# Devils Lake Inter-Ocean.

VOL. IV-NO. 7.

DEVILS LAKE, RAMSEY COUNTY, DAK., SATURDAY, MAY 8, 1886.

\$2 PER YEAR.

PER PAIR ON ALL

BOOTS AND SHOES! A Motion Taken for a New Trial

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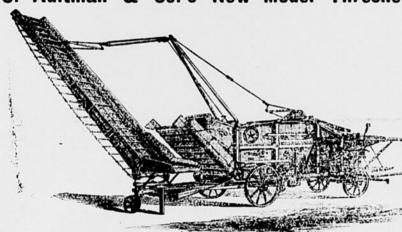
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Remember I Make Shoeing a Specialty. W. J. CHRISTIE.

If Denied an Appeal Will Follow.

Oswald Going to the Grand Forks County Jail.

Report of the Testimony and Arguments.

entrance.

At this point the court adjourned until Monda morning, Three bailties were sworn to take charge the jury. The jury and bailties were admonished by the court to have no communication with anybody it regard to the case, and not to take among themselves about the case till it was submitted to them.

The INTER-OCEAN went to press last Friday evening at the close of that day's made and is herewith presented.

When the court opened Saturday Mr. Erwin and Justice Wishart. norning the jurors appeared clean shaen; the judge wore a large wild rose virgin prairie, Col. Warner wore his usual happy smile; Attorney McGee eyed the judge's boutonnier and twisted the corner of his moustach; District Attorney Morgan looked sleepy, from the effects of sitting up with the grand jury, Dr. Erwin slapped the INTER-OCEAN on

but he was not very close when he was following him; it might have been a foot or two; Oswald was trying to put his revolver into his pocket when he went down on the floor; witness thought he had a perfect memory of what took place there, he made a statement before the coroner; it was not by question and answer. Mr. McGee may have asked some questions.

Wm. J. Hurst called and sworn by the prosecution. Was in Boing & Boyles saloon on the night of Dec. 31, 1885; was there the last time between 10 and 11 o'clock; went there at notice from McDaugall; got there just us they were lifting him from the floor, as un-

refock; went there at notice from McDongall; got there just as they were lifting him from the floor, as un-lertaker took charge of the body; there was a small three corered abrusion of the skin on the face under the left eye; found one wound in the left breast, about two inches right of the left nipple; a wound on hip and one in the back. They were bullet wounds; they were fresh and the one in the back bled badly. (Clothes of McWeeney produced). Took them off McWeeney's body and have had possession of them every since. (Holes and have had possession of them every since. (Holes

MANSLAUGHTER.
That is the Verdict in the Oswald Case.

Wald Case.

Motion To be not on the fear and surgoon in the army; has examined the autopsy of the body of Patrick McWeeney; there were three wonds and surgoon in the army; has examined that a commission of doctors be appointed to the autopsy of the body of Patrick McWeeney; there were three wonds on the face, one on the face, other witness to the other side that a commission of doctors be appointed to the autopsy of the body of Patrick McWeeney; there were three wonds—one on the face, one on the face, one on the face, one on the face, one on the face, other witness to the other side that a commission of doctors be appointed to examine the heart and lungs. Col. tully a thousand cases of gunshot wounds; was present at the autopsy of the body of Patrick McWeeney; there were three wounds—one on the face, one on the buttocks, and one over the region of the heart; in witness' opinion the wound in the heart was a continuation of the superficial wound. In his opinion death resulted from a gunshet wound; after continuing the search for a reasonable time witness came to the conclusion that the bullet could not be found without cutting the remains to pieces; a bullet might enter the body, go all around inside it, and return and pass out where it entered; did not examine the lungs carefully; am still of the opinion that the ball passed through the pulmonary artery; this has always been my opinion; I have always thought that the wound in the gluteal region was a wound of exit; I do not think that the ball passed from the heart down through the ventrace and out through the gluteal region; I do not think such a course within the range of possibility; there is not the least doubt in my mind about the ball entering the ventricle; it is possible that a ball could pass through the cheet wall around the chest and out at the place of entrance.

