

WHEARY TRIAL.

Concluded in the Circuit Court To-day.

No Evidence Submitted in Prisoner's Favor.

A new judge, and the entry of a murder case on the docket of the York circuit court, were the two causes that drew a crowd to the court house on the opening of the nisi prius sittings here Tuesday morning.

Everybody had heard favorable accounts of Hon. Fred E. Barker, the latest appointment to the supreme court bench, but few in this part of the province outside of Fredericton had seen his honor, or heard him lift up his voice in a court of justice. His entrance then to the bench on Tuesday excited much interest, and it is safe to say that all favorable anticipations formed of his honor have so far been quite fulfilled. It was just eleven a. m. when Judge Barker, escorted by sheriff Sterling, made his way through the crowded court room to the dressing rooms to the rear, and after smoothing out his white locks, and adjusting his gown and bands, he faced from the bench for the first time, an audience that had gathered to observe the course of justice as it was to be administered by Judge Barker. The clerk of the court, Geo. A. Hughes, the sheriff, his deputy, attorney general Blair, and the Fredericton barristers, were all gathered within the rail, and bowed profoundly as his honor ascended the bench.

And then the business of opening the court commenced. Orier Haining, suffering from a bad cold, was sufficiently distinct in his proclamation, however, to let everybody know that her majesty the Queen was ready and willing to give audience to all requiring justice. Clerk Hughes called the roll of the grand jury and the following answered to their names and were sworn in:

Z. R. Everett	John T. Clarke
Nelson Campbell	W. T. Whitehead
John Owens	E. H. Allen
John H. Fleming	J. F. McMurray
Joseph Walker	Alonso Staples
Wm. H. Van Wart	J. T. Jennings
Hamilton Kitchin	Eben Miller
John Lenthall	A. W. Edgcombe
J. G. McNally	John Haslin
Robt. McCredie	Chas. W. Whelpley
St. L. Morrison	Robt. Howie
James Hurley	

The jury then retired to select a foreman, on their return announcing that Z. R. Everett had been chosen for that position, and Judge Barker

delivered his charge. He said that he was not one to be presented for their consideration. That case was not only somewhat novel and intricate in its character, but it involved the most serious crime known to the law, that of murder, and the particular crime charged was the murder of Bertha Wheary by her brother-in-law, the prisoner, on the 27th of September last. There was no doubt whatever, he said, that a murder had been committed, and the only question for the grand jury was whether there was sufficient evidence to place the prisoner on his trial as the person who committed the act. That the act of one of the several neighbors who had opportunity of seeing in a general way whether or not any other persons were about the Wheary household on the day of the murder had

observed any other person than the prisoner and the deceased woman's two young children about the premises; the prisoner having been seen to go out into the yard and return to the house with a water pail during the afternoon, and afterwards walking in the yard with one of the deceased's children in his arms and leading the other by the hand; the discovery of the axe in the woodshed, apparently concealed and with spots of human blood also upon the prisoner's shirt, were all mentioned as circumstances which, taken together, would warrant the grand jury in finding a true bill. He mentioned the fact of the prisoner's deafness and dumbness, but he said because it was a matter for their consideration, but simply to show that the forms and ceremonies and the machinery of the court were quite ample, not only to protect the unfortunate prisoner thus situated, but also to secure to the administration of justice in such a case.

Referring to the illness of the chief justice he said it would be inappropriate for him to close without expressing his deep regret thereat, voicing the hope, in which he was sure all present heartily shared, that Sir John would speedily be restored to health and strength. Commenting upon the removal of Judge King and Judge Fraser from the supreme court of this province, his honor said that, while we all regretted their loss from this sphere of usefulness, we must feel gratified at their removal to more honorable positions, feeling that they will richly adorn the offices to which they had so deservedly been chosen.

TRUE BILL AGAINST WHEARY.
The grand jury then retired, to consider the indictment against Edward Wheary, jr., for the murder of his sister-in-law, Bertha Wheary, at Mouth Kewick in September last, and late in the afternoon reported to his honor that they had found a "true bill" against the prisoner.

