No. 12881

Supreme Court of Illinois

People

---

vs.

McNamee

71641 7

The Supreme Court of the
State of Illinois - Third
Grand Division -
Of the April Term A. D. 1859

Michael Mc Namee,
Plaintiff in error.
vs.
The People
Defendants in error.

And now comes the said Michael Mc Namee, plaintiff in error, by William Mattocks and B. F. Ayer his counsel, and says, that in the record and proceedings aforesaid and also in giving the judgment aforesaid, there is manifest error in these several particulars to wit:

1st Because the motion made by the said Michael Mc Namee before trial that he be set at liberty and discharged from further prosecution and imprisonment, was overruled by the said Circuit Judge, whereas by the law of the land the said motion ought to have been sustained and allowed.

2d " Because improper questions were allowed to be asked and improper testimony to be given in evidence to the jury.

3d " Because illegal and improper instructions were given by the Court to the jury.

4th " Because legal and proper instructions to the jury were refused by the Court.

5th " Because the verdict is contrary to the evidence.

6th " Because the verdict is contrary to the law.

7th " Because the affidavits of Michael Shearnee and William Mattocks and the testimony of Walter Kimball offered in proof that the said Michael Shearnee had never been arraigned upon the said indictment, were improperly excluded by the Court.

8th " Because the Court erred in overruling the motion for a new trial.

9th" Because the Court overruled the motion of the said Michael McNamee to suspend judgment in order to enable him to procure an amendment of the record from the Court of Common Pleas.

10th" Because at the time of the trial it no where appeared from the record or from any matter or thing before the Court, that the indictment was ever returned into open Court by the grand jury.

11th" Because at the time of the trial it appeared affirmatively from the copy of the record transmitted to the said Circuit Court from the said Court of Common Pleas, that there was no record in said Court of Common Pleas that said indictment had ever been returned into open Court by the grand jury.

12th Because it did not appear at the time of the trial from the record or any matter or thing before the Court that the said indictment had been found to be a true bill

by a grand jury lawfully constituted and impannelled and sworn according to law.

13th " Because the said circuit Court erred in permitting a new and amended record of the proceedings had in the said Court of Common Pleas in said cause, to be introduced after the said trial had terminated and while the motion in arrest of judgment was pending before the said circuit Court.

14th " Because it does not appear from the record that the said circuit Court acquired jurisdiction of the said indictment, or that the said cause was lawfully transferred to said Court from the said Court of Common Pleas.

15th " Because the said Michael Shannee was not tried upon the said indictment at the time and before the tribunal prescribed by law.

16th " Because the said Michael Shannee

Stamee was not tried upon the said indictment on or before the second term of the Court having jurisdiction of the offence, although he had been confined in jail ever since the finding of said indictment and the delay in bringing him to trial did not happen upon his application nor in consequence of the absence of any witness on the part of the People.

17th. Because four of the petit jurors empannelled to try said cause do not appear to have been lawfully summoned, elected and sworn as jurors, it no where appearing that the special venire issued for additional jurors was executed by the sheriff of said County of Cook.

18th. Because the said Circuit Court erred in overruling the motion in arrest of judgment.

19th. Because in other respects the proceedings in said cause are irregular and not warranted by or in accordance with the laws of this State

but are contrary thereto.

20th Because judgment was rendered upon the verdict in said cause by the said Circuit Court against the said Michael Mc Stamee, whereas by the law of the land the said verdict ought to have been set aside and judgment given in his favor.

And the said Michael Mc Stamee prays that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment.

And the said Michael Mc Stamee also prays that a supersedeas may be granted by the Supreme Court which shall operate as a suspension of the execution of said judgment

Michael Mc Stamee
by his Counsel
Wm Mattocks
B. F. Ayer

United States of America } Pleas, before the Honorable George Manierre
STATE OF ILLINOIS, COUNTY OF COOK, S. S. }

Judge of the Seventh Judicial Circuit of the State of Illinois, and Sole Presiding Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House in the City of Chicago, in said County, on the Third Monday, (being the Twenty first day) of February in the year of our Lord one thousand eight hundred and Sixty nine and of the Independence of the said United States the Eighty third

Present, Honorable George Manierre Judge of the 7th Judicial Circuit of the State of Illinois.

Carlos Mavin States Attorney.

John Gray Sheriff of Cook County.

Attest; Wm L Church Clerk.