At this point the court adjourned until Monday cover of night.

MONDAY'S PROCEEDINGS. Court opened promptly at 9 o'clock. The jurymen took their places and the defendant was soon brought in. Both dence of Clerk Saunders, together with

Dr. H. H. Ruger was re-called by the prosecution.
The sack or pericardium was full of bleed; death result of from hemorrhage, which was caused by the guishot wound; there is no doubt of this in my mind.
Robt. Boeing called by the prosecution; one shot fire

amon the weakened misscles about the heart, and a hemorrhage was caused resulting in his instantaneous death. Defense then called their first witness. Thomas S. Potts was put upon the stand. Will be 23 years old next month, was in Boeing & Doyle's saioon on the night of the homicide, about an hour before. Evidence as to what took place prior to the time heratofore limited by the court not allowed except as to drunkenness of defendant. The witness stated that the defendant was having a jolly good time as it was New Year's Eve defendant was walking to and fro; saw defendant with a hunting knife; defendant was looking at it, put it in a case and put it in his pocket; he had a pocket pistod in his hand and abot it into the west wall; McWeeney came in while he had it in his hand; Oswald stood at the bar; he called him up to the bar and said to him, "Come up and have a drink with me, you frish s—of a b—"." Oswald had a revolver in his hand and he kind of tapped him on the cheek, and said, "who are you, we are as good as you are." Oswald kind of tambled towards McWeeney, who struck out from his shoulder and knocked him clean to the floor; McWeeney followed him up; Oswald repulsed him with his revolver; Oswald fell on his right side, rolled over on his left and commenced firing; after the first shot McWeeney turned right round and was throwing it up and down over his shoulder snapping it; Oswald said, "I've been a good friend to you," McWeeney said something to him, but witness could not hear what it was.

Cross-examined by Mr. McGee,—Witness was closely questioned as to what Ir. McGee

No, no, Far, want to good for you. Incovering then squared off and knocked Oswald down to the; floor he then advanced towards Oswald down to the; floor firing; McWeeney backed off and turned round and went towards some boxes in the corner; McWeeney said to him. "You are away off; "Oswald said "Pat I have been too good a friend to you to strike me like that."

E. R. Davie called by the defense. Saw Oswald drink three or four times. Oswald called witness as—of a b— put his arm on his shoulder and asked him to take a drink with him; think Oswald said he was going to turn himself loose, but do not know when it was made, or whether he intended to get drunk. Witness not allowed to state his opinion. If it had been said in anger or earnest witness would probably not have noticed it; he said he was going to turn himself loose, but don't know who he said it to, or whether it was said.

sion; was not made by a direct blow; there was no containing the an opinion as to the cause of the rent in the heart.

Mr. Erwin requested an interview with the witness, and remarked that the defense would probably call him as their own witness in the afternoon.

Dr. C. C. Ellis was called by the prosecution. Habit him as their own witness in the afternoon.

Wh. T. O' Bonnell called and sworn by the defense. Studied medicine four years, assisted at the postmortens examination; saw the heart of McWeeney. Mr. Erwin asked to examine the witness on his qualification as surgeon, and the court granted the request. Witness studied medicine from 1876 to 1860; had been in a hospital as an under graduate.

Direct—Had assisted at three or four postmortem; saw four wounds on the body; wound on breast was a gunshot wound. Pericardium was filled with bloody the other wound in the heart was a continuation of the wound had a the breast. Death was the result of hemorrhage or smothering of the heart.

Cross-examination by Mr. Erwin—Dr. O'Donnell and the breast was a gunshot wound in the heart was a continuation of the wound had a ragged appearance, the same as a gunshot wound in the heart was a continuation of the wound had a postmorten examination by Mr. Erwin—Dr. O'Donnell made the minutes of the postmorten. The wound had a ragged appearance, the same as a gunshot wound in the service of the postmorten. The wound had a ragged appearance, the same as a gunshot wound in the service of the postmorten. The wound had a formed the remainable of the last in the leaf was a point of exit; the ragged edges of an officer. Objection over other hall went in a gint tangent the ninght with state the right venticle neare the right venticle hours and the right venticle neare the right venticle had

the other side they should state that on of the body had already been exhumed and that such an examination had already been made. Mr. Erwin after a brief si lence, announced that the defense would resist with all its force this ex parte exhumation on the part of the prosecution. made without authority and under the

Dr. W. T. O'Donuell was re-called for examination the defense. He described the pericardium and trice pice valve; the weight varies from eight to fourte pounds. Fatty degeneration has frequently been for the cause of a sudden death, especially in old age.

witness if Oswald had got home, and upon being informed that he had not, that McWeeney told witness that he was going to "do him up."

