

No. 12040

Supreme Court of Illinois

In the Matter of John

McIntyer on Habeas Corpus

vs.

71641  7

State of Illinois
La Salle County

Illinois, s. c.

To the Honorable, The Supreme Court of the State of Illinois
for the 3^d Grand Division:

The Petition of John M^cIntyre of said County for a
Writ of Habeas Corpus, Respectfully sheweth:

That on the 16th day of May A.D. 1849, he, your Petitioner appeared
before Warren Brown, Esquire, a Justice of the Peace of the County aforesaid,
in Custody of H. W. Baker, a Constable of said County, to answer to a charge of
murder, then pending against your petitioner, before said Brown,
for having caused the death of one Thomas Cunningham, at LaSalle
in said County, on the 15th day of May A.D. 1849.

The ~~said~~ ^{of said charge} hearing was before said Justice at his office in Peru in
said County, within less than two miles of the place where the alleged
homicide took place; which alleged homicide occurred in
open day, in the presence of many persons: Eight of which
persons, so present at the alleged homicide, were present as
witnesses on said hearing before said Brown, at the instance
of the people; and three of them were examined on said
hearing, on behalf of the People; and four of them on
behalf of your Petitioner, and one them, Frederick Fider-
mil, was not examined for the reason hereinafter stated.
In addition to which, one witness on the part of the People
and two witnesses on the part of your Petitioner, were
examined on said hearing, and testified in relation to
said charge.

The People, on said hearing, were represented by C. S.
Holbrook Esquire, attorney & Counsellor at law of LaSalle
County, who had for several years resided, and was then
residing at Peru, within two miles of the place of said alleged
homicide; and is a person of character, standing, experience
and ability in his profession: and the said hearing before
said Brown, was a full, fair, thorough, elaborate and impar-

- trial hearing, and examination of all the material testimony then or now existing, against your petitioners, in respect to the aforesaid charge. -

And the said Warren Brown himself, is a magistrate of well known and undoubted intelligence and integrity - and has had an ample experience of many years in the discharge of the duties of his office of Justice of the Peace. Upon the hearing aforesaid, and on the conclusion of the same, the said Warren Brown, Justice as aforesaid, considered and determined, ~~in~~ in his said Capacity of Justice, "that the testimony in the case was of such magnitude, as to call on him, (in his said Capacity of Justice of the Peace) to bind the defendant over before a higher Court, viz., the Circuit Court of LaSalle County, to answer for the Crime of manslaughter, "in causing the death of ^{of} Thomas Cunningham as aforesaid - with good and sufficient security. -

In obedience to the aforesaid adjudication, your Petitioner did give good security for his appearance at the next term of the LaSalle Circuit Court to answer said charge, by giving his own recognizance in the sum of six hundred and dollars, and Adam Johnston, and William Mitchell, good and responsible citizens of La Salle County, for his bail, in the further sum of six hundred dollars for his appearance as aforesaid. -

Whereupon, your petitioner was duly discharged from arrest, on the charge aforesaid, by the said Warren Brown.

And your petitioner further says, that the papers marked (A) & (B) herewith filed, contain a full and true abstract of all the material testimony given on the said hearing before said Brown, against your Petitioner on the charge aforesaid - and that the said paper (B) is the abstract of the testimony taken by the said Justice Brown himself on the said hearing before him. -

Afterwards, on or about the day of May, A.D. 1849, your Petitioner was arrested by virtue of a warrant issued by M. E. Hollister, a Justice of the Peace of LaSalle County, and brought before said Hollister by virtue of said Warrant, to answer to the charge of Murder, in killing the same Thomas Cunningham, at the same time and place aforesaid.

The hearing on said Charge, was removed at the instance of your Petitioner from before said Hollister to Joseph H. Morrell Esquire, the next nearest Justice; and before said Morrell your Petitioner appeared, under arrest, on the day of May A.D. 1849; and thereupon showed and moved to said Justice, the aforesaid proceedings before said Justice Brown, and moved thereupon to be discharged, which motion was sustained, and your Petitioner was thereupon discharged by said Justice Morrell.

And afterwards, on the 23^d day of May 1849, your Petitioner was again arrested, on the same Charge of Murder, in killing the said Thomas Cunningham, at the time & place aforesaid, by virtue of a warrant for that purpose issued by Nicholas Keating, a Justice of the Peace of LaSalle County, and was brought under arrest before said Keating, to answer the same Charge aforesaid, at the said Keating's office in Ottawa, on the 23^d day of May 1849.

On which hearing, and before the examination of any testimony, your Petitioner stated to said Keating the aforesaid proceedings before said Brown, and said Morrell, and offered to make proof thereof; But the said Keating refused to allow any proof of the aforesaid proceedings, or any part thereof to be made; and thereupon the said Keating proceeded to hear a part of the testimony which was heard before said Brown, and one witness only, the before mentioned Frederick Indermil, in addition, but without any other additional proof or testimony whatever. The said Indermil did

not testify to any material fact or thing, on that examination, ~~against~~ your petitioner, which had not been substantially already testified to by the other witnesses before said Brown as aforesaid: And further, the said Indermil testified on his said Examination before said Keating, that he was present, as a witness, at the instance of the People, on the aforesaid hearing of the same charge of Murder before said Brown on the 16th of May: and the fact of his so being present was known to said Justice Brown and the prosecutor on that occasion: and he further testified, that said Brown enquired of him, after the other witnesses had testified on said hearing, whether he was present at the aforesaid homicide of Cunningham: and the said Indermil, replied to said Brown he was: Whereupon said Brown further enquired of said witness, ^{in relation to said homicide} whether the facts had been ^{fully & truly} stated by the other witnesses - and the said Indermil replied that they had so far as he knew, - and that he had heard their testimony.

Upon the conclusion of the aforesaid examination before said Keating, he the said Justice Keating decided that your petitioner should be committed to the Jail of said County to answer the charge of murder in killing the aforesaid Thomas Cunningham, on the 15th of May 1849, and thereupon made his warrant of commitment, a copy of which is herewith presented marked (C), by virtue of which warrant your petitioner was committed to the Common Jail of said County, on the said 23^d day of May A.D. 1849, and hath ever since remained, and now remains there, in the custody of the Jailor of said Jail, by reason of said last mentioned commitment, and for no other reason whatever.

