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THE DAILY EXAMINER.

JANUARY 30, 1879.

SUPREME COURT.

The Murder Case.

JAN. 29, 1879.

THE EVIDENCE.

Afternoon Sitting.

DAVID INGLIS, sworn—Examined by Mr. Peters—I remember the night Kelly was shot. When he was shot I was on the sidewalk, between Dr. Hobkirk's and Billy Byers', on my way home. I came from Rochfort Square. I saw my sister and Mrs. Chiverie on the street—I paid no attention to anyone else. If I ain't mistaken, I saw some one sitting at Billy Byers' door. My sister and Mrs Chiverie were standing on the platform over the drain nearest Ryan's. They stood ten or fifteen feet apart. They were not speaking. I went straight on till I heard the three shots. A wagon met me, but I paid no attention to it. About a minute after I heard the shots, I heard a boy singing out "Oh, my God, I'm shot." The wagon then passed me quick and went around Hobkirk's corner. I ran to where the boy was hollering. He was on the south side of the street—about 20 yards off Rochfort Street. I picked him up. He said he was shot. I felt blood on my hands, and says I "There's blood here anyway. I was the first to pick him up. Then William Potter and my sister came along, and then the whole bog turned out. I did not see Cusack before the shots were fired. I think I saw John Hughes afterwards, but not before to my knowledge. I heard about a stone that was thrown, but I did not throw it. I spoke to my sister. I did not see any one talk to the persons in the wagon. I did not see the wagon stop at all. There were two men in the wagon. It was single-seated. The horse was dark and of ordinary size.

Cross-examined by Mr. Palmer—I now work wherever I can get a day's work to do. The wagon passed me after the shots were fired. I didn't hear any one sing out from the wagon. I did not hear any one say "Howl, you black son of a whore, howl;" nor did I hear those in the wagon say anything. From the time the wagon passed me till the shots were fired about five minutes elapsed. I didn't pay much attention to the men in the wagon. I would know James Millner, but not Johnston.

Cross-examined by Mr. Hodgson—I had no conversation with Emily Byers about this matter, nor with any one else.

To the Attorney General—I don't recollect seeing George Hughes before the shots were fired.

FRANCIS CUSACK, sworn—Examined by Mr. Hodgson as to the nature of an oath, witness said if he swore false his soul would be burned in hell.

Examined by the Attorney General—I have lived all my life in the bog. My mother is living. I remember the night Kelly was shot. I was coming from the pump and I saw the carriage coming along. It stopped in the street. Mrs. Chiverie and Susc Inglis were standing about three feet from it. I don't know that they were talking. One of the men in the wagon said, "Is that you Cusack?" I said "Yes." I picked up the bucket to go on and I heard a stone which I thought struck the rungs of the wagon. I was going along with the bucket. I didn't take notice to Kelly till I heard the shot. The carriage was standing there when Dave Inglis passed along. The fellows fired about the time I got to Maloney's cellar. The horse was then right forenent the bridge where Kelly was. I heard Kelly hollering, "I'm shot." Dave Inglis got to Kelly a little before I did. I was about 24 feet from where Kelly was. I was not close enough to identify those in the wagon.

Cross-examined by Mr. Hodgson—I didn't take notice to Emily Byers holding onto the wagon. The wagon was standing on the road about ten minutes. It was after the last shot that Kelly cried out. I had no talk with the girls about this matter. That's true.

Cross-examined by Mr. Palmer—I was about 12 feet from the men in the wagon when the shots were fired. If those men in the wagon had sung out, "Howl, you black son of a whore, howl," I would have heard it. I didn't hear it. They might have said it when they got over by Byers'. I didn't hear them say, "I'll give you firing stones." I didn't hear said, "I've shot one black son of a bitch and I'll shoot another." I don't know James Millner.

To the Attorney General—John Flood (a witness in the case) has his leg broken.

JOHN FLOOD was brought in on a chair—(sworn)—I remember the night Kelly was shot. I was with Joseph Duster. I was going along Pownal street when I met Duster. We met a wagon there. It was single-seated, with about six inches of a board up. One of those in it was Millner who is in the dock. I am not mistaken. They were driving near the gutter going towards Spring Park. Millner was in the left hand side. I do not know the other man. He was not as big as Millner. I don't know what became of the wagon. I went down the square, and Duster and I sat down on the little bridge on Grafton street. We then went over and sat on Miss Harvie's schoolhouse steps. We passed Dave Inglis on the square at the West End Store. Dave Inglis came over and commenced to talk to us. He then started to go home, and when he had gone as far as Ryan's corner we heard the shots and a cry of murder. I said to Duster, "You go one way and I will go the other, to see who them fellows are." We were sitting on the school-house steps, and the first time we saw the wagon it was coming from Hand's. There were three dashes. I ran after the wagon, but did not catch it.