Be it remembered that heretofore to wit on the 15th day of November in the year of our Lord One Thousand Eight Hundred and Fifty Eight there were filed in the office of the Clerk aforesaid a certain transcript from the Record of the Cook County Court of Common Pleas together with an Original Bill of Indictment which transcript and Indictment are in the words and figures following to wit:

State of Illinois } ss
County of Cook }

Pleas before the Honorable John M Wilson Judge of the Cook County Court of Common Pleas within & for the County & State aforesaid at a regular term of said Cook County Court of Common Pleas begun and holden at the Court House in the City of Chicago in said County and State on the Second Monday being the Thirteenth day of September in the year of our Lord One Thousand Eight Hundred and Fifty Eight and of the Independence of the United States of America the Eighty Third

Present the Hon John M Wilson Judge
Carlos Hagan Prosecuting Atty
John L Wilson Sheriff
Walter Kimball Clerk

Attest

Be it remembered that heretofore to wit on the Eighteenth day of September Eighteen hundred & fifty Eight said day being one of the days of the September term in the year aforesaid of said Cook County Court of Common Pleas

the following proceedings were had and Entered of Record to Wit

The People of the State of Illinois
Vs
Michael McNamee

Indictment for Murder

And Now on this day Come the said People by Carlos Mason Prosecuting Attorney and the said defendant in his own proper person also Comes - And he being without Counsel the Court appoints Messrs Allen & Mattocks Counsel for the said defendant

And afterwards to Wit on the Twenty first day of September in the year last aforesaid being Yet of the said September term of said Court the following further proceedings were had in the above Entitled Cause and Entered of Record to Wit

The People of the State of Illinois
Vs
Michael McNamee

Indictment
Murder

This day again Come the said People by their said Prosecuting Attorney and the said defendant in his own proper person as well as by Allen & Mattocks his Counsel also Come and said defendant being furnished with a Copy of the

Indictment against him, a list of the names of the Jurors and Witnesses and being Arraigned in due form of law and Forthwith demanded of Concerning the Crime alledged against him in said Indictment How he would acquit himself thereof. For Plea in this behalf says he is not guilty as Charged in said Indictment and of this he puts himself upon the Country. And the said people by their said Prosecuting Attorney do the like and thereupon it is ordered that said defendant be remove d to the Custody of the Sheriff

State of Illinois }ss
County of Cook }

I Walter Kimball Clerk of the Cook County Court of Common Pleas in for the County State aforesaid do hereby Certify that the Foregoing Contains true Copies of all the Proceedings had in the above Entitled Cause as the Same now appear on the Records of said Court and that the Paper Herewith transmitted Marked "A" is the Original Indictment Presented by the Grand Jury at the said September term of said County and the defendant being now in Custody of the Sheriff of Cook County I do herewith transfer said Indictment to the Circuit Court of Cook County in pursuance of the Statute in Such Case Made and provided

Witness Walter Kimball

Clerk of our said Court & the Seal thereof at Chicago
this 15th day of Novr AD 1858

Walter Kimball
Clerk

State of Illinois } ss
Cook County }

At the September term of the Cook County Court of Common Pleas in said State and County in the Year of Our Lord One Thousand Eight Hundred and Fifty Eight

The Grand Jurors Chosen selected and Sworn in and for the County of Cook in the State of Illinois on the Name and by the Authority of the People of the State of Illinois upon their Oaths present that Michael McNamee late of said County on the first day of July in the Year of our Lord One Thousand Eight Hundred and Fifty Eight at the City of Chicago in the County of Cook and State aforesaid with Force and arms in and upon one Jane McNamee in the Peace of the said people there and then being unlawfully, wilfully, feloniously, and of his Malice aforethought did make an assault and that the said Michael McNamee there and then feloniously wilfully and of his Malice aforethought did Strike Kick, beat and pound the said Jane McNamee with his the said Michael McNamee's hands and feet in and upon the head neck breast, back belly sides and other parts of the body of her the said Jane McNamee