At this point the defense offered to show that McWeeney and another killed a man atternal Harbor two years ago. Objected to and objection sustained.

William Boil called and sworn by defense. Was taking in the sights of town on New Year's Eve. Defense offers to show the entire town was celebrating New Year's Eve. Objected to and sustained. Saw Oswald and McWeeney in Johnson's saloon before the shooting; they seemed to be friendly; there were several there, and we all drank together.

Cross-examination by Mr. McGee—Were Frank Haney and Chas. Walsh there!

Answer—They might have been.

Richard Fanning called by the defense. Saw defendant and Oswald in Johnson's saloon; Doll, Dignan, Johnson and myself were there; saw Oswald and McWeeney there; should judge it was between eight and nine o'clock.

Jehn F. McGee called and sworn by the defense. The heart and lungs remained in the body till the body was exhumed; never told Dick Maybe the heart and lungs were preserved.

John William Oswald, the defendant called on his

was exhumed; nover told Dick Maybe the heart and lungs were preserved.

John William Oswald, the defendant called on his own behalf. Is about 25 years old and has lived at Devils Lake about four years; knew McWeeney about three years; was at the Benham House for supper; went to Lynch & Gormans after supper and drank, and was in Johnson's saloon after that; and then went to Boeing & Doyle's; we stayed there and drank; remembers Gowan pulled him down to the floor; saw McWeeney come in, and went up to him and said to him "You big Irish s— of a b— come and have a drink with me;" had hold of his arm and went up to the bar; he said "dont call me that; call me anything, but don't call me that; waived the pistol before his face (witness indicated the waiving motion) but did not strike; witness was not angry at McWeeney at that time; dont remember whether he had his revolver in his hand or not momory is indistinct as to all that occured: when I waived my revolver in McWeeney's face, he stopped back and hauled off and hit me and knocked me down; could not tell what it was that struck me; he knocked me quite a way; the blow was a surprise to me; it stunned me; as soon as he knocked me down he came right for me: I thought I was in danger; that is the way it looked to me. In the first place I did not expect any blow from him; we had been friends; had no distinct idea of what took place from that time; was not agers at Pat before or after he knocked me down.

nem at a person. Question—Did you ever shoot any one else? Objected to, objection sustained.

This closed all the testimony except that of the physicians. Dr. H. M. Wheeler was called and sworn on

Dr. II. M. Wheeler was called and sworn on the part of the defense. Is a physicion and surgeon and lives in Grand Forks; was called to attend Partick McWeeney in the county jail at Grand Forks; treated him for intermittent fever; he was fleshy then, but was considerably emociated when he left the jail. Witness then described and explained various causes of heart trouble. When men lift a heavy weight it dams back the blood and causes a pressure on the walls of the heart; if the lungs were distended with air a ball would enter the right ventricle nearer the right margin than the left, a little below the nipple. It is impossible for a ball to enter the chest wall as indicated, perpendicular to the surfale, and enter the heart.

Cross-examination by Mr. McGee. Witnesses views are based entirely upon the correctness of the statements going to make up the hypothetical question.

Dr. A. J. Smith called by prosecution. Graduated at collage of physicians and surgeons at Baltimore Md;

There is no excusable homicide in this case. In the Gay case cited by the prosection of physicians and surgeons at Baltimore Md. is knew McWeeney by sight; was present last night at a postmortem examination held on the remains. This testimony objected to by the defense on the ground that it is immaterial and irrelevant and experts and made by stealth and fraud perpetrated under cover of the night: that the remains were taken up without the presence of an officer. Objection overruled. Witness stated they found a wound in the gluteal region of the back; if was a wound of entrance; we traced it and found a leaden ball; traced it with a catheter: found a wound on the left hip: found wound on the breast; the heart had been cut open and we found a gunshot wound in the heart; we traced it and found it in the back at the right of the spinal column, a little above the point of enterance in front.

