

ARLETON SENTINEL EXTRA.

Trial of W. H. Kearney

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thought there would be difficultly; Orr told me some days before that he would fight prisoner, he said prisoner had sent him a Valentine, and charge prisoner with thrashing; never heard Orr and charge prisoner thrashing singing Valentine; knew they had a squabble; saw one time before; heard that prisoner at had been in some parties, not by Orr; Wolverton's and Kearney's were bad friends; Orr lived at time with Wolverton; don't remember having said that prisoner should be hung; said he should be punished. When went to singing; school had no thought it was would be trouble; in singing heard that Orr, think heard was to be trouble; during recess; Orr and prisoner had had some words that night; I saw scuffling coming out of school after Orr got out or prisoner was one of the committee to keep order in school; saw one of us I w we had interfered had trouble arisen from self so; outside heard Kearney say, "if any man attacks me I'll make a corpse of him;" I thought he had been attacked before school; I did not have made such an observation if he had not been attacked; did see was about 4 feet high; do not know that prisoner was driven there; did not go to go to him, but walked by; heard a blow, did not see it given; did not see Orr on drift as I went by; Orr must have gone there; had cut off and in tussel; did not see him where; when I heard blow I turned away; did not have idea death would result; did not see during difficulty go and put head on one of parties; stepped in between two men with my hands; did not fear; was not afraid, but stepped to get like a wave of row; looked on coolly; don't know who gave first blow, sounded loud like blow of fist; soon men on my left; saw prisoner strike while in clinch, did not see Orr strike; Orr was leaned up against prisoner; heard Orr say, "he's got a knife, and has stabbed me;" this was while they were together; Orr leaning up against prisoner; saw prisoner then to interfere, did not see him; prisoner jumped back; Orr ran forward, and prisoner ran; Alexander Orr ran after Kearney; saw no one go up while in clinch; could see parties standing; saw 25 or 30 persons at singing school; no confusion; everything still; saw ten or twelve able-bodied men there; don't think interference on my part would have prevented the result; did not examine Orr afterward, did not feel like it; will not deny that I said I considered Kearney's words were a warning to every one to leave him alone; Orr struck the snow drift at all; most likely Orr attacking party; don't know if Orr heard Kearney's warning; did not see or hear anything to deserve remark from Kearney, he might have seen or heard more than I did; don't remember hearing Alexander Orr say anything that night; did not hear any one say, "come on boys, now's your chance;" never knew Orr to carry brass knuckles; I once saw Walter Hay have brass knuckles; probably he was there that night; this was not the night he showed them to me; did not know of Orr have weapons about him; never knew there had been ill-feeling between the men; thought Wolverton's are relations of mine; they did not rouse ill-feeling; they sent to thrash Kearney when a boy going to school; did not know that brass knuckles were in singing school that night; I had no weapon with me; don't know of Orr lying in wait for Kearney with a sled-stake; was not in sham fight that night.

Re-examined—Orr was up higher than Kearney, between him and fence.

Charles H. Wolverton (sergeant)—Live in Northampton; was singing school, night referred to; was sitting; heard disturbance; as walking up road saw Orr lay his coat down along side of road and go into the crowd; I stepped up alongside the drift, stood short time; saw Orr step back out of the crowd and walk about 10 feet, fall on his knees, and say, "he's got a knife—he's stabbed me;" when he dropped he had moved away from the crowd; saw Kearney at singing school but not after; supposed he was there in the distance; did not see in crowd; saw Orr on edge of road when he fell; felt right on edge of road and drift; saw somebody running away; carried Orr into Gibson's; saw blood on him, saw wounds after he was taken into house, on one shoulder, others on side; was there when Dr. Waulpauper examined him; did not see Kearney again that night; knew there had been some cause of trouble between the parties before; I saw the valentine.