and did then and there Feloniously Wilfully and of his Malice aforethought cast and throw the said Jane McNamee down unto and upon a certain floor there situate and being with great force and violence giving unto the said Jane McNamee there and then as well by the stabbing kicking beating pounding of her the said Jane McNamee in manner and form aforesaid as by the casting and throwing of her the said Jane McNamee down as aforesaid several mortal Stroke Wounds Contusions and bruises in and upon the head neck breast, back, sides and other parts of the body of her the said Jane McNamee of which said Mortal Strokes Wounds Contusions and bruises the the said Jane McNamee then and there instantly died And so the Grand Jurors aforesaid in the Name and by the authority aforesaid upon their Oaths aforesaid do say that he the said Michael McNamee her the said Jane McNamee in the manner and by the means aforesaid then and there unlawfully Wilfully Feloniously and of his Malice aforethought did Kill and Murder Contrary to the Statute and against the Peace and dignity of the People of the State of Illinois And the Grand Jurors aforesaid Chosen selected and sworn as aforesaid in the Name and by the authority aforesaid upon their Oaths aforesaid do further present that the said Michael McNamee on the same day and year aforesaid at Chicago in the County and State aforesaid

with force and arms "in and upon one Jane
Mc Cranee in the Peace of the said people then
and there being unlawfully Wilfully. Felonously
And of his Malice aforethought did make an
other assault and that the said Michael Mc
Nanee then and there unlawfully, Felonously
Wilfully and of his Malice aforethought did Strike
beat and Kick her the said Jane Mc Cranee with
the Hands and Feet in and upon the head Neck
breast back, belly sides and other parts of the body
of her the said Jane Mc Cranee and did then and
there Felonously Wilfully and of his Malice aforethought
With some Weapon and instrument to the Grand Jurors
unknown which said Weapon or instrument he the
said Michael Mc Nanee in his hands then and there
had and held at upon and against the head, Neck,
breast, back, belly sides and other parts of the body
of her the said Jane Mc Cranee Strike, beat and
wound giving unto the said Jane Mc Cranee then
and there as well by the Striking beating and Kick-
ing of her the said Jane Mc Cranee with the Weapon
and instrument so to the Grand Jurors unknown
as aforesaid several Mortal Stroke Wounds Contusions
and bruises in and upon the head Neck breast back
sides belly and other parts of the body of her the
said Jane Mc Cranee of which said Mortal Stroke
Wounds Contusions and bruises she the said Jane
Mc Cranee then and there died. And so the
Grand Jurors aforesaid in the Name and by the autho-

ority aforesaid upon their oaths aforesaid do say that he the said Michael McNamee her the said Jane McNamee in the manner and by the means aforesaid then and there unlawfully, wilfully Feloneously and of his malice aforethought did Kill and Murder Contrary to the Statue and against the Peace And dignity of the People of the State of Illinois

Carlos Haven
Prosecuting Attorney
Cook Co Cr of C. P.

On the back of said Indictments appear the following Endorsements to wit,

"Indict for Murder. a True Bill
Geo W Gage"
"Foreman of Grand Jury"
"Witnesses" "Geo P Hansen, Owen McBrien
Mrs Mary P Collum Dr Geo B Page Delaski Miller
" Ephraim Ingalls " Charles Miller, John F Salter,
And J Wright, John Herron, Gilman Palmer, Harriet
E Dixey, John McNamee, Charles L Carpenter, Isaac
G Halleck, Andrew J McNamee Dr H A Johnson"
"Filed Sept. 17. 1858 W Kimball Clk"

And afterwards, to wit; at the January Special Term of said Court, to wit: on the Tenth day of January AD 1859 the following proceedings, among others, were had and Entered of Record therein in said Cause, to wit:

The People of the
State of Illinois
vs
Michael McNamee

Indictment for Murder

And now come the said People by Carlos Haven State Attorney; And the said Defendant as well in his own Proper person as by Allen, Mattocks and Ayres his Counsel also come; And the said Defendant now here move the Court that he be discharged from imprisonment under the Indictment pending against him for reasons stated and set forth in his motion in writing on file herein. And the Court after hearing Arguments of Counsel on said Motion and being fully advised in the premises now order that said Motion be and the same hereby is overruled, to the overruling of which said Motion by the Court the said Defendant by his Counsel now here Excepts. Whereupon the said Defendant is remanded by the Court into the Custody of the Jailor.