Cross-examined by Mr. Palmer—I was sitting on the little bridge. It was on the square I passed Dave Inglis talking to a woman. I did say nothing to Dave Inglis. When you stopped me short (in the direct examination) I was going to tell a conversation which occurred between Duster and myself on the little bridge. All the conversation Inglis and I had was on the schoolhouse steps. I swear I was not living with Dave Byers' wife. Dave Byers was in Boston three or four years ago.

Question—Who lived with his wife then?

Answer—That's all right.

Mrs. Byers lived by her own hard work. I stopped there some nights when Dave was in the boat. This wagon passed by me. They were just abreast of me when I was going down the square. It was after night. My attention was drawn to the wagon by some oaths which proceeded from it. I recognized Millner in the wagon. He was dressed in dark clothes with a black hat on. He was sitting on the side next me. I could not say which was driving. I saw the whole of his face—enough to know it. I lived in the bog my lifetime. My father—John Flood—lives in Lot 48. I was up before the Stipendiary Magistrate twice for assault and battery, and three or four times for being drunk. I got my leg broke on Christmas morning. I slipped and fell. I was up this summer. There was a lot of us in Mrs. Young's lane, and a fellow passed through and dropped two cents out of his pocket. Some of the crowd picked them up, and he went to the Police Station and had us arrested for highway robbery. I don't swear the wagon that I seen Millner in was the one which the shots were fired out of.

PATRICK HAND (sworn)—Examined by Mr. Peters—I live on Euston street, across from Dr. Hobkirk's. The first I heard was the shots. I was then in the stable behind the house on Spring street. I heard three shots. I was taking out my horse to water, and as I was loosing the halter rope from the manger I heard two shots. Then there were some seconds between the second and third shots. Says I to myself, "There is some fun in the Bog." I then went out of the stable, and when I got to the gate I saw a wagon coming around Hobkirk's corner from the Bog. There were two men in the wagon. It went up Euston street. It struck me at the time it was Millner's horse. I knew Millner's horse. Mr. Millner had two horses at the time. The one in question was the smallest black one. I recognized the gait of the horse. He was a pretty smart one. Just as the wagon was coming around Hobkirk's corner I heard the tallest man in the wagon saying "I know the beggar that fired the stone." This was between four and five minutes after the shots were fired. "I have him," was the reply. The smallest man of the two said that. The other then said, "No you haven't." "Yes I have," was repeated again by the smallest man. It was a fine moonlight night. When I was standing at the gate I was about 36 or 40 feet from the wagon. I did not recognize how they were dressed, I am a truckman. I am acquainted with horses since I can remember. I gave information to somebody about what I saw the night Kelly was shot. I cannot swear it was the Marshal. Kelly lived about a quarter of an hour after I went over. When they passed the corner they were driving pretty fast. I saw no other wagons about, that time.

Cross-examined by Mr. Palmer—I met the horse that I saw that night in Millner's employ taking out pumps. I think I only heard three words. (Counsel read first sentence uttered by the persons in the wagon, and witness said "I would call that one word.) It is a fact that I heard the expressions as they went by, (*i. e.*, "I got the bugger that threw the stone," etc.) I did not swear it was Millner's horse. I did not state it at the time, but I was under the impression that it was Millner's horse, at the time he turned the corner. I told some person it was Millner's horse a half hour after Kelly was killed. I cannot give the name of the person that I told. I don't recollect Isaac Knight or Policemen Heartz or Warren being there. I deny that I stated in front of Kelly's house that night that I did not know the horse, and that it was not a town horse at all. I went in search of the horse that night. I did not go to Millner's that night. It was not my place to go to Millner's. I went out the road that night. I was hired to go. The reason I went out the road was because a young man came down and said he saw a horse and wagon going out the road as hard as they could. The Marshal then hired my horse to go in pursuit of them. I did not tell the Marshal then that it was Millner's horse. We went out the road five or six miles. I deny telling Warren and Heartz that I did not think the horse belonged to the town, that I thought he belonged to the country. I deny it to the best of my knowledge. I think I might have mentioned about Dockendorff's horse. I cannot swear positively who mentioned about Dockendorff's horse. I won't deny I mentioned it, nor I won't swear I didn't. We went to Dockendorff's house to look for the horse. We did not go to Dockendorff's to look for Dockendorff's horse. We followed the wagon tracks. We went out to McDonald's and passed over Moar's Mill Dam and came in the North River Road.