Cross-examination by Mr. Erwin. Dr. Ruger, Dr.

Adjourned to Wednesday morning. MORE EXPERT TESTIMONY.

The prosecution then announced that

Mr. Erwin here read from the prelim- not from disease. and compared it with the evidence of gument on the part of the defense. on both sides going through and marking the points of inconsistency. Mr. should rest.

Should rest.

Dr. Wheeler recalled by the defense. Mr. Erwin here stripped himself to the belt for the purpose of showing marks previously made upon his body by the witness to illustrate the course of the ball. According to the diagram upon Mr. Erwin's breast the witness stated that a ball fired at an angle of 40 degrees upward and backward would miss the heart.

Dr. Swanson recalled by the defense, and testified that a ball fired at a very short range upward and passing just below the fifth rib would hit the heart.

Dr. O'Donnell recalled. He testified that a ball entering as described would simply graze the heart. No such wound could be made as indicated by the testimony if fired as described. Witness stated that he was stronger in the belief than ever that the ball never entered McWeeney's heart.

Both sudes then rested their case.

Both sides then rested their case. At the close of the case the prosecution moved the court to take the case from the jury except as to the grade of crime, whether it be murder or manslaughter in the first degree. Some discussion arose as to the time at which this motion should be taken up, and it draw and that the attorneys enter immediately upon the discussion of it. The attorneys brought in their law books and Mr. McGee commenced the argument of the motion. The position taken by the prosecution is that the evidence tends to show that there is nothing in it to justify the shooting. It was the de-fendant's own unlawful act which brought on the attack from McWeeney The first assault was made by Oswald Attention was then called to the defini

ition of the word "willfully." The prosecution then referred to a ase (Stoffer vs. The State, 15, Ohio Stat., 47) which holds that while the party who first commences the malicious assault continues in the combat and does not put into exercise the duty of withdrawing from the place, although he may be so fiercely pressed that he cannot retreat or is thrown upon the ground, or driven to the wall, he cannot ustify taking the life of his adversary, however necessary it way be to save his own, and must be deemed to have brought upon himself the necessity of would have been justified in killing me killing his fellowman. Reference was then made to the Gay case reported in their characters buttoned up under the Dakota reports in which it was held their coats. It is where men meet men. that it is proper to instruct the jury that evidence which only tends to reduce the grade of the offense is not to be continuous. It is where they go to exchange courtesy and drink and have a good time. If you knew Patsy McWeeney you knew McWeeney you knew Patsy McWeene the grade of the offense is not to be con-sidered by them as tending to excuse or that he knew what a pistol was. He justfy the killing; and that there being took advantage of the first offer to have no evidence tending to excuse or justify a fight with the man with a pistol in his the killing, it is not error to instruct the jury that "if you regard the oaths you ing by stringing up the survivor of an have taken, your verdict must be mur-affair of this kind. We have resorted der or manslaughter."

Mr. Erwin then addressed the court and said that homicide in this territory was either justifiable or excusable. The people of this community have no There is no excusable homicide in this case. In the Gay case cited by the prosecution justifiable homicide did not enpray you defend the institutions of your

is whether the committing of a misde meanor takes from him the right to

plead justifiable homicide. The defend-Can the court take notice of such fun as that mentioned by the defendant when he says it was all done in fun?