And afterwards, to wit; at the same term of said Court last aforesaid, to wit; on the 11th day of the Month and Year last aforesaid the following further proceedings were had and Entered of Record therein in said Cause, to Wit;

The People of the
State of Illinois
vs
Michael McNamee

Indictment for Murder

This day again come the said People &c by Carlos Haven Esqr States Attorney and the said Defendant as well in his own proper person as by Allen, Mattocks and Ayres his Counsel also comes and the said parties being now ready to proceed to trial upon the issues joined herein, and the said Defendant being now furnished with a list of the names of the Jurors and Witnesses, it is ordered that a Jury come. Whereupon come the Jurors of a Jury of good and lawful men, To-wit Willard Meacham, Luke Lakore L Nowlin, Milo Winchell, H O Smith, J H Ely Alfred Danks and J L McCormick who being duly Elected and Sworn, well and truly to try the issues joined aforesaid and a true verdict render according to law and the Evidence, and the remainder of the panel being Exhausted by Challenge it is ordered that the Sheriff Summon from the bystanders Twelve good and lawful men of his county to serve as Tales Jurors. and the said Defendant having been furnished with a list of the names therefor A. A. Rogers. Watson Lee and C H Garbutt were duly selected tried and sworn as Jurors in said Cause well and truly to try the issues joined as aforesaid and a true verdict render according to law and the Evidence" and the panel being now complete and the Jurors having severally answered to their names when called and given in their attendance and having heard a part of the Evidence the same not being closed and the

hour of adjournment having arrived, it is ordered that the Sheriff of Cook County or other officer of this Court duly authorized take Charge of the Jury so Empannelled and Sworn as aforesaid, And Keep them together in Some Convenient place to be by him provided, and return them to the bar of this Court at Nine O'clock to Morrow Morning At Which time said Cause is Now Adjourned. And that the said Defendant be remanded to the Custody of the Jailor

And afterwards to Wit; at the Same term of said Court last aforesaid, to Wit; on the 12th day of the Month and Year last aforesaid the following further proceedings were had and Entered of Record in Said Cause to Wit:

The People of the State of Illinois vs Michael McNamee } Indictment for Murder

This day again Come the said People &c by Carlos Mason States Attorney and the said Defendant as well in his own proper person as by Allen Mattocks and Ayres his Counsel also Comes and the Jury aforesaid having been returned to the bar of this Court by the officer having them in Charge, and having answered to their names, and heard further Evidence the same not being closed it is ordered that they be Kept together in some Convenient place and returned to the bar of this Court at Nine O'clock on to morrow

morning to which time this cause is adjourned and that the said Defendant be remanded to the Custody of Jailor

And afterwards to wit; at the same term of said Court last aforesaid to wit: on the 13th day of the month and year last aforesaid the following further proceedings were had and entered of record therein in said cause to wit;

The People of the State of Illinois vs Michael McNamee } Indictment for Murder

This day again come the said People &c by Carlos Haven Esq States Attorney and the said Defendant as well in his own proper person as by Allen, Mattocks and Ayres his Attorney's also comes and the Jury aforesaid having been returned to the Bar of this Court by the Officer having them in charge and having answered to their names and heard further Evidence the same not being closed, it is ordered that they be kept together in some convenient place and returned to the bar of this Court at nine o'clock to-morrow morning to which time said cause is adjourned And that the said Defendant be remanded to the Custody of the Jailor

And afterwards to wit: at the same time of said Court last aforesaid to wit: on the 14th day of the Month and Year last aforesaid the following further proceedings were had and entered of Records therein in said cause to wit:

The People of the State of Illinois
vs
Michael McNamee

Indictment for Murder

This day again comes the People by Carlos Haven States Attorney and the said Defendant as well in his own proper person as by Allen Mattocks and Ayres his Counsel also comes and the Jury aforesaid having been returned to the Bar of this Court by the Officer having them in Charge and having answered to their Names and having heard all the Evidence the arguments of Counsel as well on the part of the said People as of the said Defendant and instructions from the Court retire to their room in charge of a Sworn officer of the Court to consider of their verdict. And the hour of adjournment having arrived it is ordered that said Jury if they shall agree upon a verdict return the same to the bar of this Court at Nine o'clock to morrow morning to which time said cause is adjourned. And that the said Defendant be remanded to the Custody of the Jailor.

4

And afterwards to Wit: at the same term of said Court last aforesaid to Wit: on the 15th day of the month and year last aforesaid the following further proceedings were had and Entered of record therein in said cause to Wit:

The People of the State of Illinois
vs.
Michael Mc Namee

Indictment For Murder

This day again come the said People &c by Carlos Mason States attorney And the said Defendant as well in his own proper person as by Allen Mattock, And Ayers his Counsel also comes and the said Jury having been returned to the bar of this Court by the Officer having them in Charge And having answered to their names, And they having agreed upon a verdict and say "We the Jury find the Defendant guilty" Whereupon the said Defendant by B F Ayers of Counsel here demanded that the Jury aforesaid be polled and they being now seperately called and Enquired of, Whether the foregoing verdict was and is now their verdict severally answered that it was and is It is therefore ordered that said verdict be Entered and the Jury discharged. Whereupon the said Defendant by his Counsel moved the Court for a new trial of said cause. And in arrest of Judgment. It is therefore ordered that said cause be Continued to the next term of this Court for

hearing upon said Motion. And that the said Defendant be remanded to the custody of the Jailor