~~whereupon your petitioner prays for a writ of Habeas Corpus, to the end that the facts herein before stated~~

And your petitioner further avers, that the whole testimony, given on the hearing before said Brown, and the hearing before said Keating, taken separately or together, together with all other facts that exist, and which can, or cannot be proved, do not show that your petitioner ought to be held to ^{answer} ~~answer~~ for the crime of murder. —

Wherefore your petitioner prays for a writ of Habeas Corpus, to the end that the facts herein before stated may be investigated, by this Honorable Court, and if found truly alledged, that your petitioner may be discharged from his present arrest and confinement. —

John M. Intyre

Illinois, et.

John McIntyre.

et.
The People, vs.

Habeas Corpus
Petition for ~~Habeas Corpus~~.

Filed June 20. 1849.
L. Leland Clk.

State of Illinois, Supreme Court, 3rd Grand Division - June Term 1849.

In the matter of John McEntyre
in Habeas Corpus ----- Costs on the part of McEntyre.

Clk. fee - apper. 25;	leave to file Peter. 25;	Ord. for writ of H. C. 25;	.75	
Writ of Habeas Corpus & seal 1.	fil. 6 $\frac{1}{4}$,	fil. Shffs. retur. 6 $\frac{1}{4}$,	fil. Peter. 6 $\frac{1}{4}$,	1.18 $\frac{1}{4}$
2 affds. & fil. 3 $\frac{1}{2}$,	Subp. & fil. 56 $\frac{1}{4}$,	fil. 3 papers 18 $\frac{1}{4}$,	Set. for hearing 25;	1.37 $\frac{1}{2}$
Ent. subm. 25;	Ord. taking under admt. 25;	Ord. admitting to bail 25;	.75	
Ord. for re-commitment 25;	Bill of costs 37 $\frac{1}{2}$,	Copy 25;	fil. & sh. 18 $\frac{1}{4}$,	1.06 $\frac{1}{4}$
Shffs. retur. 12 $\frac{1}{2}$,	ent. Satisfaction 25;		.37 $\frac{1}{2}$	
Shffs. fee -			5.50	
Serv. sub. Subp. 62 $\frac{1}{2}$,	mil. 32 miles 0.00	(H)	2.62 $\frac{1}{2}$	
Attendy. cost in Habeas corpus 1.	recommitting & rety. writ 50,		1.50	
		Am't. of	9.62 $\frac{1}{2}$	

State of Illinois, ss.

Supreme Court—Third Grand Division, at Ottawa:

The People of the state of Illinois to the sheriff of *La Salle* county---Greeting:

WE COMMAND YOU, that of the goods and chattels, lands and tenements of -----

John McEntyre ----- you cause to be made the
sum of *nine* ----- dollars and *sixty two & a*
half ----- cents, the amount of the foregoing bill, which is due and unpaid, and is a true
copy from the Fee Book in my office; and hereof make due return in ninety days.

WITNESS, the Hon. SAMUEL H. TREAT, Chief Justice of
our said Court, and the Seal thereof, at Ottawa, this
eleventh - day of *July* -----
A. D. 1849.

A. Ireland Clerk of the Supreme Court.

By virtue of the within Fee Bill in the matter of John M.
Dutyme on Habeas Corpus 3^d Grand Division of the Supreme
Court of the State of Illinois - I did on the Eleventh day of
July Levy upon 18⁵/₁₀₀ Acres of Land in the North East
Quarter of Section Six Township Thirty Six North Range
Two East of the 3^d P.M. - And on the 4th day of August
1849 Sold the Same to James H. Baldwin for the sum of Fifty
Dollars. a more particular description given in the Certificate of
Sale - Applied Thirteen Dollars to satisfy this Fee Bill, the
balance remaining in my hands subject to the order of the Dyk
John M. Dutyme
H. Russell Shiff

Supreme Court
In matter of John M. Dutyme
Fee Bill ~~in~~ \$9.62¹/₂
Sheriff of La Salle County

My fee \$37

Fid August 7. 1849
Shelton Ckr.



State of Illinois, ss.

Supreme Court of said State - 3^d Grand Division.

The People of the State of Illinois, to the Sheriff of La Salle
County _____ Greeting:

You are hereby commanded, to attach William Hardin, Edward
Kelley, Francis Bay & Frederick Undermil, if they shall be
found in your County, so that you may have their bodies
before the Supreme Court of said State now in Session at the
Court House in Ottawa, in and among, to testify & the truth
to speak on behalf of said People "in the matter of John Mc-
Intyre on Habeas Corpus"; & also to answer for their contempt
to the said Court, for having failed to attend as ~~a~~ witnesses,
when lawfully summoned at the instance of said People
for that purpose - Have you then & there this writ
do. —

Witness, Hon. Samuel H. Treat Chief
Justice of our said Court & the Seal thereof
at Ottawa this 25th day of June
A.D. 1849.
J. Leland Clerk.

4
In Matter of ~~Chertsey~~ vs.
Attachment.

Executed this writ
June 26/49 by ~~the~~
arresting ~~Wm~~ ~~Clark~~
~~Frederick~~ ~~Bry~~ Ed-
ward Kelly, and
~~Frederick~~ ~~Indemil~~ and
bringing them before
the Supreme Court, as
I am herein com-
manded,

W. Herbert Stiff
R. E. Goodell *clerk*

Deer & Ht. 212 $\frac{1}{2}$
64 Miles 400

612 $\frac{1}{2}$

Filed June 27. 1849.
L. Deland *clerk*.

State of Illinois, S.D. =

Supreme Court of said State - 3^d Grand Division.

The People of the State of Illinois, to Henry Goddard
Greeting:

You are hereby commanded personally to be & appear
before the Supreme Court of said State now in the
Session at the Court House in Ottawa, in Stanton, to tes-
tify & the truth to speak in behalf of said People in
the matter of John McEntyre an Absconding Debtor.

