

DR. ATHERTON WON.

**Verdict For Defendant in
Case of Burns vs
Atherton.**

**THE JURY WAS OUT NEARLY
FIVE HOURS.**

**LIST OF QUESTIONS SUBMITTED TO
THE JURY, AND THEIR ANSWERS
TO THE SAME.**

The trial of the Burns-Atherton malpractice suit which has been engaging the attention of Judge McLeod and a jury of the circuit since Thursday last week was concluded at 6.30 o'clock last evening, and resulted in the complete vindication of the defendant. The jury after four and one half hours careful deliberation returned to court and submitted answers to the questions given them by His Honor. Their answers were nearly all favorable to Dr. Atherton, and the court immediately entered a verdict for him. The jury had been asked to fix the amount of damage, if any, that the plaintiff had suffered as a result of the loss of his arm, and they estimated the amount at \$1000.

Immediately after the verdict had been announced the Judge thanked the jury for the careful attention they had given to the case, and dismissed them from further attendance. The questions and answers upon which the verdict was based are as follows:

Q. On what date was the plaintiff's shoulder injured?

A. 13th February, 1897.

Q. When did the defendant first see the plaintiff after his shoulder was injured, and at that time was it dislocated?

A. In June, 1897. The shoulder was then dislocated.

Q. After the plaintiff's shoulder was dislocated, did he have what may be called a fairly useful arm with which he could do some work free from pain?

A. He had a fairly useful arm but not free from pain.

Q. When the plaintiff met the defendant in Fredericton, on July 15th, did he tell the defendant that his shoulder, when he attempted to work, gave him a great deal of pain and was little or no use to him?

A. Yes.

Q. Did the defendant advise the plaintiff to allow him to attempt to reduce the dislocation?

A. Yes.

Q. If you say the defendant did advise the plaintiff to allow him to make an attempt to reduce the dislocation, did he do so bona fide and fairly for the purpose of reducing the dislocation and improving the condition of the shoulder, and did he believe that there was a fair chance to do so?

A. Yes.

Q. Taking into consideration the plaintiff's age and condition and the knowledge the defendant had of the condition of his shoulder, was it a fair and reasonable exercise of surgical skill on the part of the defendant to attempt to reduce the dislocation at the time he did, on July 15th?

A. We think it was.

Q. Did the defendant as a surgeon use the usual fair and proper means to ascertain the physical condition of the plaintiff before attempting to reduce the dislocation?

A. Yes.

Q. Did the defendant use reasonable, fair and proper surgical skill in the means he used and what he did in his attempt to reduce the dislocation?

A. Yes.

Was the accident that happened—that is the breaking of the axillary artery—the result of unskillful or improper conduct on the part of the defendant in what he did or the means he used when he attempted to reduce the dislocation?

A. We think not.

Q. Did the defendant use reasonable, fair and proper surgical skill in tying the artery and redressing the wound after the artery had broken?

A. Yes.

Q. After the plaintiff was at the hospital and before the arm was amputated, did the defendant give him fair, reasonable and proper attendance and treatment?

A. Yes.

Q. Did the defendant when he attended the plaintiff at the hospital on August 23rd use reasonable, fair and proper surgical skill in examining the wound?

A. Yes.

Q. Should the defendant when he found the artery was bleeding, on August 23rd, and before he administered chloroform, have told the plaintiff that his arm might have to be amputated, in order to save his life?

A. No.

Q. Could the defendant, on Aug. 23rd,

by a fair and reasonable surgical skill have saved the plaintiff's arm, or was its amputation necessary in order to save his life?

A. We think amputation was necessary in order to save the plaintiff's life.

Q. Did the defendant use fair, reasonable and proper surgical skill in the amputation of the plaintiff's arm?

A. Yes.

Q. The damages to the plaintiff?

A. One thousand dollars.

Questions by Mr. Hazen:

Q. Did the defendant in attempting to reduce the dislocation use undue force, and did this cause the rupture of the plaintiff's axillary artery?

A. We do not find that any undue force was used.

Q. Was the defendant justified in attempting to reduce the dislocation without first informing the plaintiff of the difficulty and dangers, if any, attending such an attempt?

Not answered.

Q. Were the plaintiff's arteries at the time of the attempt at the reduction of the dislocation or were they not in an atheromatous condition?

A. We do not know.

The prolonged absence of the jury was not caused by any great difference of opinion over the case, as many impatient spectators in the court room supposed at the time, but was due to the fact that the jurors had a large amount of hard work cut out for them and found it impossible to get through with it any sooner than they did. They weighed the evidence very carefully and undoubtedly brought their best judgment to bear on the questions submitted to them by the court.

The verdict was received with every satisfaction by the numerous spectators in the court room, and Dr. Atherton was showered with congratulations.

After the judgement of the court had been announced, Mr. Hazen asked for a stay of postea, which was granted by His Honor.

The case was conducted with great ability on both sides and the conduct of the counsel towards each other was most courteous and gentlemanly. Dr. A. A. Stockton and J. D. Hazen, K. C.'s, conducted the case for the plaintiff and the defendant's interests were ably looked after by Attorney General Pugsley.