And afterwards to Wit: at the February Term of said Court to Wit; on the 23 day of February in the year last aforesaid the following further proceedings were had and Entered of record therein in said Course to wit:

The People of the
State of Illinois
vs
Michael McNamee } Indictment For Murder

This day again come the said People by Carlos Haven Esq State Attorney. And the said Defendant as well in his own proper person as by Allen Mattock and Ayres his attorneys also come and the Court after hearing the Argument of Counsel on the motion of the said Defendant for a New trial and in arrest of Judgment as well in support thereof as in opposition thereto and not being fully advised in the premises take said motion under advisement. Whereupon it is ordered that the said Defendant be remanded into the custody of the Jailor.

And afterwards to Wit: at the same term of said Court to Wit: on the 28th day of the Month and year last aforesaid a certain transcript of Record from the Cook County Court of Common Pleas was filed in this Court which is in the words figures following to wit:

United States of America }
State of Illinois County of Cook } ss

Pleas before the Honorable John M Wilson one of the Judges of the Cook County Court of Common Pleas within and for the County and State aforesaid at a regular term of the Cook County Court of Common Pleas begun and holden at the Court House in the City of Chicago in the County of Cook and State of Illinois on the second Monday being the Thirteenth day of September in the Year of our Lord One Thousand Eight hundred and Eighty Eight and of the Independence of the United States of America the Eighty third.

Present The Honorable John M Wilson Judge
Lucas Haven Prosecuting Attorney
John L Wilson Sheriff
Attest Walter Kimball Clerk

Be it remembered That heretofore to wit on the Thirteenth day of September in the Year of our Lord One Thousand Eight hundred and Eighty Eight said day being one of the days of the September Term of the Cook County Court of Common Pleas the following Among other proceedings were had in said Court and Entered of Record to wit;

This day John L Wilson Sheriff of Cook County returned into Court the Venire for Grand Jurors to serve at the present term of this Court issued by order of the

Board of Supervisors of said County and bearing
teste in the Name of Charles B Farwell Clerk
of the County Court under the seal of said Court
Executed by Summoning the following named
persons To wit.:

Sidney Caswell of South Chicago. Jonathan Marsh of Rich
George W Gage " " " Conrad Kolling " Schaumburg
S. B. Cobb " " " Wm Miller of Bloom
Russell Green " West Chicago Geo Hutchings of Leyden
John P Fass " " " H Woodworth " Hanover
N. Jackson " North Chicago H Kellogg. Lyons
Wm T De Wolf " " " Gideon Pitts Proviso
Erastus Wilcox " South Chicago Wm Casey Bremen
Philetus Jackson " Orland and
John Fusey of Evanston. John Hastings of Lake
John A Wolfram of Lake View H Ham of Niles
B F Gardner of West Chicago Wm S Johnston Jr of North
Chicago not found

And the Grand Jury aforesaid
being Severally called in open Court the said George
W Gage Jonathan Marsh Conrad Kellogg William
Miller Jr George Hutchings H Woodworth Erastus
Wilcox Sidney Caswell S B Cobb Russell Green
John P Fass N Jackson and Wm T De Wolf answered
to their names and thereupon for good cause
shown to the Court it is ordered that the said
S B Cobb and W T De Wolf be excused from
farther attendance as Grand Jurors at the present
term And thereupon it is ordered that

the Sheriff Summon twelve Tales Grand Jurors to Complete the Panel

And thereupon afterwards to wit on the Fourteenth day of September aforesaid the following Among other Proceedings were had in said Court and Entered of Record to wit:

This day the Sheriff in obedience to the order of the Court made and Entered on Yesterday returned into Court the Names of Jas R Maguire H Scott Wm E Richardson Stephen Leary John A Jackson E A Akin J W Cooper Warren Haugh J W Austin Richard Filkins Stephen Lamb and Nicholas Barth who being Severally called answered to their Names, and with the Grand Juror in attendance as aforesaid gave their attendance

And thereupon George W Mayo is appointed Foreman of the Grand Jury by the Court and after having taken the Oath prescribed by the Statute and after receiving the Charge of the Court the Grand Jurors aforesaid retire to Consider their presentments.