Witness, Hon. Samuel H. Treat Chief
Justice of our said Court & the Seal
thereof at Ottawa this 25. day of
June A.D., 1849.

S. Deland Ck.

4
In Matter of Whitaker,
Subp. for Papers.

Executed this writ
Sime D. 49 by reading
to Henry Goddard.

1/1 (Hurlbut St. H)
R. E. Goddell St. H

Serv. of Ret. 32 1/2
20 miles 125
1.02 1/2

Filed June 27, 1849.
L. V. and Clerk.

State of Illinois - ss.

Supreme Court of said State - 3^d Grand Division.

The People of the State of Illinois to William
Hardin, Henry Goddard, Edward Kelley, Francis
Bry & Frederick Indemil _____ Greeting:

You are hereby commanded personally to
be & appear before the Supreme Court of said State, now
in session at the Court House in Ottawa, instant, to
testify & the truth to speak in behalf of the People of said
State of Illinois, in the matter of John C^t Butye on
Habeas Corpus - To the Sheriff to execute -

Witness, Hon. Samuel H. Treat Chief
Justice of our said Supreme Court, at
Ottawa, & the Seal of said Court, this
21st day of June A.D. 1849.

L. Seland Clerk.

Supreme Court
in matter of John
O'Quinn on Habeas Corpus

Subpoena for People

To June Term 1849.

Executed this with sum 22/49 by sending to William Hardin,
Edward Kelly, Francis Fry, Frederick Anderson,
- Henry Goddard and others

Dray & Ret 1.12²
60 miles 3.75
4.87²

J Danforth Court

State of Illinois }
Ladalle County of } I Henry Hurlbut Sheriff and
the forgoing writ that I herewith produce to the Court
the body of John McIntyre, mentioned in said writ,
and that said McIntyre was placed in my custody
and is now detained therein in the Jail of Ladalle
County, by virtue of the Command of the mittimus,
a copy of which was filed in this Court, by the
said McIntyre, with his petition, & by virtue of no
other authority whatever. Henry Hurlbut Shff

For attending Court-on
Habias corpus & security 1.37½
Returning mot 12½
1.50

H. 14 without
Shff

State of Illinois, ss. Supreme Court of said State - 3^d Grand Division.

The People of the State of Illinois, to Henry
Humbert Sheriff & Jailor of La Salle County - Greeting:

We command you, that you do forthwith without excuse or
delay, bring, or cause to be brought, before the Supreme Court
of said State, now sitting at the Court House in Ottawa in
said La Salle County, the body of John McCuttyre, by whatever
name or addition he is known or called, & who is unlawfully
detained in your custody, as it is said, together with the day
& cause of his caption & detention; then & there to perform and
abide such order and direction, as our said Supreme Court
shall make in that behalf.

Hereby make due return, forthwith, under the penalty
of what the law directs.

To the Sheriff of said County to execute.

Witness, Hon. Samuel H. Treat Chief Jus-
tice of our said Supreme Court & the Seal of
said Court, at Ottawa, this 30th day of
June A.D. 1849. L. Leland Clerk.

In the matter of John
McIntyre on Habeas Corpus

Writ of Habeas Corpus

"By the Habeas Corpus Act"

The Proprietors
of John McIntyre } on Halcus Corpore
OK will issue subpoena
for Henry Loddare
Bleeker
Statutory

Prinps

Filed June 25, 1849,
S. Island Ck.

State of Illinois vs. Supreme Court of said
State 3^d Grand Jurisdiction

The People of the State of Illinois
to John B. Murritt, Benton Ayres &
Adam Johnston, Samuel Lee, William Lee, Gentlmen
You are hereby Comanded personally
to be and appear before the Supreme Court
of said State now in session at the Court
House in Ottawa instanted to testify
the truth ^{to speak} in behalf of John M. Intyre
in ~~behalf~~ of the matter of John M. Intyre
on Habeas corpus. To the Sheriff to execute.

Witness Your Samuel A
Dear. Chief Justice of our said
Supreme Court at Ottawa
& the Seal of said Court this
25th day of June 1849.
L. Leland Clk.

In Matter of Ch'nty re.

Subp. In Drft.

Executed this writ
June 26, 1849 by reading
to B. Agers & Jno R. Norwith
the others not found
in the County

J. H. Hurvat Skiff
R. E. Goodell
Lpy

Serg Skiff	62½
32 Mils	2.00
	2,62½

Filed June 27, 1849.
L. Island Ck.

The People

vs.
John M. Intyn

Cause removed from Wt. Term

May 11. 1849. ^{deft. witnesses}
Wm Lee Saml. Lee. Adam
Johnston Wm Whaley L.R. Merriam
^{Wm. Harding}
Wm Gilman James Muelless

Wm Narden First saw Cunningham when I was at
work under M^c Intyn on Hotel on 15 May 1849. he
was pretty high at the time - he stood at Lindsey St. Con-
siderable time & then came to building & commenced talk-
ing with O'Connor Whaley & Johnston, & then run round
the building enquiring for M^c Intyn I said wanted to see
him, ^{wanted as John} M^c was on the work. I paid no attention to him
at that time (saw M^c on the building) he then com-
menced talking to Whaley & Johnston again. M^c told
him he would give him a job. (they both stood in front of the
building Whaley & Johnston were both close by.) to carry
mortar on stone. Dec^d said would see the work damned
first that he would carry mortar on stone. Dec^d M^c
was during this time sometimes close together & sometimes
a little apart - Dec^d said had pt with M^c Cornick - M^c
said then he ought to be calaboured - he said then
would like to see the man that could put him in or
he come out be put in ~~and~~ & went off & then came back
muttering something about M^c's debt. saying he
ought to pay his debt, and said he would see him
damned first if he'd work for him unless he did
pay his debt. They stood 12 or 15 feet from building
M^c Intyn told him to go away - he then turned
to go away ^{down a little way not far from 15 or 15 feet} They were at this time 5 or 6 feet from each
other - Whaley & Johnston in ahead M^c then
asked him if he owed him any debt. I can't tell what
answer he gave - M^c then says pick up a stone and throw
it ^{toward me} M^c was coming towards my stone 15 or 20 feet from
where they were. (I was cutting stone 12 or 15 feet from
building on sidewalk) M^c said damn you I want
dirty my hands with you I will take something else