Immediately after making the presentment, Foreman Everett, on behalf of the grand jury, read an address of welcome to Judge Barker, which he said had been prepared on his elevation to the bench, expressed confidence in his ability and integrity, and wished him and family health, happiness and prosperity for many years to come.

Judge Barker made a suitable reply, expressing his pleasure at meeting the grand jury of the county, where he had studied his profession and passed seven pleasant years of his life. He then dismissed the grand jury.

Geo. F. Gregory, on behalf of the Fredericton bar, read a complimentary address to the judge, congratulating him on his appointment, and expressing the belief that great success would mark his career on the bench.

His honor made an appropriate reply thanking the bar of the capital very cordially for their expression of esteem and good wishes, and expressing the hope that in the discharge of the duties of the high office he would be able to attain to a realization of their expectations. He referred pleasantly to his residence in Fredericton as a student of arts and law.

ATTORNEY GENERAL BLAIR
then addressed his honor in a few felicitous words on behalf of the bar of the province as to his conduct and character in the discharge of the duties pertaining to his exalted position. If a wide knowledge of law, a lengthened experience and active practice at the bar, a courteous affable manner, a calm judgment, an unflinching disposition, were calculated to fit one for the eminent position his honor occupied, he thought he could say, and in saying he felt that he expressed the universal sentiment of the bar of New Brunswick, that his honor combined in an eminent degree these qualities. It must be a matter of deep gratification to his honor, that through the appointment had been made to be made from one political party, and the organs of public opinion, and the

leaders of the people on both sides of politics, had joined in expressing their heartiest approval at his selection, and their entire confidence in the way in which he would discharge his duties. It was the sincere desire of those who were his honor's fellows at the bar, that he might be long spared to discharge these important functions, and it was their common hope that his honor would be able to place his name alongside the honored names that the bench of New Brunswick had given birth to in the past.

JUDGE BARKER
in replying, said: Mr. attorney general, as an ex-officio head of the bar of this province, I assure you it is most gratifying to me that you feel at liberty to have made the remarks which you have made in reference to the position to which I have so recently been appointed. It would be needless for me to attempt to disguise the fact, that I have felt exceedingly pleased indeed that my appointment has been received so generally with expressions of esteem, more especially in a community where political feelings sometimes run away with one's judgment. It has been especially gratifying to me to find that the press generally, on both sides of politics, have found themselves free to express some satisfaction, at all events, at my appointment.

When the court opened Wednesday morning, the prisoner Wheary was brought into court, by deputy sheriff Haining, and placed in the dock. He smiled as he took his seat, apparently not realizing his position, and his manner, as at the police court, is evidently one of indifference.

The prisoner was asked by the clerk of the court if he were guilty or not guilty. Upon his making no answer to this the clerk informed his honor that the prisoner stood mute. On motion of the attorney general, and of the opinion of the judge, a jury was empaneled to try whether the prisoner stood mute of malice or by the visitation of God. The following jury was empaneled: The H. Colter, foreman; Geo. A. Miles, Thos. R. Speedy, Dennis Connolly, Hubbard Niles, John Moore, N. A. LaForest, Isaac Peabody, Mr. Henry, Alex. Calder, E. Ladlow, Ass. H. Van Wart.

The prisoner's father, Joseph Wheary, and A. F. Woodbridge, of the deaf and dumb institution, were examined and the jury without leaving the room reported that they had found the prisoner stood mute by the visitation of God.

On motion of the attorney general and by consent of the prisoner's counsel, Alfred F. Woodbridge was sworn in as interpreter, and under the direction of the judge he interpreted to the prisoner in the deaf and dumb language the indictment, and explained its meaning to him in simple words. The prisoner pleaded not guilty.

In conformity with the practice usually followed in such cases, a jury was then empaneled to try whether or not the prisoner possessed sufficient intelligence to understand the proceedings and the nature of the trial, and to make a defence. By consent of counsel the same jury was sworn. Prisoner's father and mother and Mr. Woodbridge were examined, and the jury were addressed by Mr. Van Wart, the prisoner's counsel, who had undertaken to establish the prisoner's incapacity; and of the attorney general in reply. His honor then charged the jury, who retired and after a brief absence returned that they found the prisoner to have sufficient intelligence to be put upon his trial. The court then adjourned for dinner.