And afterwards to wit on the Seventeenth day of September aforesaid said day still being of the September Term of said Court the following among other proceedings were had in said Court and Entered of Record to wit:

This day the Grand Jurors return into Court and present the following Indictments Endorsed as true Bills by their Foreman Geo W Mayo -

Namely

The People of the State of Illinois
44 vs Indictment for Murder
Michael McKamee

And afterwards to wit on the Eighteenth day of September aforesaid being still of the September term of said Court the following among other proceedings were had in said Court and Entered of Record to wit;

The People of the State of Illinois
44 vs Indictment for Murder
Michael McKamee

And now at this day come the said People by Carlos Hamm Prosecuting Attorney and the said defendant in his own proper person also comes and he being without Counsel the Court appoints Messrs Allen & Maltock Counsel for the said defendant

State of Illinois } ss
County of Cook }

I Walter Kimball Clerk of the Cook County Court of Common Pleas within and for said County do hereby Certify that the above and foregoing are full true and correct copies of the proceedings had and Entered of Record in said Court on the 13th, 14th 17th and 18th days of September AD 1858 respectively in the Case of the People of the State of Illinois versus Michael McKamee Indictment for murder.

(22)

In Testimony Whereof I hereunto subscribe my Name and affix the Seal of said Court at Chicago in said County this 28th day of February AD 1859

Walter Kimball Clk

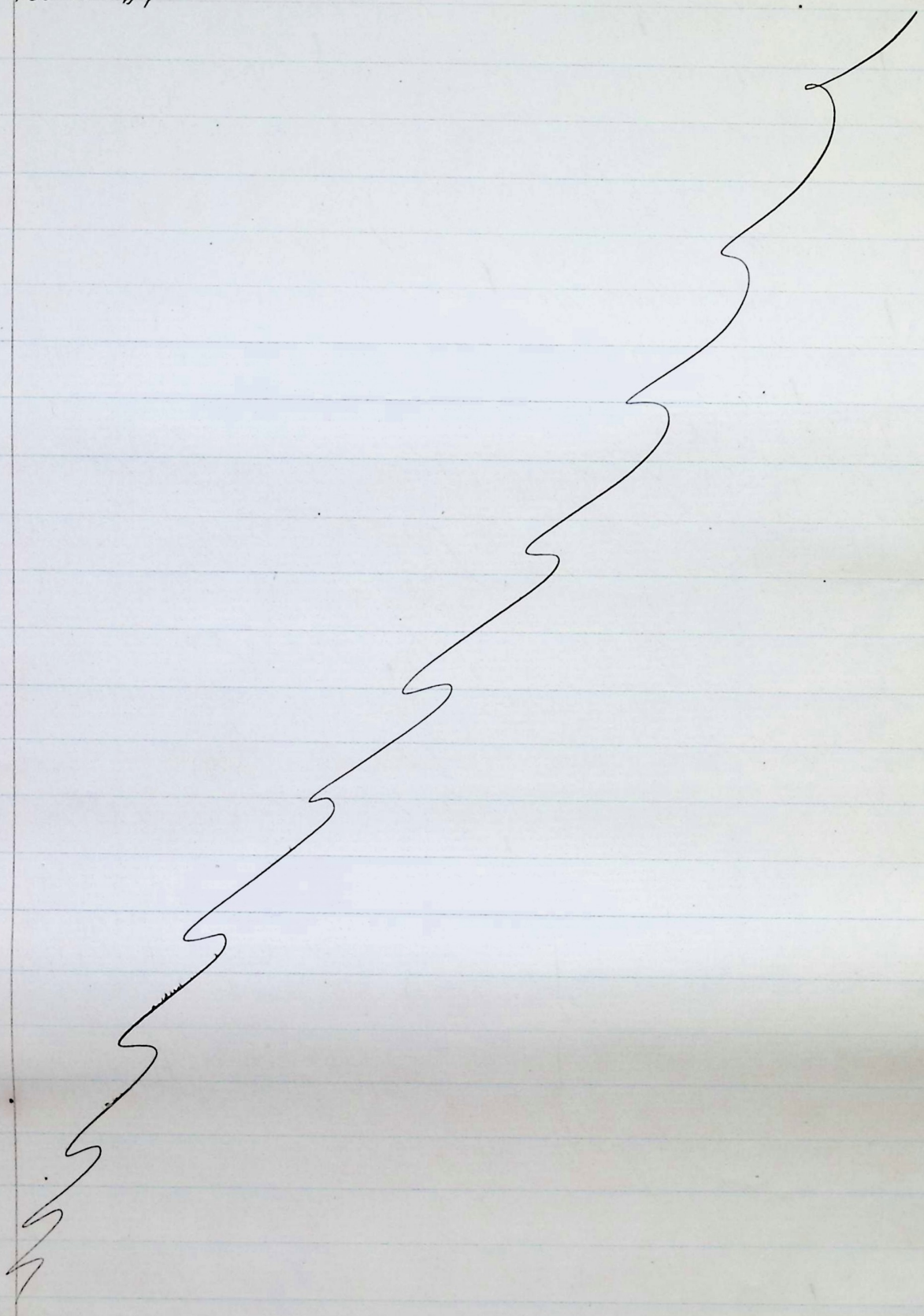
And thereupon, afterwards, to wit: at the same term of said circuit last aforesaid to wit: on the 28th day of February in the year last aforesaid, the following proceedings were had in said Court and entered of record in said Cause, to wit:

The People of the
State of Illinois
vs
Michael McNamee

Indictment for
Murder

This day again come the said People by Carlos Haven Esq. States Attorney And the said Defendant as well in his own proper person as by Allen, Mattocks And Ayers by Counsel also comes and the Court having heid the said Defendant Motions for a New Trial and in arrest of Judgment under advisement, and the same having been carefully considered and the premises being Now fully understood doth order that said Motions be and Each of them are hereby overruled. And to the Ruling of the Court in overruling his said Motion and Each of them the said Defendant by his Counsel Now here excepts, and Now the said Defendant saying Nothing further either in person or by Counsel why the Judgment of this Court should not be pronounced against him. It is therefore ordered and considered by the Court that the said Defendant Michael McNamee be taken from the bar of this court to the Common Jail of Cook County from Whence he came and confined therein in safe and secure Custody, until the Sixth day of May next "1859" And that he be then and there on the 6th day of May between the rising of the sun and the going down thereof hanged by the neck until he is dead and that a warrant issue therefor

And thereupon afterwards, to wit: on the day of in the year last aforesaid the said defendant by his counsel files in the Court aforesaid his certain Bills of exceptions in the words and figures following to wit:



State of Illinois
County of Cook } ss

Circuit Court of the
County of Cook
January Special Term A.D. 1859

The People of the State
of Illinois
vs
Michael McNamee

Indictment for Murder

Be it remembered that at a Special Term
of the Circuit Court held at the Court
House in the City of Chicago in and for
the said County of Cook on the first Monday
in January A.D. 1859, before the Honorable
George Manierre Circuit Judge, a motion
based upon an agreed statement of facts
was made and filed by Michael Mc
Namee, the defendant in the above entitled
cause. — First, That he be set at
liberty and discharged from further impris-
onment under and by virtue of any
process or proceeding in the prosecution
now pending against him in said Court
for the murder of Jane McNamee, and
Second, That he be set at liberty and
discharged from further prosecution on
the charge and indictment now pending
in said Court against him for the murder

of Jane McNamee; — which said Motion and agreed Statement of facts are now on file and constitute a part of the record in said cause And are as follows towit;

The People of the State of Illinois } Cook County Circuit Court
vs } January Special Term A.D. 1859
Michael McNamee }

The Defendant Michael McNamee being present and in open Court now moves the Court as follows towit;

Firstly To set him at liberty and discharge him from further imprisonment under & by virtue of any process or proceeding in the prosecution now pending against him in this Court for the Murder of Jane McNamee.

Secondly To set him at liberty and discharge him from further prosecution on the Charge and Indictment now pending in this Court against him for the Murder of Jane McNamee, Among other reasons apparent on the record why these several motions should be granted the said Defendant Michael McNamee assigns the following, that he was imprisoned in the Common Jail of Cook County

Illinois on the said charge and prose-
cution as early as the 6th day of July
1858 and has been continued in
said imprisonment ever since without
bail being allowed or given him
that an Indictment was found
against him for Murder of the said
Jane M Manus at the September
Term 1858 of the Cook County Court
of Common Pleas and that the said
Cause was put at issue at the said
September Term of said Court, but
at the request of the Defendants Counsel
the same was continued to the November
Term of the Circuit Court of Cook
County 1858, At which said November
Term of this Court 1858 the said Cause
stood for trial, That Each of said
Courts had full power and jurisdiction
to try and determine the said Cause
or prosecution - and that the said
November Term of this Court has finally
adjourned - without giving him the
said Defendant a trial on said charge
or prosecution