Mc had gone in the direction that Dec^d was —
they were about 9 feet apart. This was as the time Dec^d
turned away — Mc came to my stone & got a square
which was on my bank. It was a steel square like
the one shown. — Mc raised the square and run
toward him and said drop the stone. Several times,
a man by name of Mullen came and took stone
out of his hand — They came close together. Mc
said at some time do I love you anything?
Mc said would use him bad in some way
do would beat him ^{or pay him off} or something to that effect,
^{if he didn't quit talking} after the stone was taken Mc immediately kicked
Dec^d 3 or 4 times in the stomach — Dec^d was standing
up straight & put his hands down to defend himself
he then struck him with square on back or neck
somewhere below head. Then gave him another
kick & he reeled & fell & as he was falling struck
him the last time ^{with square on back head} and killed him — ~~he~~ I thought
he was picking up his cap as Mc struck him
his cap had fallen off — I heard the blow — Mc had
square raised & brought it down straight — imme-
diately after blow he fell straight to earth on
his side. Mc Intym was in a good deal of passion.
Mc then left him & went 20 feet & laid square
down and then went on to building — I could
not see him from where I stood, about 5 or 6 minutes
after he fell I went over and saw him — he was
not then dead but was motionless. The body
was carried to Sebeaus store & laid on a plank.
the body was 20 or 25 feet from building. There
seemed to be life in body near an hour saw nothing
more than breathing. he died.

X Building fronts N & South. They were 15 feet from E end
of N side. I was west of them about 15 feet. I
saw him have stone in his hand would weigh 3
or 4 pounds held it in his hand hanging down.

didn't see him raise it. did not hear him
make any threat. he had not stone in his
hand at time Mc kicked him. Kicked him in
the abdomen all the time. was one handkick 2 or 3.

did not think Mc intended to kill him
judging from his act at the time.

^{Henry} Goddard First I heard Cunningham speaking to
Mc Intym & said Mc had cheated him out of \$50 or there
the cause of it. They were at n end of building
near the N.E. corner. They appeared to be moving
They were 10 or 12 feet from building Mc ordered
him to go away. Dec^d made some large or small
threats about whipping Mc or Mc could in
whip him Dec^d then moved off 10 or 12 feet.
Mc asked him if do you say I have cheated
you. or words to that effect. Mc at this time
came up towards Dec^d & told him to
clear out to be off. and said If you don't
I will give you a drubbing. Dec^d told him
to strike. Mc said I will not disgrace my
first to strike you but I will get something
else. & passed back by me (where Hurdin
was at work. Then when no motion made
on either side to strike. he picked up a square
& returned toward Dec^d stood & stopped
at some distance two feet or so. This was about
30 feet from building. Mc again told him
repeatedly to go off. at different times. Said
If you don't I will kick you, will split your
head in two. split your hair out. These words
were repeated a number of times. Dec^d told
him to strike. Mc then kicked him. & still
urging him to clear out & go off. When Mc
was coming with square. he said to Dec^d pick up
stone will you. & then told him to lay down the stone.
& then kicked him which was 1st kick.

As ^{dec} as McRichie stepped back he had a stone
in his hand a man came from north & took
stone from ^{dec} hand - he had a stone in his
hand by his side & his hand was turned
back Mc still urging ^{dec} to leave - struck
him on neck or shoulder so that his cap fell
off & light blow & kicked him twice one was
pretty hard - he stooped as if to pick up his cap
as I supposed and turned his face partly toward
Mc as he was stooping I said to Mr. Let me pick
up my cap let me pick up my cap twice - then
Mc hit him on head with signa he did not
get hold of his cap. The blow was not given
with full force - but pretty hard. Muddling force.
The man dropped right down Mc Intyre
turned immediately & walked toward build-
ing appeared to be in passion - Mc threatened
to kill repeatedly was enraged. The Kick & blow
was immediately following one after the other -
X after the time he appeared frightened. Mc
still kept telling him to go off - they were only
together a few minutes - & were quarrelling
all time there was no time for passion to cool.
My opinion was that Mc Intyre did not in-
tend to take his life - It was considerable of
a blow but not as hard as the might strike -
Edward Kelly saw Mc & ^{dec} Mc saw a stool or iron sign
on shoulder ^{dec} apparently not able to stand without support
of stone by intoxication Mc told both men place had
annoyed him for some time. ^{dec} made some expres-
sions could not understand - & Mc said 2^d time
leave place or I will kill you - Then saw Muller
come & take stone out of ^{dec} hand without any
resistance throw it away & returned to his work
Mc advanced ^{3 or 4 steps} drew his foot & kicked him -
once & then retired about one step & advan

and again & kicked him twice Mr kept telling him to leave the place. The 2^d Kick was most severe & stumbled ~~and~~ he said "My Cap^t this was all I heard I think he had cap partly pushed up when Mr Drew Square - he advanced two or three steps. & struck him with tolerable good force - Square something like one shown - to best of my opinion Dec^t was not able to fly about to pass or ~~about~~ an hour before he was scarce able to walk correct in consequence of intoxication -

X was ^{or 70-} 60 years from place when they were Doct Francis Bry, a physician & Surgeon - saw Brown raise head hurried. raised head saw blood flowing very profusely from back part head they moved him I noted wound ^{on} left side of the back part of the head part of bone of cranium was driven in sunk about $\frac{4}{8}$ ^{inches} blow surface of head on left side was small piece of brain about size of buck shot - will not say that death was caused by the wound ~~as~~ In most instances would produce death ~~as~~