After much challenging the following jury was selected to try the main issue, Wheary's guilt or innocence:

John Moore	John Barnett
Jos. Machum	Geo. Ebbett
Isaac Peabody	Geo. Ebbett
John Christie	Alex. Thompson
Wm. Inch	A. N. LaForest
Fred. Ebbett	N. A. Edgcombe

THE PROSECUTION OPENED.
When the court opened Wednesday afternoon, attorney general Blair opened for the prosecution in a short address. After detailing the circumstances of the murder, he intimated that the crown would be able to show, not only that the prisoner had the opportunity to commit the murder, but to show also that that opportunity was not open to any body else. The Wheary house, in which the murder was committed, was situated on an elevated position, and the premises were free altogether from any obstructions that would prevent the neighbors from seeing any one moving about the premises on either side, and the crown would be able to show that not one of the neighbors, although nearly all of them had the opportunity of seeing what was going on, had seen any one approach the house.

The crown would be able to show also that the prisoner had appeared to be conscious that he had done some wrong upon the return of the husband of the deceased woman, and had run away for a time. The crown would show also that an axe had been discovered under circumstances that clearly proved that it had been concealed and not that alone, but that the axe had marks of

HUMAN BLOOD UPON IT,
and their appearance indicated that there had been an effort made to wash them off. In addition to this the crown would show that spots of human blood were found upon the shirt worn by the prisoner on the day of the murder. Speaking of the question of the sanity of the prisoner, the attorney general said he was not aware whether the counsel for the defence intended to offer any testimony upon the ground of insanity, but that matter would be open to him. Just now it was for the crown to proceed to the proof of the commission of the crime by the prisoner, and if the defence should offer any testimony to prove insanity in the prisoner, then the crown would endeavor to get at the truth of the matter. The presumption of the law was that a man was sane until it was proved insane, and it was for the defence, if they wished, to rebut that presumption.

THE EVIDENCE.
Hedley Wheary, husband of the deceased Bertha Wheary, was the first witness called. He deposed he was living in a double house at Kewick with his father. Witness's family consisted of his wife and two children. In his father's apartment his father, mother, brother Tyler, his brother Edward, the prisoner, and sister Mabel lived together. Witness left home on 27th of September last about five o'clock a. m., to go to the grist mill some miles distant. Before he left he saw Edward and his father in his father's part of the house. They were the only ones up. In his own part of the house he left his wife and two children, all of whom were in bed. Witness had no conversation with prisoner when leaving. When he returned he left his father, mother and Mabel were to go up to Macnaquac in the afternoon, and that his brother Tyler was going to work for Thos. Colter.

Witness did not tell prisoner where he was going, but the letter helped him to load the grist. When witness returned to his home from the grist mill at 3:30 o'clock p. m., he met his little boy, in front of the house, and upon going round to the rear of the house saw the prisoner standing by the woodpile back of his father's shed. Observed nothing in his hand. Prisoner had on pants, shirt and coat. The coat was dark in color.

contenance he looked "kind of queer," different from what he generally did. There was nothing different in his actions from usual. Witness got off his wagon from usual. Witness saw the prisoner get up and left his team standing at corner of house in consequence of the remark (which remark was not given in evidence) the little boy had made. He tried to get into his house through the shed door, but could not because it was locked. He then entered by the front door and went through his father's apartments and his own kitchen and through to his shed. He found his wife's body lying on its back across the floor of the shed. It was not usual to have this door bolted in the day time. As the body was then lying, it was impossible to open the door without moving the body. There was a pool of blood at the head and another at the feet, and the outside of the door for about a foot and a half from the ground was bespattered with blood. Witness then went out into the yard and made signs to the prisoner to get up. Made no inquiries of him as to his wife's death. When he saw his wife's dead body, witness formed an opinion as to how she had come to her death and by whose hand. Prisoner when told, put the horses up. Witness then went down to Mrs. Carlisle. He returned with Mrs. Carlisle, John Howard and Mrs. Riley. When he returned the prisoner was not in sight. Did not see him again till after dark. Witness went into the house with these neighbors. Witness then described the wounds on the body. He then sent for Dr. Coburn. When prisoner first put in an appearance in the house after dark witness was in a room in his father's house. Prisoner came into this room through the kitchen with a digging fork in his hand, and seemed angry, whirling the fork in his hand and stamping about. Witness took the fork away from him, being afraid that he might hit some one with it. Prisoner resisted witness's effort to take the fork away from him. Witness knew of no difference of any kind between the prisoner and the neighbors; they always appeared to be on good terms. Witness recognized the axe which Zopher Dunphy found as one that was used about his father's premises.