The jury which tried the case was made up of Major W. T. Howe, of Stanley, (foreman) Alex Little of Harvey, Prof. Cadwallader of Marysville, and Messrs. I. R. Golding, M. Ryan, D. Lee Babbitt and W. T. Estey of this city.

A CRUEL JOKE.

**Imaginary Smallpox Outbreak in the City
Causes Some Alarm.**

Quite a sensation was created this forenoon by a report that a suspected case of smallpox had been discovered in a double house on Westmorland street occupied by Squire Boone and a family named Harper. The story had its origin in the action of a mischievous boy who, in some manner, got hold of a smallpox placard, belonging to the Board of Health, and nailed it upon the front of Squire Boone's residence. The placard, which contained the rather startling information that "the house was under quarantine, and that the nature of the disease was not known," remained up for some time and was read with astonishment by a great many pedestrians. It is generally known that several Normal School students make their abode at the Boone house, and the theory was put forward that some of them must have contracted smallpox during the Christmas vacation. This version of the affairs was accepted as a fact and the alarming report spread quickly about the city. A heavy-weight agricultural implement dealer, who is very fond of a game of dominoes, swallowed the story whole, and seemed to be much worried over the fact that he had spent an hour or two in Squire Boone's office last evening. A number of others were also badly frightened over the alleged outbreak.

The appearance of Squire Boone at his office at the usual hour this morning occasioned some surprise among those who had heard the sensational reports, but he was not long in turning the laugh on the numerous persons who stood off at a respectable distance and asked questions.

It soon became apparent that the whole story was a "sell," and the feeling of alarm on the part of the public turned to one of indignation against the culprit who perpetrated such a cruel joke. The police now have the matter in hand, and if the guilty party is caught, he is very apt to make the discovery that he is not half as smart as he thinks he is.

Circuit Court.

The case of Edgecombe vs Edgecombe has been withdrawn from the docket of the circuit court and the matter in dispute is to be submitted in arbitration. The case of the People's Bank of Halifax vs the Bank of Montreal and also McCatherine vs Brewer go over until next term. The court has been adjourned sine die.

Old Resident Dead.

The death occurred at the home of his stepson, Ald. John Moore, last night of Andrew McGowan, an aged and highly respected citizen. His death was due to a general breaking down of the system caused by the infirmities of age and occurred after a few days illness. The deceased was a native of Ireland, but had been in this country over sixty years. He followed the vocation of a farmer and lumberman in Sunbury county for a number of years, and it said accumulated considerable property. He was 90 years of age and a widower. The funeral will take place on Saturday morning at nine o'clock with services at St. Dunstan's church. Interment will be made at the Hermitage.

Royal Arch Chapter.

At a meeting of Fredericton Royal Arch Chapter held at the Mesonic Hall on the 15th inst., the following companions were duly installed into office for the ensuing year:

Alex Burchill, H P
S L Morrison, K
Wm Lockhart, S
A F Street, secretary
W E Smith, treasurer
R S Barker, C O H
J D Fowler, P S
J H Hawthorn, R A C
George Y Dibblee } M of Veils
Austin Dunphy }
John Rogers }
R M Pinder, tyler

Death at McAdam.

Mrs. Barbara Bryan, widow of the late George Byran, a former resident of Gibson, died at the residence of her son-in-law at McAdam last evening, after some weeks illness brought on by a complication of diseases. She was 69 years of age, and is survived by a family of four daughters—Mrs J W Hallett and Mrs Fannie Bryan of McAdam, Mrs William Campbell of Gibson, and Mrs John Taylor of Fredericton Junction. The remains will arrive here by the late train on Friday evening, and the funeral will take place at Gibson on Saturday at one o'clock. Geo. W. Adams will have charge of the arrangements.

Wants Fredericton Help.

W. R. Chapman, whose connection with musical festivals at St John and throughout New England, is in the city today a guest at the Queen. Mr Chapman is trying to interest the musical people of Fredericton in a scheme for the organization of fifty or seventy voices to take part in the festival to be held under his auspices in St John next September, and expects to make an arrangement to that end before leaving the city tomorrow morning. He will meet the musical people at the parlours of the Queen Hotel, this evening at 7.30.

Mail Contracts.

Posters are out calling for tenders for the work of carrying the mails between the Fredericton post office and the C.P.R. station. The service is to be performed by horse and vehicle and the mails have to be conveyed four times per day each way. Tenders are to close at Ottawa on Friday, February 9th.

Tenders for conveying the mails between Fredericton, St. Marys and Nashwaakiss, twelve times per week, each way will be received at Ottawa up to the 7th of February.

Still on Deck.

The York Agricultural Society, which owes its existence to the energy and persistence of the veteran, John H. Reid, is meeting in annual session at the council chamber this afternoon. President Reid Justice Stockford and other life long members are in attendance.

Closed Up.

The harness and saddlery business carried on by A. D. Macpherson, for the estate of the late J. D. Macpherson, has been closed up at the instance of certain creditors, represented by H. H. Pickett of St. John. The order to close was issued by Judge Barry out of the York Probate Court.

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SPECIAL MEETING.

A special meeting of Agricultural Society District No. 34 will be held next Wednesday morning, 22nd inst., at 3 o'clock, at the office of R. W. McLellan, Carleton street.

W. S. HOOPER,

Secretary.

Jan. 15, 1902.—d31

A. Edgar Hanson,

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