Proper rest -

Mr Lee - Heard Dec^t come up & Enquire for Johnston was using ill language to every one - Enquired for Mr Antier - did not appear to know Mr Lee on shore him he asked for work - he said would not carry mortar on shore. Mr said had no other job for Dec^t went away staid awhile & came back again - First I heard him say was that Mr did not pay his hands Mr. said did not owe him anything & Dec^t said something about cutting throats - Mr then told him to ~~go away~~ ^{put out from the work} he was keeping all the men from work - he did not go away & Mr then said would make him go. the Dec^t told Mr to strike him

Mc said would not dirty his hands with
him & went & got a square. then went stood
dec to put out - he didnt go away he stood
with a stone in his hand. he held his hand
up (elbow at right angle) with stone in it. Mc
told him to put out again & then kicked
him once. They made a good deal of noise
both angry & quarrelling when I saw him
again he was stooping to pick something
up & Mc struck him with square & then
went to his work. Cunningham just came
up & commenced cursing & swearing -
the language of dec was very insulting
and of such a character as to provoke
a man to anger - said if he dec had
been one of men that Mc had injured last
fall his throat would have been cut open
this - this was before Mc had kicked him
the & before Mc took square &
Samuel Lee - was working on building at the time. Spoken
of. The first words I heard Mc call him
a damned rascal - why didnt you pay men
last fall as he ought to have done Mc asked
him if he owed him anything - he said If he had
he would have cut his God a-d. throat before that
& then told him to clear out he was hindering
men from working & if he didnt clear out
he would make him - & said he would
make him I next saw & picked up rock on &
threw took the square. Mc went up & told him to clear
out again. He said would not - This was all I heard
He had stone in hand with arm raised
in horizontal position when man came & took
stone away - Mc hit him on shoulder with
the square & kept telling him to go away
& then kicked him two or three times. They

both during this time were speaking words
& angry didn't hear words were spoken
low. The man who stooped was not falling
in act of picking something up & was in
act of rising when the blow was struck - he
was staggering when blow was struck - if
had not been staggering. My opinion is
that the blow would have hit him on shoulder
& not on head at all - should not think at
all that it was the intention of Mc to kill
him - his intention was only to make him
leave the work - My opinion is that the
blow was aimed at the man's head
because if had been aimed as he ~~was~~ ^{had} ~~was~~
had missed the man staggered ~~to~~ ~~the~~
his was towards west & staggered towards south.

The stagger was at the moment of the blow -
Adam Johnston - was present. first saw C come to
building - he asked me to get work I refused him to
Mc he went to him - he went away using a great
deal of abusive language towards men at
work & every body generally - ~~was~~ came back
& went to Mc again & heard him say would
be damned if would carry food - I followed Mc
round considerable back & forwards & then
up to him about not paying hands last pay &
Mc went up & told him to leave - I asked him
if over him anything said didn't if had would
have cut his damned throat. Mc kept telling
him to leave & said would hurt him if would
not leave - they were standing close together &
C stooped & picked up a stone weighing 4 or
5 pounds - he went out & I intimated that
Mc would make him leave, I then went
from where they were - I went with Whaley towards
Whaley & Liza's Bakery. I heard Mc say God damn

I will spare you anyway if I can find anything
to do it with. he went for squaw - and I looked
round & saw him standing with squaw drawn
in and to think he kicked him two or three times
I heard a blow struck & turned round & man was
falling - The language was used by dec & was
extremely abusive & calculated to irritate &
provoke - Cunningham previous to Mc
taking squaw was loudest - afterwards
Mc voice was loudest - Mc was at the last
very much enraged prior to that time Mc
was quite ^{calm} & trying to get him to leave & heard
him repeatedly tell him to leave. after Mc
had squaw - Cunningham still continued
his abuse and did not offer to go away at all
Mr Whaley has heard him (C) raving about
when I came 2^o time - was close by me & then
said of Mc of not paying his men didn't want
to work for him any more & told Mc to kiss his
ass & following Mc round & abusing him
Mc asked if over dec anything ~~the~~ said
didn't if had would have cut a - a throat -
Mc started toward him & ~~then~~ called out to him
to leave or he would make him leave - Mc said
something about stone & said would not dirty
hands &c. & went to pick up squaw - I saw
dec had stone in hands - Mc came and drew
squaw & told him to ~~leave~~ him to leave several
times & spoke very harshly - he told him if
he would not leave would split him or hurt him
~~with squaw~~ or something to that effect - saw
Mc kick him twice after my eye caught him -
saw man in leaning position with one hand
^{right hand} leaning to ground - was in act of rising at the
time the blow was given - dec then did not
allow me to come on to work to interrupt workman

John R. Meritt C was standing near work
using very abusive language to some one down
town who appeared to be directed to everybody
went off like a madman talking and did
I'm close to get him. C had ~~10~~ ¹⁰ ~~ch~~ ^{ch} ~~in~~ ⁱⁿ hand
M^c had square-headed C. make use of threat-
ening language & M^c trying to get him off
work ordering him away. about this time
M^c struck him with flat of square across
the shoulder. C had stone in his hand. Some
one took it out of hand & M^c kicked him
twice. as he kicked him he gave him a push
& told him to leave. he went probably a step
or two & stooped as I thought to pick up a
rock I know positively he had his hand
on a rock I saw with my own eyes - whether he
had it in hand on rising or not I do not know
when he was in act of rising up M^c hit
him with square. This was the last blow
that was given him - heard him say nothing
about his cap - I did not think at the time
I don't yet think he intended to kill him
it was an accidental blow he was expecting
considerable - had hand raised with
stone in it in attitude ^{as if} to throw ^{or make a blow} - M^c had
square in his hand. John R. Meritt.

Mr. Wilman ~~was~~ - knew Thomas Conington he
was sometimes grint & sometimes quarrelsome. - when
was under influence liquor was ^{quite} quarrelsome &
inclined to pick quarrel with anybody to cause
trouble on earth - was 8 weeks on same boat
with - ^{another}
X was pugnacious - disposed to provoke fight
with him if could

Capt. John L. McCormick - has been acquainted
2 winters was quite man when John when in
Lynn was my antagonist was abusive and
insulting - saw him fight.