CROSS-EXAMINED BY MR. VAN WART.
Cross-examined by Mr. Van Wart witness testified there was no road back of his house. The woodpile was beyond the end of his father's shed and there was a space between his shed and his father's, the two running parallel to each other.

JOSEPH L. WHEARY.
Joseph L. Wheary, the prisoner's father, said that after Hedley went away to the grist mill on the morning of the 27th of September, Tyler went to work for Thos. Colter. Prisoner was sent to work digging potatoes and continued doing until dinner time. When witness went away with his wife and daughter between 12 and 1 o'clock in the morning, he wrote instructions upon the slate, as to what work the prisoner should do before night, telling him to feed the pigs, milk the cows and bring in all the potatoes he had dug. Witness saw Bertha Wheary in the door of her own apartment just as he left to go to Macnaquac, the shed door being open. There was nothing unusual in the prisoner's conduct during the forenoon of that day. Witness and his wife came back from Macnaquac together, the daughter coming soon afterwards, just before dark. Hedley was in the house when witness returned. Prisoner was not, and witness made no search for him. The work that witness had instructed him to do was not done. Witness was in the kitchen when prisoner returned to the house after dark. He came in with a digging fork in his hands. He got an axe soon after, and witness was made to take the fork away from him. When prisoner returned, witness wrote on slate: "What have you been doing?" Prisoner took the slate, did not read the writing and laid the slate on the table. He made no answer to any questions by signs if he knew anything about the murder, but the prisoner made no answer.

CROSS-EXAMINATION.
In cross-examination, witness said he did not think prisoner had sufficient mental capacity to take care of himself. He would not be competent to earn a living for himself, or to work in the woods or by steam driving or any other employment. Witness did not think the prisoner realized what danger was. Could not say if he knew the value of money, never tested him upon that point. Had given him some money, but prisoner did not want to go back to Deaf and Dumb asylum because, as he said, the larger boys imposed upon him. Prisoner pleaded so hard not to be sent back that witness decided not to send him. He wrote letters home from the Deaf and Dumb asylum while there. Prisoner was frightened and cried a good deal. Prisoner when handcuffed, pointed towards the door of the room in which the body lay, then raised his hands, and passed them across his neck and then pointed to himself.

ATTORNEY GENERAL'S CROSS-EXAMINATION.
As the interpreter communicated this evidence to the prisoner the latter smiled and shook his head. Witness next detailed his search on the 28th Sept. for the axe. Witness saw a loose piece of board that had some clotted blood upon it, and underneath the board on the ground there was some clotted blood. He found a card of matches underneath also. There was a barrel stave in the wood box that had some clotted blood upon it also. Witness then gave measurements from several points in neighbor's premises to Henry Wheary's field and from Henry Wheary's barn there was a clear view of Joseph Wheary's premises. Witness then detailed circumstances of the search of prisoner made by himself and sergeant Phillips in the county jail on the 17th October last. They stripped prisoner of a vest, shirt, overalls and drawers.

Witness observed a spot of blood upon the front of the vest near one of the pockets, and then on the back near the top and another on the shoulder. On the wristband of the right sleeve of the shirt there was another blood spot. Just under the waistband of the back of the drawers there was another blood spot. There were no spots of blood on the overalls.

CROSS-EXAMINATION.
Witness testified it was possible for a person to approach Joseph Wheary's house without being seen from Henry Wheary's backfield, if the person approaching should keep the house carefully between him and the person in the backfield field. From the signs prisoner made when handcuffed, witness considered he meant that he cut the woman's throat. Did not think he meant to say his prayers.