Cross-examined—Saw fight up alongside of road; saw Orr get feeling between Kearney and I; for some ten years we have not spoken friendly; for five years Orr was in my father's family; know Alex. Kearney; don't recollect his having had a ram killed a few 27 years ago; recollect his gate being destroyed; did not see it done; cannot swear who he did; Orr did not tell me he was there; he went away from the house alone that evening; don't know what he went for; the matter was not talked over before; heard that Alexander Kearney was suspected; he did not tell me he had done it; Kearney has some nice fruit trees; don't remember them having been girdled; but did hear of some trees in pasture being girdled; I believe I did it myself; I told my father I liked I had done it; he said it was wrong; I believed it was our axe that was used in destroying Kearney's gate; Orr borrowed the axe; he did not tell me what he wanted it for; he brought the axe back either the next day or in the afternoon; he said if he had done it, he would not have told me; whether he had done it or not; sometimes he'd say he did, sometimes that he didn't; a man hired by Joseph Wolverton felled a tree over Kearney's line; we told him not to; Orr told me he did not shave Kearney's horses tail; have had no difficulty with Kearney, except some words; my brother thrashed Kearney once; our hired man instigated him to it; my mother and I once got into some beating; Dr. W. and father told Charlie to go and give him a kicking, he did not so. Saw Orr and prisoner previous to school opening on night of death of Orr; did not see any trouble before singing school; heard that Orr challenged prisoner for a fight; prisoner did not fight; heard prisoner said he did not want any trouble with Orr; did not see him having the knife; did not know of Orr having laid wait for prisoner on previous occasion, heard he did; Orr told me that if he met prisoner there he'd lick him or get a thrashing; don't know of Orr threatening to way-lay prisoner; heard others, not Orr, say he had been waiting for prisoner the Friday night before to thrash him; I and Augustus Orr were accused of lying in wait for W. H. Kearney, but it was not so; knew they had fought before; did not see them; told me he intended to attack prisoner if he met him there; don't know that he was prepared with a weapon; before Orr left home he told me he intended to thrash prisoner; did not tell me so in singing school; don't know that Orr prepared himself with any weapon before he went to singing school; have never told any one that he took a link of kniving in the house or knew of Alexander Orrell supporting the kind; Orr got a valentine supplied about prisoner; heard that he had a chain; did not tell that prisoner that link he was in danger; I told Wallace Hempfling; don't know that he got a whip of row; I was one of the committee; some whispering in school but did not know what it was about; did not see any one going out of school on hands and feet; did not hear

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man provides himself with a deadly weapon
 on any provocation to take life, and
 so, he commits murder, but if he is provoked
 and happens to have a deadly weapon about
 him, and under the influence of passion aroused
 by the provocation, uses and makes a dash with
 the weapon, the law having due regard to the
 infirmities of our natures, call the act man-
 slaughter. Then there is justifiable homicide.
 When a man is assailed and has reasonable
 grounds to believe that it is intended to do him
 at both ends, he may resist even to the death;
 but he must only resort to taking life in self-
 owned defence when it is absolutely necessary
 to his own protection. No assault upon him will
 justify his taking life unless he is satisfied his own
 life is in danger. The corollary provision is that
 when a party is attacked he is not justified in
 killing life, and the jury cannot acquit him, if
 he could retreat by any means. But if he
 could retreat no further, as he stated, and he
 retreated, he had retreated to the wall, or if in
 retreating, being followed, he would in-
 crease his danger, then he has met the require-
 ments of the law.

Gentleman, the deceased, Orr, died, and by
 the hands of the prisoner at the bar. We have
 evidence as to the weapon used and can only
 find its nature from the character of the wounds
 which the Doctor says were made by a bowie
 knife, dagger or other instrument sharpened at
 both ends. We have not the instrument here, and
 while it might have been a dagger it may have
 been a Jack-knife sharpened on both sides. It
 might have an effect in your minds if you know
 the character of the instrument used. But there
 is no man there are any doubts the law provides that
 the prisoner is entitled to the benefit of any rea-
 sonable doubts—doubts not arising from the feel-
 ings of the jurors; not from the unpleasantness
 of the duties they have to perform, but con-
 scientious doubts arising out of the circumstan-
 ces.