^(a)
People vs. McIntyre.

Minutes of testimony.

Filed June 20. 1849.
J. Island Clk.

1

The People }
John McEntine } E. Holbrook Esq appears for the People and
Wm Chumasco Esq appears for the Jft. Partis ready
for the investigation, People call on William Horden, sworn & says
I was at work under McEntine on the Holbrook Hotel, I saw Thomas
Coringham he was intoxicated at the time he was around Jersey street
for some time he came to the building and commenced talking
with A. O. Connor & A. Johnson, then ~~were~~ ^{front} ~~in~~ the building
several times enquiring for McEntine, ^{McEntine} ~~he is~~ building the stair
part of the ^{Harden} building, & he McEntine paid no attention to him
at that time, I saw McEntine on the building, then the
two stood in front of the building, McEntine said he would
give him a job, & Coringham said he would not carry
Mortar or Stone, shortly after that they were about two feet
apart, Coringham said he had a job of Capt McCormick
McEntine said he meaning Coringham ought to be Calabas
Coringham said to McEntine he would like to see a man
that could put him in, Coringham went away for
a short time and come back and mentioned something
about McEntine paying his debts, and he would not work
for him unless he would pay him his debts - McEntine
told him to go away, he turned to go away 5 or 6 feet
apart at this time I went a little way 15 or 20 feet.
McEntine asked him do I owe you any debt, Cant tell what
the answer was, McEntine said pick up a stone will you
(whether he was in the act of taking up one I dont know, I was
cutting stone 15 or 20 feet from the ~~Building~~ ^{Building}), they were
about 10 or 12 feet apart, McEntine said I will not dirty
my hand with you but will take something in, at this
time McEntine got ~~at~~ square lying on my back, the
one in court the same square or one like it, ~~he~~ cannot say
whether the same McEntine raised the square over his head
the stone several times, ^{do I owe you any thing} but C. did not drop it, & a man
by the name of Muller came and took the stone from
him, ^{Muller} he was to work on the building, McEntine was 2 feet
from ~~the~~ at the time Muller took the stone from him at that
time McEntine said he would hunt him, or something to that
effect, then McE. kicked him several times in the stomach,

struck him with the square on the back - I then kicked him again, and C. began to reel and fall, then ^{he} struck him on the ~~head~~ back part of the head - (C. spoke not again) with the edge of the square, & with fore and a hard blow - Mr Entin appeared to be in a hurry - he then left him and went about 20 ft and laid the square down and went onto the building, about 5 or 6 minutes after he fell I saw him, he then had life in him I spoke about getting a doctor, he was motionless, several took up the body and carried him near Lebeus street & laid him on a plank, the body was laying about 25 feet from the building in the public street, then appeared to be life in the body for about one hour, known by his breathing long breaths - he died, he means the District Court when he spoke of Mr Entin,

they were standing on the ^{Cross Ex} N. side 15 ft. from the E end, ~~at the time~~ of he was West of this, he was when he could see plainly most of the time, witness says from the acts of Mr E he should not think he intended to kill Coningham -

Witness by Holbrook. Did you see the wound, he said he did, it was on the back of the head, that C was pretty well intoxicated, he might have injuries but I should not be afraid of him

Harry Goddard sworn and says first that I noticed, C. said that on a job above Mr Entin had cheated or caused him to be cheated about 50 off. they were on the N. side of the Hardy building about 10 or 12 ft they were at different times near & together, C. made some threats after Mr E. ordered him away, then C moved off the other side of the loose stem lying about the building, he went about 10 or 12 feet, C. said something back to Mr E, then Mr E asked him have I ever wrong you, Mr E came up close to him Mr E told him to clear out be off if you dont I will Give you scrubbing as near as I can recollect C. told him to strike, Mr E said he would not disgrace his fist, but I will get something else, Mr E passed back to where ^{Hardy} was at work, I do not recollect any Motions, I took of a square and came back to when

C. was to about 2 or 3 feet and about 30 feet from the building, then Mr E told him to go away as he had before several times & if you dont I will split your brains out, ~~or~~ Kill you several such words & then C told him to strike, Mr E then kicked him once at that time - he still urged him to clear out and go off as he was coming with the squire, he said pick up a stone will you, then told him to lay down that stone, this is the time he kicked him as above C. moved back some, he saw a man come and took the stone out of C. hands which was in his hands hanging down by his side rather back after he urged him C to go away, he struck him with the squire so that his hat or cap fell off, and then urged him to go away. & kicked him twice one of which was a kind blow. C. then stooped to pick up his cap as the squire Mr Mr E let me pick up my cap let me pick up my cap - at that time Mr E struck him on the back part of his head with the squire - it appeared to be considerable of a blow, but not with full force, yet a middling force, then C. dropped down but not his full length, and Mr E went to his work and said nothing, he appeared to be in a passion, Mr E repeated at different times that he would split his head open, or kill him, he appeared to be in a rage, ~~from the whole time~~ from the kicks to the blow about 2 minutes, immediately following one after the other, C. at that time staggered a little, after the fray commenced & received a kick he appeared to be a little frightened, for he rather moved away

Crowd he ~~seems~~ Me & told him
to go away after he appeared frightened.
My opinion from what I saw is that Me & did not
intend to take life

Edward Kelly sworn & says

yesterday afternoon while to work in my shop
I was down the street, I saw J. M. E. & C.
in the street, M. E. held at that time an iron square
in his hand & C. stood by a stone, it appeared to me that
he was leaning against the stone for support, held
the square in a raised situation, M. E. told C. to
leave the place, ~~then~~ & will for you have a crowd me
sometime, I told him he would kill him if he did
not. Mullen came and took the stone from C.
M. E. advanced towards him 3 or 4 steps, & kicked him
once and then retired about one step, advanced again
and kicked him twice, the last of which caused him to stumble
& heard him say my capt. then M. E. advanced 2 or 3
steps and struck him C. with the square a considerable
good force, the square in Court was like the one
M. E. had & struck with, to the best of my opinion
C. was not able to walk in consequence of intoxication
the weight of the blow, with the square would be a deadly blow from
the force of the blow. Cross Ex

I mean to swear that M. E. drew back 2 or 3 steps
after the last kick before the blow with the square -
I was about 60 yards from them I heard M. E.
what he said.