JOHN L. MARSH.
John L. Marsh, police magistrate of Fredericton, identified the prisoner's clothing. He testified to the cutting out of portions of the clothing, containing blood stains, and the preparation of the pieces for shipment to analyst.

PAUL PHILLIPS.
Paul Phillips, sergeant of Fredericton police force, testified as to his trip to Kewick on 28th September, describing the circumstances of the arrest substantially the same as city marshal Roberts. He did not see the prisoner make the signs described by Roberts.

JESSE MERRITHREW.
Jesse Merrithrew, of Kewick, deposed, he lived about a half mile above Joseph Wheary's. He was at latter's house the night of the murder and remained all night. Witness saw prisoner in the house. Knew him for many years and had seen him very frequently. Prisoner that night was very nervous. He was very nervous and often during the whole night. He appeared frightened, and watched the windows and doors closely, and everyone who came in, he eyed particularly. Witness also observed him examining his clothes. He opened his vest once and examined his shirt sleeve several times. Witness would say prisoner went out and into the house fully twenty times before

midnight. His father followed him out nearly every time, and watched him closely all night. Prisoner examined his finger nails frequently, once going up to the lamp to do so. Witness never previously saw prisoner act in this manner. At one time during the night prisoner's father signed to him to take his boots off and go to bed. Prisoner thereupon grabbed a stool and raised it in a threatening attitude. Witness corroborated city marshal Roberts' evidence as to the signs made by the prisoner when being taken away.

CROSS-EXAMINATION.
Witness testified he had previously to the night of the 27th of Sept. had no opportunity of studying the habits of the prisoner and what appeared to him to be strange might have been the prisoner's ordinary conduct.

GUILDFORD DENNY.
of Kewick, testified, he was in Joseph Wheary's house on the night of the 27th September, and described the prisoner's conduct that night. With regard to signs made by prisoner when being taken away by the officers, witness thought prisoner, after raising his hands and passing them across his neck, pointed to the ceiling.

SARAH L. WHEARY.
Prisoner's mother, identified the clothes in court as the clothes which the prisoner had on the afternoon of the 27th of Sept. Previously to the 27th of Sept. she did not notice any stains like blood spots on the clothing. She was in the habit of getting the prisoner's clothing for him and washed it when necessary. There were no cats or dogs or guinea pigs about the house.

W. F. BERT.
analytical chemist of St. John, testified that the blood found on the axe and on the prisoner's clothes was human blood. He was submitted to a very rigid cross-examination by Mr. Van Wart.

This concluded the case for the crown. Mr. Van Wart, counsel for the prisoner, he had no proposal offering any evidence, and the court adjourned. (On the court assembling this morning, the attorney general stated, that in view of the peculiar nature of the case, and on account of the desire of himself and the court that the prisoner should have every opportunity of making the best defence possible, he would waive his right to reply, and address the jury first. He then would be asked if he found the prisoner guilty, and accompanied their verdict with such a strong recommendation to mercy as would satisfy the excellent authorities in committing the death sentence, and making such a disposition of the prisoner as would satisfy the ends of justice.)

Mr. Van Wart followed in a vigorous and able address. He contended, first, that the evidence did not justify a verdict of guilty, and secondly, that the prisoner could not be held accountable for his act. As the jury had to go to press, Judge Barker is charging the jury, and a verdict is expected this evening.

There seems to be but one opinion, viz: that there will be a conviction, and that the judge will defer sentence, pending advice from the Minister of Justice as to the manner of punishment. Nobody believes Wheary will be hanged, even if convicted.

YORK COUNTY COUNCIL.
The business transacted at this week's meeting. The January session of the York county council was held this week, opening at 10 a. m. Tuesday.

All the councillors answered to their names except Coun. S. Inch, who is laid up with a gripe. The first order of business was the election of a warden. Coun. Scott nominated Coun. John McKee as warden, seconded by Coun. Cropley. There being no other nominations, Coun. McKee was declared elected. Warden McKee, in taking his seat, thanked the board for their confidence in him and friendship towards him in his election to that office.