Suppose McWeeney had shot Oswald and killed him, would that be homicide! Mr. Erwin claimed that he was not ound to take the testimony alone of the defendant. It is the disputed facts, and not the persons who dispute them. In a criminal case where there is one scintilla of evidence tending to prove a fact, the defendant is entitled to a trial by a jury of his peers. It would be a great error for the court to take this case from the jury. The facts in the Stoffer case were not the same as in this. In the Stoffer case the defendant met the deceased on the street and attacked him and then intended to kill him, but he changed his mind and retreated. He was pursued by the deceased and he then turned and killed him. The defendant pleaded justifiable homicide and the court sat down upon him as it

At the conclusion of the argument the court ordered the jury to be brought in; and stated that counsel should proceed with the arguments, and that if he decided to do so he would take the case from the jury at the proper time. Mr. McGee then commenced the first

of the closing arguments to the jury. He said he had come now to the last duty he had to perform in this case. He characterized it as a most brutal murder; recited the story of it in a general way; and commented freely upon the testimony. Said the witness Dr. O'Donnell had been of the same opinion as Drs. Ellis and Ruger, who were his associates in the first autopsy, until about a month ago, when he suddenly changed his mind as to the primary cause of death, that is that the bullet did not penetrate the heart, but passed under it towards the back and down into the right gluteal region and passed out at the wound at the back. He charged that Dr. O'Donnell has been bought by the defense and is to receive \$25 per day of the defendant's money. He claimed that an example should be made of the defendant, not because it was Oswald, but because the law should be upheld and such a crime should be punished.

Mr. McGee was followed by Judge J. F. O'Brien who contended that the jury was not here for the purpose of making an example, but of deciding whether or not the defendant was guilty of the charge set forth in the indictment. The jury must consider only the evidence before them and decide whether or not the defendant was justified in his act. He claimed that the defendant was simply celebrating the day, which was the occasion of an old settlers' reunion; and that it was not a very unusual thing for the citizens to celebrate in this way He stated that his theory of the affair was that the first cause of the trouble arose from the response made by Mc-Weeney; and that it was false pride on Patrick McWeeney's part. You will have to decide whether death resulted from the pistol shot, or whether it was

inary testimony of various witnesses Mr. Erwin then made the closing arcommenced by thanking the court for the way in which courtesy had been ex-Erwin's object was to build up a basis him in placing before the jury the fact upon which his theory of self-defense and fallacies for the purpose of doing him in placing before the jury the facts justice to his client, and not for the purpose of befogging the minds of the ju-

rors. The law presumes a man to be in nocent until he is proven guilty; and it is the duty of the prosecution to prove exactly and in every particular each obligation mentioned in the indictment. It is the man well acquainted with the science of medicine to whom we entrust our sick wives and children. I give you my word of honor as a gentleman that before I came into this case I did not know what the ascending and descending vena cava were. Tell me why the Almighty God could not have burst the wall of the heart of Patrick McWeeney. The prosecution told you that the ball which entered the chest went in perpen dicularly; they have not changed that. With jingled, heeled-bound and boyish enthusiasm described to you was finally decided that the jury withforty-five degrees. If that ball had penetrated the heart the blood would have spurted out of McWeeney's mouth; but we dare not touch upon it in the hearing of the prosecution, else Daniel Blue would have come in and sworn that it did. But Daniel Blue's mouth is now closed. Mr. Erwin charged that at one time Daniel Blue would tell one story, and at another time another story; and and then dig in the night time for new facts. The eyidence shows that death was the result of hemorrhage, caused by a bursting of the walls which was not caused by a pistol shot. The other branch of this defense was willingly

placed at the disposition of the jury's manhood and reason. In some instan ces a man is justified in taking life, and I will give you an example of it. If I fraw my pistol from my pocket and say 'Elliott I am going to shoot you," and I point the pistol at you and snap it, but before it goes off you apprehend that I am going to shoot you and you quickly take my life, what will be the result? If you believed you were in great bodily danger, as you must have been, you A saloon is no place for men to go with their characters buttoned up under hand. Your community can gain nothto no means to delay an investigation of this matter, and gentlemen of the jury, we have no fear of being disappointed. manly consideration of this matter. I country. Thanking the jury on behalf of the defendant for their attention to the entire presentation of the ca-e by the prosecution and defense, and commending them to the learned counsel

who would follow him he closed. CLOSING THE CASE. Col. Warner closed the case for the prosecution. Counsel was glad the case was near an end. The reputation and

Continued on fourth page