Question—You knew it was Millner's horse that was in the wagon, and yet you went fourteen miles out to the country, and you did not go to Millner's.

Witness—What had I to do with Millner? The Marshal sent us to the country, and we went.

Question—You went all over the country. You were leading the police astray.

Witness—I was not leading them astray. I would go as far as they wanted. It was none of my business.

To Mr. Hodgson—There was a track turned into Dockendorffs. We got that track on the other side of Moor's mills. We got to Dockendorff's at one o'clock. There was a wagon there. I will not swear that I said that was the wagon.

Question—What became of your thoughts about Millner's horse if you said that was the wagon.

Witness—To the best of my knowledge I did not say that was the wagon.

The policemen measured the wagon at Dockendorff's. I could not swear whether we had the measure of the horse's hoofs or wagon wheel. We met one of the Dockendorffs on horseback coming in the road. I cannot swear whether we measured the horse's hoofs or the wagon. I cannot swear whether we went into Dockendorff's barn or stable that night. We might. We might have went into the house.

Re-examined by Attorney General—I was employed by the Marshal to go to the country. There was word came to the Station that a horse and wagon was seen going out the road as hard as he could go. The Marshal then asked me where was my horse. I said he was in the stable. He told me to go and get him, and I would be paid for it. I went, and I think he told Warren and Heartz to go with me. I went under the Marshal's directions, and was under the policemen's directions while I was with them. I had nothing to do with taking them to Dockendorff's. I had nothing to do with measuring wagons or anything else. I might have helped the police to take measurements.

HUGH MCDONALD, sworn—Examined by the Attorney General—I live in Charlottetown. On the evening Kelly was killed I was on Euston Street, near Mr. Trainor's, opposite Hobkirk's gate—a little past. I heard two shots about twenty minutes or a quarter past nine. They came from the direction of the bog. When I was opposite William Welsh's a single-seated wagon, with two people in it, came along. They were talking about a revolver or shooting. They said something that made me think they were the party that fired shots.

Cross-examined by Mr. Hodgson—I could not say Millner was in the wagon. I knew Millner. I saw him knocking about. If I was on the side of the street and he in the middle, I would know him.

EDWARD STRAIN (sworn) - Examined by the Attorney General—I am in the employ of Mr. Stumbles. I know James Millner well. I remember last August the night Kelly was killed, I lent Matt. Curran a wagon. He came, I think, from Millner's. He got the wagon for James Millner. The wagon was one that had been a buggie, but the roof was taken off. It was the same wagon that was before the Stipendiary Magistrate's Court at the time of the investigation. It was a high wagon. The springs were fore and aft. It was a black color. It was newly painted. I lent it between 7 and 8 o'clock. I saw it between eight and nine o'clock on Grafton street opposite Godkin's Tannery. Matt. Curran and the prisoner—James Millner—were in the wagon. Millner's father had four horses last August. The horse that I saw in the wagon was one of the four. It was a middle-sized black horse. I last saw Matt. Curran three weeks ago. He was employed with Mr. Millner last summer—the time the boy was shot.

JAN. 30.

WILLIAM POTTER sworn—Examined by the Attorney General—I live in the Bog. I don't know anything about the shooting. I was at the picking up of Kelly. I held the arms while Dave Ingles put his hand into Kelly's breast. I was in Mrs. Crosby's when the shots were fired.

JOHN HIGGINS sworn—I know the prisoners at the bar. I remember the night Kelly was shot. Johnston was boarding with me. He came in that night between half-past nine and ten. I am convinced in my own mind that he walked to the house. I heard no carriage stopping at my door. His father gave him a bunch of keys and sent him to the Post Office. He returned and went to bed. I saw him next morning at breakfast with his father. Johnston, as near I can recollect, was dressed in dark clothes when he came home. He had a cap and a hat. I could not swear which he had on that evening. I don't recollect seeing him wear a light overcoat that evening. He went away after breakfast and did not return till the next morning in charge of the police. I saw him with a revolver eight or ten days before he was arrested. It was a small revolver. I don't know how many chambers it had. I heard no conversation between the prisoner and his father when he came back with the police.