The minutes of the last session were read and adopted. The secretary presented his accounts for the past year with vouchers for all payments. He asked that a committee of five be appointed to examine the same. The warden appointed the following committee: Couns. Fullerton, McNally, Scott, Mowatt and Heron.

The following standing committees were also appointed: Assessment—Couns. Kinghorn, Jamieson, Cliff, Fisher, McNally, Lockyer, S. Inch, McMillan, Scott, G. S. Inch, Thompson, Estabrooks and Boies. Public accounts—Couns. Graham, Lawson, Murray, Mason, Haines, Fisher, Simmons, Thompson, Estabrooks, Boies, Carr.

Coun. Scott moved that the council present an address to the present lieutenant governor. He thought we ought all to feel proud of the elevation of that gentleman. A committee was appointed consisting of Couns. Murray, McNally, Mason, with the secretary treasurer.

Afternoon Session.
Coun. Kinghorn presented the report of the public buildings committee, showing that very little work was found necessary on the buildings this year, and that they were in a good state of repair. The report was adopted.

Coun. Kinghorn called the attention of the board to some of the accounts of constables, and the friction that sometimes arises between the county and the city in the settlement of the administration of justice accounts. He thought that the number of constables should be reduced, and the sheriff asked to do this. Later on he proposed a resolution to reduce the pay of constables.

The secretary treasurer presented a letter from Mr. Toke of the provincial lunatic asylum stating that he had been requested by the board of commissioners to notify the municipality of York, that the county of York was required to assess for and pay to the receiver general for 48 pauper lunatics, at the provincial lunatic asylum, at the rate of \$2 per week, the same dating from Jan. 1st, 1894.

The secretary treasurer remarked that it would be well for the assessment committee to take the matter into their consideration. Coun. Pinder at this point made a characteristic attack on Dr. Steves, and the matter of Mr. Toke's communication was laid on the table for the present.

Coun. Kinghorn moved that the sheriff be requested to employ no more constables about the court than absolutely necessary, and that in future constables be paid \$1.00 per day.

Coun. Fullerton reported from the secretary treasurer's books that all the payments had proper vouchers attached, and his report was adopted.

A resolution to ask that a bill be prepared and presented at the next session of the legislature establishing a new parish of McAdam and St. Croix, was after considerable discussion allowed to stand over until Wednesday morning.

Adjourned until Wednesday morning.

Wednesday's Session.
The council resumed business shortly after ten o'clock. After reading the resolution relating to the parish of McAdam, the council was taken up and elicited considerable discussion. Couns. Pinder, Scott, Graham, and Fullerton spoke in favor of the resolution, and Couns. Cliff, Mowatt, Thompson and others took the opposite view, and the motion was carried by division.

Coun. Fullerton intimated that next year he would probably ask for the division of Stanley into two parishes.

The council then adjourned until two o'clock, and at once, with the county officers repaired to Farraline Place to call upon his honor Lieutenant Governor Fraser. Warden McKee, on behalf of the council, presented the governor with an address complimenting him on his appointment, to which his

honor made a very happy reply. Then the councillors were served with luncheon. The council resumed business at 2:30 o'clock.

Couns. Kinghorn, Pinder and Scott were appointed a special committee to consider the compensation to be allowed the police magistrate of Fredericton for holding examinations.

A resolution was adopted instructing the secretary treasurer to ask the commissioners of the lunatic asylum to furnish names and addresses and under what class each of the forty-three lunatics is put, for which it is claimed York county is liable.

A long discussion grew out of the parish indebtedness. Coun. McNally wanted these parishes charged interest on withdrawals, and proposed a resolution to that effect. The result was an order for the assessment of ten per cent on the indebtedness of each parish.

The council finished its business Thursday afternoon. The business transacted was wholly of a routine nature, including the appointment of parish officers, fixing the parish assessments and the enactment of some by laws prohibiting the running at large of cattle in certain districts. The following standing committees were appointed: Audit—Couns. Estabrooks, Mowatt, Scott. Administration of justice—Couns. Kinghorn, Cliff, McNally. Public buildings—Couns. Kinghorn, Fisher, Murray. Printing—Couns. Spencer Inch, Graham, Lawson.

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