J. J. B. sworn and says My profession
in practice a surgeon, I came to the crowd and found
Mr C. lying. I raised the head & found the blood flowing
profusely. I told them to move him to a more
convenient place, I probed the wound before he
died, I found the wound on the right side of
the head on the back part a part of the bone of the
Crown, about $\frac{1}{4}$ of an inch sunk a little
more than the thickness of the skull, on the left
side the brain was a little about the size
of a Buck shot. the wound was a dangerous one
was able to stop the blood, he lived about $\frac{1}{4}$ of a hour
& died, a blow of that kind produces insensibility.

5
People Clow

Dft Call on Wm Lea, morn & says. he was present and saw a part of it C. came up and Enquired for Johnson, he used ill language, & Enquired for Mc E. Some one showed him Mc E he asked him for work. Mc E told him he had no other job, but to carry mortar and stone he said he would not do that, C. went away and staid away a while & came back again, & said Mr Mc E did not pay his hands. Mc E said he did not owe him any thing, C. said something about Cutting throats but did not hear whom. Then Mc E told him to put out away from the work but he was keeping all the men from work C. did not go away, Mc E said he would make him go. C. told Mc E to strike him, Mc E said he would not dirty his hands with him, & then went and got the sycamore & went to the ~~then~~ C. & told him to put out, C. did not go away ~~but~~ he had a stone in his hand then I held his arm in a horizontal position, Mc E told him to put out again & immediately kicked him, they were both making a great deal of noise & both angry, when I saw him again he was stooping in the act of picking something up then Mc E struck C. with the sycamore, and then went to his work, C. commenced by cursing & swearing, his language was insulting & very insulting, and of such character as to provoke a man to anger C. said if he had been one of the men that Mc E had injured his through would have been cut before this, this remark was made before Mc E kicked him, & Mc E had no sycamore in his hand at that time.

Samuel Lee Sworn and says he was on the building, & the first words he heard C. told Me E he was a dam nascal, and asked why he did not pay the hand last fall. Me E asked him if he owed him any thing C. said if he had he would have cut his throat before this, Me E told him to clear out for he was ~~impeding~~ hindering the men from working, & if he did not he would make him. C. said he could not, then I saw C. pick up the rock, then Me E took the squire - then Me E went up to C. and told him to clear out, he C. said he would not. I was near 60 feet from them I saw all the blows struck. C. had the stone in his hand & his arm raised in a horizontal position, Me E hit him C. on the shoulder with the squire, kept letting him to go away & then Me E kicked C. two or three times, both said many words I could not hear & both angry. I then saw C. stoop but was not falling in the act of picking something up and in the act of rising when Me E hit him a blow on the head with the squire & if he had not been staggering my opinion is the blow would have hit him on the shoulder - from what I saw I think. Me E had no intention of killing but to make him C. leave the work. I think from the position of C. Me E intended to strike on the shoulder & not on the head.

Crossed

I saw him stoop & he had a stone in his hand when he raised ~~he~~ up - he only heard him Me E say he would make him clear out, & advanced towards him C. to make him leave

I have been acquainted with McE since last October,

A Johnson hired him and says, he was there present and saw C come to me and asked me for work. I refused him to McE, he takes with him and went away abusing all around there, he went down to Lundy, stum & soon came back again to McE. I heard C say he would be damned if he would carry a hod for any one, and then he blung up to McE about not paying his hands, McE told him to leave there or four times, or he would hurt him. C told McE that if he had been one of the hands that he had not paid he would have cut his throat. C. stooped & picked up a stone about 4 or 5 pounds in weight. McE was then standing pretty close to C, and C was unwilling to leave and intimated that McE could not make him leave. I then went with Whately to his W. & L. Shop. I heard McE say I will thank you any how, I went & took up the squaw & said if he did not leave he would kill him, he then kicked him. C. several times, I then heard the blow (I suppose of the squaw) that McE hit C with. The language of C to McE was extremely abusive, and calculated to abuse & provoke - C. spoke the foudest during the whole time except the time McE had the squaw in his hand, my impression is that at the time McE first took the squaw he somewhat excited and growled more and more excited, and C continued his abuse, and did not offer to go away at all.

Wm Whately sworn & says, I heard McE say after C had been raving some time, he was using language abusive, I saw them close by him I heard C. abuse him McE all the time.

he C followed M E & heard him C say to M E if he had owed him he would have cut his dam through; M E started towards him and told him to leave this or he would make him leave, M E came up pretty near him, & said pick up a stone will you, I saw him C have a stone in his hand, and M E came up with a squar in his hand, & told him to leave immediately, he told him if he did not he would split him ~~with~~, he C did not leave, I heard a blow, & supposed the blow was from M E for C was a kicking, I ran after ~~the~~ C at the act of rising of C. the blow was struck on or near the back of the head.

John R Murrite called and sworn and says, I saw some of the fray. I saw this M E and he was using abusive language, and rough language to all everyone, I soon heard loud talking and M E & C was close together at that time M E had a gun in his hand C had a stick in his hand, C was making threatening language & M E trying to get him away about this time M E struck him C with the squar about the shoulder, I thought about that time some one took the stone out of C hand, & M E kicked him twice, & told him to leave, C went about a step or two and stooped down to pick up a rock, & know he had his hand on a rock for I saw the rock move whether he had it in his hand or rising I don't know, & in his act of rising M E hit him with the squar from what I saw I do not think M E intended

to Kill C. I believe it was an
accidental blow, I saw C while
the stone was in his hand with his
arm raised as if he was in a position
to throw or strike with. I was from
3 to 5 Rods distant.

Goddard called again and
says when the last blow was given,
saw C stoop saw no side Motion.

Henry Harder sworn & says the
square in Court is the square as I
believe Mr E has.