Cross-examined by Mr. Hodgson—I don't know whether the pistol I saw was his own. He was shooting cats. His mother is lying in bed now. She is not expected to live. He did not look like a murderer when he came in that night. I saw no difference in him. He was, I thought, a model young man.

JOHN A. MCKENNA, sworn—Examined by Mr. Peters—I know the prisoner Millner. I don't know him any more than to bid him the time of day in passing. I remember the night Kelly was shot. I saw Millner that night driving in a wagon, between St. Patrick's Hall and Newson's. I saw a person with him whom I could not recognize. He did not appear to be as big a man as Millner. I know Matthew Curran. I saw him at the Coroner's Inquest. It was not he who was in the wagon. He is a big man. Millner and he were pretty near the one size. Millner was driving. It was sometime after eight o'clock. Francis McCarron was with me. We were driving in opposite directions. We did not speak to him. They had what appeared to be a light-running wagon, with back springs. I took no particular notice to the wagon. Millner appeared to be a head over the other.

Cross-examined by Mr. Palmer—When I sit down I sit higher than a good many taller men. The wagon did not ride as high as I have seen wagons. It was ordinary size. I don't remember particularly how I was dressed that evening. I wore a hat. I could not swear what sort of a coat I had. I used to wear a light coat and a black one. I had not a bucco cap at that time. It is a long time since I wore a bucco. It is my impression McCarron wore a hat. I would say the seat was in the centre. I did not take particular notice to it. I don't think the position of the seat would attract my attention. I am sure it was Millner was driving and that he sat on the driver's side. I could not say what difference there was between the wagon we had and Millner's. The horse we had was a dark brown and pretty near the size of Millner's. It was Mr. McCarron's horse. He might look pretty dark in the night. We came in pretty near nine. I could not swear what kind of clothes McCarron had on.

To Attorney General—I swear positively I was not driving on Rochfort street that night.

To Mr. Palmer—I swear that the person in the wagon with him had not a "bucko" cap. He might have one in his pocket for all I know.

FRANCIS P. MCCARRON (sworn)—Examined by Mr. Peters—I have known the prisoner Millner for six or seven years. I don't know the other prisoner. I was driving with John McKenna the night Kelly was shot. We met Millner driving with another person about five minutes past eight, in front of Newson's. Millner had dark clothes on, and wore a high black cap with a large peak—called a "bucko" or "bummer." I did not take notice what kind of clothes the person with Millner wore. Millner appeared a great deal taller than the other as they sat in the wagon. I know Matt. Curran. I saw him before the Coroner's Inquest. He is about the same sized man as Millner. The horse Millner drove that evening was a small black horse. I did not take much notice of the wagon. I went in that night about nine o'clock. We drove on the eastern side of the city. We were not on Rochfort street. I had on a soft brown hat. McKenna had a black hat on. I never wore a "bucko" cap in my life.

Cross-examined by Mr. Hodgson—I cannot say what streets I was on that night, but I can swear that I was not on Rochfort street.

JOHN LARTER sworn—Examined by the Attorney General—I know the prisoners. I know Millner three or four years. I hauled some things for Johnston. I was standing on the sidewalk on the Malpeque road opposite Murley's the night Kelly was shot. Millner came driving along. I knew his horse, and I spoke to him, and he answered. There was a young man with him. The young man sat lower in the wagon than Millner did. The wagon looked like a buggy-wagon. Millner was dressed in dark clothes, and had on a bucko cap. The other man was dressed in black. He had a black felt hat on. James Millner sat next to me in the wagon. He was side-driving. The wagon seemed to be side-springed. It was a little before me when I saw them. They went out the road and came back in about five or ten minutes. I was not in the same place. I was walking up and down. When they came in they turned towards McKinnon's tannery.

Cross-examined by Mr. Peters—I have no doubt but Millner was in the wagon. I am quite certain that neither persons in the wagon had a light coat on. There were several horses on the road that night. I saw one passing something like Millner's.

ROBERT HUGHES, sworn—Examined by the Attorney General—I remember the night Kelly was killed. I was at Dr. Mackieson's corner. I am not certain whether it was between eight and nine or nine and ten o'clock A girl came along and I was speaking to her. I saw a wagon coming from Malpeque Road. It was a single wagon. There were two persons in it. I am not sure who was in the wagon. As they passed they sung out "Cut it short." I thought it was Millner's voice. He was next me on the right hand side going down. I did not see them afterwards. A girl named Larter passed along as the wagon passed me.

