 cents. Summerside, Jan. 25, 1879—

CHARLOTTETOWN CEMETERY COMPANY.

THE Annual Meeting of the above Co., will be held at the office of the Marine Insurance Co., corner Great George and Lower Water Streets, on

Tuesday, the 4th day of Feb'y next, at 4 o'clock in the afternoon.

By order, F. W. HALES, Sec'y. Ch'town, Jan. 25, 1879.

Seven Years in Rome.

THE Very Rev. Dr. McDONALD will deliver a Lecture on the above subject before the St. Joseph's Total Abstinence Society, in

ST. PATRICK'S HALL,

WEDNESDAY EVNG., JANUARY 23, 1879.

Admission 10 cents. Ladies free. Doors open at 7 o'clock. Lecture to commence at 8. ANGUS MACDONALD, Sec'y. Ch'town, Jan. 22, 1879. eod t 1

MAIL NOTICE.

MAILS will be closed daily at this Office, (Sundays excepted) at 8 o'clock, p. m., and forwarded via Cape Traverse, to all places abroad.

The British Mail for Canadian Packet sailing from Halifax on Saturdays, will close here at 8 o'clock, p. m., every Wednesday; and for the fortnightly packet sailing from Halifax on the first and third Tuesday in February, it will close here on the previous Friday evening at 8 o'clock p. m.

Mails for all places West of Charlottetown and Summerside receiving Mails by Railway train or Postal Car, will close here at 7 o'clock a. m., daily.

Mails for Georgetown and Souris East and all places on the route to those points, will close daily at 2.25 p. m.

Post Office closes at 8 o'clock, p. m. A. A. MACDONALD, Postmaster. Post Office, Ch'town, 21st Jan'y. 1879. 1m

Executors' Notice.

THE undersigned Executors of the Estate of Ralph Brecken Peake, late of Charlottetown, in the Province of Prince Edward Island, merchant, deceased, hereby notify all persons indebted to the said Estate to make immediate payment to them; and all persons having any claims against the said Estate are hereby required to render the same to the undersigned, duly attested, within one year from date.

Dated this twenty-first day of January, A. D., 1879. EDWARD J. HODGSON, GEORGE W. DEBLOIS, THOS. HANDRAHAN, Executors. Jan. 21, 1879. r g 3m

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CHOICE FLOUR From \$5.50 to \$6.00 per bbl., and

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