There is some discrepancy in the evidence.
 We have the two Miss Hays, Jos. A. Wolverton,
 Harvey Bull and Mr. Frost who conducted the
 trial, and I do not disagree with them. But it is for
 you to judge as to the credit to attach to the
 witnesses. With regard to the other witnesses
 I am not prepared to say that I am as well satis-
 fied with the evidence of the instrument used. But
 if I tell you unhesitatingly, a murder of the most
 aggravated character was committed. But his
 testimony here does not agree with his own de-
 claration before the Magistrates, nor with the
 evidence of the witnesses at the church for the com-
 munity to take such testimony rather than
 that of the other witnesses.

Between the families of Kearney and the
 Wolverton there appears to have existed for
 years very unpleasant feelings; there was a state
 of ill-feeling which I can scarcely understand.
 With old men the entertaining of prejudices,
 which strengthen as they grow older and feebler,
 is not so surprising, but it is very unusual to
 find young men growing up together in the same
 community, and in companionship with each
 other, nourishing and maintaining such feelings.
 Who was to blame originally for these feelings we
 have no evidence to show. Mr. Fisher did not
 denounce in language too strong the acts com-
 mitted against the father of the prisoner when
 he said they were mean, miserable, disgraceful
 and I hope I shall never again, in any County,
 hear of such dirty conduct. We have in the
 evidence the account of former difficulties be-
 tween the prisoner and the deceased; the annoy-
 ance about the valentines; the watching of the
 deceased to way lay prisoner, armed as one wit-
 ness said, with a stick; then we have the gather-
 ing of the neighbors at the church for the com-
 mendable purpose of acquiring a knowledge of
 sacred music. Kearney was right in saying he
 had as good a right to be there as any one. He
 was in the Queen's peace, surrounded by the
 rights of the law. If Orr had any one else had any
 cause for feeling injured, the house of God was
 a place to carry their ill-feelings and private
 quarrels to. Up to the time of this occurrence
 V. H. Kearney's character stands as high as
 that of any young man. We find him exposed
 to insult, contumely; outside and inside the
 house of God he was insulted and assaulted be-
 fore singing school commenced, but he did not
 resist it, but exercised as much forbearance as
 any man could wish his son to exercise. On a
 previous occasion we learn he was struck across
 the face.

All these acts of an aggravating character
 done peacefully, you have a right to consider
 as tending in your own mind as to the pri-
 soner's intention to take life. Orr's statement
 shows that there was a premeditated determina-
 tion to attack Kearney. Up to this time who
 was right. There is no evidence to show that
 Kearney was not Orr's valentine; he denied that
 Kearney was so desecrating and that was an apology.
 We might have supposed that the presence of
 ladies at the school would have induced, at all
 events, a decency of demeanor, which is recog-
 nized as being due to the female sex in every
 civilized community. The young ladies have
 given us the best account of the affair; they tell
 us the very words that were used; they saw the
 assault—it was very natural if it was desired
 to get up a row, to introduce it by means of a
 slam-fight—they saw the attack upon the prisoner
 after Alexander Orr said one on. All but one
 of the witnesses seem to concur in the statement
 that Kearney went aside out of the way, and
 that the unfortunate deceased took off his jacket,
 followed the prisoner, and struck him two or
 three blows, and then staggered back. Mr.
 Frost says he suspected something because there
 was a great gathering of the Wolverton's, Orr's
 and Gibson's. What was the meaning of the
 statement of the deceased to Henry Bull that
 he was well backed? Did he mean by the par-
 ties named? That is a material feature in the
 case. The use of a knife is un-English; belongs
 to countries where assassination is practiced; we
 call it cowardly, dastardly, unless under strong
 mitigating circumstances.

Unless desired, I will not read over the evi-
 dence to you as you have heard it so recently,
 and the main facts are common to such small
 companies. You will view the evidence and try
 it by the law I have laid down to you; and for
 the sake of public justice do your duty manfully
 without fear, favor or affection, and return such
 a verdict under the evidence as your own con-
 sciences will approve.

The jury retired and after an absence of a
 few hours returned bringing in a verdict of
 "Not Guilty." The prisoner was then dis-
 charged, without other remarks by the Chief
 Justice.