Cross-examined by Mr. Palmer—I would not swear positively that Millner was in the wagon. I dont' remember how they were dressed. It was by the voice that I thought it was Millner.

Afternoon Sitting.

LAVINIA LARTER, sworn—I was standing at Dr. Mackieson's corner. I saw a wagon driving past the Kirk and turning up towards Bayfield's. I saw no carriage going towards Black Sam's Bridge.

Cross-examined by Mr. Palmer—I didn't know who was in the wagon I saw.

William H. Mitchell, sworn—On the evening Kelly was shot I was on Pownal Street, opposite Dr. Mackieson's. About twenty minutes past nine I saw a wagon passing. The horse was black or dark brown. One of those in the wagon was Millner, who is in the dock. The other man was shorter. They turned towards Hobkirk's corner. I am quite sure I recognized Millner.

Cross-examined by Mr. Palmer—I did not speak to Millner. It was a bright night. I did not know his horse.

The Grand Jury presented a true bill against Colin Pearson for forgery. Also a petition to the Governor General for the discharge from jail of John McNevin. The Chief Justice said the petition would be forwarded. In reference to the proposed payment of the Grand Jury for their services the Chief Justice said it was a matter for the House of Assembly.

THE Grand Jury found "True Bills" against Charles Horreil (*alias* James McLean) and James Crosby, for forgery. As the bill now before the Grand Jury was for a forgery on the Bank of P. E. I., and as Henry Longworth, Esq., is a shareholder in that Bank, he was relieved from further service on the Jury, and David Mutch, Esq., took his place as Foreman.

Flour, Apples, &c.

BY AUCTION,

On Saturday, February 1st,

AT 2 O'CLOCK,

100 BBLS. FLOUR.
100 " CORNMEAL,
50 " APPLES,
30 " HERRING,
30 qtls. LING,
20 boxes SOAP,
Mustard, Pepper, Ginger, etc.

B. BALDERSTON.

Ch'town, Jan. 30, 1879—2in

AUCTION.

TO be Sold at Public Auction, on the premises of Mr. CHARLES RODD, Melbourne Farm, Little York, Lot 34, five miles from Charlottetown,

On Wednesday, February 19, 1879,

AT 12 O'CLOCK,

A **Farm,** consisting of 50 acres of Freehold Land. There are on the premises a good Dwelling House, Barn and other Outbuildings, together with a good well of water. Also, the following Stock, consisting of 7 head of Horned Cattle, 3 Horses, 10 Sheep, and sundry other articles not enumerated.

Terms at Sale.

PETER STEWART,
Auctioneer.

Little York, Jan. 30, 1879—wkly a 3i

ORGAN FOR SALE.

FOR SALE, **a First-Class Mason & Hamlin Organ,** almost new, and in perfect order. Will be sold VERY CHEAP.

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Ch'town, Jan. 24, 1879—2aw tf

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Jan. 23—

CHEAP CROCKERYWARE

ON hand, **Five Crates Crockeryware,** which I will sell at much less than cost, for Cash.

WILLIAM DODD,
Queen Square.

January 25, 1879.—3i

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A DRAMA IN V. ACTS,

—BY—

HUNTER DUVAR

THE above interesting book is for sale at all the Bookstores on the Island.

Col. Duvar 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.

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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—TO THE—

FLOUR & TEA STORE!

And it cannot be stopped while they are selling

SUCH EXCELLENT TEA

For 36c., 40c., and 44c. per lb.

GOOD SUGAR

For 7½c., 8c., 8½c., and 9c. per lb.

CHOICE FLOUR

From $5.50 to $6.00 per bbl., and

OTHER GROCERIES

RIGHT CHEAP.

☞ Save your money by buying at

BEER & GOFF'S.

Ch'town, Jan. 17—

PRINCE EDWARD ISLAND RAILWAY.

NOTICE!!

THE **SPECIAL TRAIN** connecting with the "Nothern Light" will cease running until further notice.

WILLIAM McKECHNIE,
Superintendent.

Ch'town, Jan. 18, 1876—6 in

REMOVAL!

J. QUIRK has removed his shop to new building, two doors to the right.

Ch'town, Dec. 26.—h pres 1m