Wm W Gilman sworn & says
I am acquainted with Thomas Coningham
& sometime he is quiet & sometimes
in a quarrelsome. C. in which
under the influence of liquor was
a quarrelsome man, I have been
on the boat with him some 6 or 8
weeks, & he is when in liquor quarrelsome
with the tongue.

Capt John Mc Cormick sworn
& says he has been acquainted with Thomas
C. for the last two winters, he is when
intoxicated an abusive and quarrelsome
man.

average $3\frac{1}{2}$ Pays
 $3\frac{1}{2} \times 8$ words to a line
 $72 / 259.2$ (36 shillings or \$4.50)
 $\begin{array}{r} 259.2 \\ 2 \overline{) 259.2} \\ \underline{432} \\ 432 \\ \underline{432} \\ 0 \end{array}$

(131)
Testimony

Frid. June 20. 1849.
L. Island Ck.

Illinois, Sec.

In Supreme Court, 2nd Grand Division.

In the matter of
John McIntyre,
On Habeas Corpus.

A. Hors.

being duly sworn

on oath saith, that he was present

at the examination of the said John McIntyre, before
Nicholas Keating at Ottawa, on the 23^d of May 1849,
on the charge of having murdered Thomas Cunningham
at LaSalle on the 15th of the same May; and that
on said Examination, ^{to the best of deponents recollection} William Hardin, Henry Goodard
Edward Kelly, & Francis May, ~~and Samuel Lee~~, were examined
as witnesses on the part of the people; That Frederick
Indermil was also examined as a witness on said
Examination; but no other witness was examined on said
hearing, who was not also examined before said
Brown, according to the best of Affiant's knowledge
information and belief - and affiant further saith
that the testimony of said Indermil, ^{in his judgment & belief} ~~was substantially~~
~~stated in the latter of said depositions~~ did not material-
ly vary the case ^{made} ~~against~~ said McIntyre, as shown
by the minutes of the testimony made by said Brown,
~~and~~ on file in this case; and the minutes of Mr. Chumano
also on file; which affiant believes to be substantially
correct, - as well from the confidence he reposes in the
integrity & intelligence of the parties who made said
notes, as from hearing the aforesaid witnesses testify
on the same matter before said Keating - and
comparing at the time they were
so testifying before said Keating
the testimony of said witnesses with
the minutes of the testimony before
said Brown

Subscribed & sworn to before me June 26, 1849
J. C. Leland & Co.

A. Hors.

In the matter of
John M. Intyre,
on Habeas Corpus.

^{A. Wagon}
App't. of ~~Intyre~~.

Filed June 21. 1849.
H. L. and O. L.

John McIntyre

and
The People of the State
of Illinois

Upon Helen Corpus

And now comes the said People by
B. C. Cook states atty and for replication to the answer
of said McIntyre to the Sheriff's return to the writ of Helen
Corpus in this case say that said McIntyre ought not
to be discharged by reason of any thing in said an-
swer contained because they say that on the examination
of said McIntyre before said Justice Keating, Andrew
McDaniel did testify to material facts which had not
been testified to at the examination of said McIntyre
before said Justice Brown and they further say that
the whole testimony given on said examination
before said Justice Keating as aforesaid does show
that said McIntyre ought to be held to answer
for the crime of Murder

B. C. Cook
States atty

The People
vs
John McIntyre

Replication

Filed June 21. 1849.
L. Wilson Clerk

Illinois, Oct.

In Supreme Court, 3^d Grand
Division—

In the matter of
John M^cIntyre.

On Habeas Corpus.

} John M^cIntyre being duly
sworn, on oath saith, that

he has heard the petition by him subscribed, and
filed in this cause read, and is acquainted with
the contents thereof, and that all matters of fact
in said petition stated and alledged are true, and
that all else in said Petition contained, he verily
believes to be true. — And he prays that his said
Petition may be taken and he hereby refers to it,
as a part of this affidavit. — John M^cIntyre

subsd. sworn to before
me June 21, 1869.

Richard C. [unclear]

In the matter of
John Mc Intyre
On Habeas Corpus.

Appt. of John Mc Intyre

Filed June 21. 1849,
Holland Ch.

In the Matter of } On Habeas Corpus
John McIntyre }

OK will issue a subpoena
for William Hardin Henry Goldsone Ellwore
Kelly Francis Bury & Frederick Indermil

B. C. Cook
State atty.

In matter of John
McCarty in Habeas
Corpus

Principle for People

Filed June 21. 1849.
S. Island Ct.

State of Illinois }
LaSalle County } ss. The People of the State
of Illinois to all Sheriffs
& constables of said County.
Greeting

Whereas John McIntyre was this day brought before the undersigned, one of the Justices of the peace of said county upon a warrant by me issued upon the complaint of William Hardin made on oath charging the said John McIntyre with having feloniously and wilfully murdered one Thomas Cunningham on the 15th day of May A.D. 1848 in said LaSalle County And whereas I did inquire into the truth and probability of such charge by the oath of all the witnesses attending, And having determined from all the evidence adduced before me that there is probable reason to believe the said John McIntyre guilty of the charge aforesaid, and that the said McIntyre should be held to answer said charge

You are hereby commanded to take the said John McIntyre, and convey him to the common Jail of said County, and the Jailor of said County is hereby commanded to safely keep the said John McIntyre in the common Jail of said County to answer to an Indictment to be preferred against him by the Grand Jury of said County for the crime of murder, or until he shall be discharged by due course of Law. Witness my hand and seal this 23rd day of May 1849. Nicholas Keating J.P. (L.S.)

State of Illinois
Madison County,)
J. J. McHenry, Sheriff of said County, do
certify the foregoing to be a true & perfect
copy of the warrant of commitment of
John McEntyre, now detained in the jail
of said County on the charge of murder
wherein was heard this 19th day
of June 1849,
Henry McEntyre

(6)
Propp vs. McEntyre

Copy of the warrant
of commitment

Filed June 20. 1849.
L. Island Ck.

Co. 4

In the matter of John
McIntyre on Habeas Corpus.

1849

12040

1849