Third Because the Second Term of the
Court having and taking Jurisdiction
of the offence for which this defendant
stands charged and indicted has been

held and adjourned without the said Defendant having either delayed or moved to continue the said cause or without the Prosecuting Officer or any other person having moved to have the said Cause continued for the purpose of having Evidence for and on behalf of the People, or for any other Cause, And the said defendant has been and remained in Prison during all the time of holding the said Terms of Court and by virtue of said prosecution and still remains in prison without ever being allowed to have or ever giving bail or having ever been tried on said Cause or prosecution

Mich. McNamee

Jany 8th 1859

The People of the State of Illinois
vs
Michael McNamee

Circuit Court of the County of Cook January Special Term A.D. 1859
Indictment for Murder

A Motion having been made and filed by Michael McNamee the Defendant in the above entitled cause, at this

Term of the Court, to wit, on the tenth day of January A.D. 1889,
1st That he be set at liberty and discharged from further imprisonment under and by virtue of any process or proceeding in the prosecution now pending against him in this Court for the murder of Jane Doe Name
and 2d That he be set at liberty and discharged from further prosecution on the charge and indictment now pending in this Court against him for the murder of Jane Doe Name:

Now, therefore, for the purpose of bringing before the said Court the facts bearing upon the said motion, it is hereby admitted for and in behalf of the People by the Prosecuting Attorney as follows to wit:
1st That the said Michael Doe Name was committed to the Common Jail of said County of Cook, on said Charge of Murder, as early as the Sixth day of July A.D. 1888,
and that he has ever since remained in such imprisonment without bail being allowed or given him

2d That the indictment now pending against the said Michael D. Manus and upon which he is now detained in custody of the Sheriff of the said County of Cook for the murder of Jane D. Manus, was found by the Grand Jury at a regular term of the Cook County Court of Common Pleas begun and holden at the Court House in the City of Chicago in said County on the Second Monday, being the thirteenth day of September A.D. 1858

3d That no trial was had upon the said indictment at said September Term of the Cook County Court of Common Pleas but the trial was deferred upon application of said defendant, ~~the said defendant having been~~ ~~[illegible]~~

4th That at the Eleventh day of October A.D. 1858, being the Second Monday in said month, there was begun and holden at the Court House in the City of Chicago in said County of Cook a regular vacation term of the Circuit Court of said County of Cook which continued until the thirteenth day of November A.D. 1858

which said Vacation term was by law held only for the transaction of Civil business without the intervention of a Jury

5th That on the first day of November A.D 1858, being the first monday of said month, there was begun and holden at the Court House in the City of Chicago in said County of Cook a regular vacation term of the Cook County Court of Common Pleas which continued until the Sixth day of November A.D 1858 which said Vacation Term was by Law held only for the transaction of civil business without the intervention of Jury

6th That on the Eighth day of November A.D 1858 being the Second monday in said month, there was begun and holden at the Court House in the City of Chicago in said County of Cook a Special trial Term of the Cook County Court of Common Pleas for the trial of causes at issue before a Jury, which continued until the thirteenth day of November A.D 1858.

7th That no proceedings were had upon the said indictment at either of the Terms of Court above mentioned subsequent to the said September of said Cook County Court of Common Pleas, at which the said indictment was found by the Grand Jury

8th That on the fifteenth day of November A.D. 1886, being the third Monday in said month, there was begun and holden at the Court House in the City of Chicago in said County of Cook a regular trial term of the Circuit Court of said County of Cook for the trial of causes at issue before a Jury, which continued until the first day of January A.D. 1887

9th That at said regular trial term of the said Circuit Court of the said County of Cook last named, the indictment together with all the papers and proceedings connected with the above entitled cause, was transmitted by the Clerk of said Cook County Court of Common Pleas, in which Court said indictment had up to that time been pending, to the said Circuit Court and the said

Cause was then Entered in said Circuit Court for trial.

10th That no further proceedings were had in said Cause at the said regular term of the said Circuit Court last named, except an order that said Cause should be continued to the present Special Term of said Court for trial; that no application was made by the said defendant or by his Counsel at said regular trial term for a continuance of the said Cause, nor was any application made for a continuance by the prosecuting attorney on the part of the People but the said Cause together with all the Criminal business on the Docket was continued by the Court and the trial thereof deferred until the present Special term of said Circuit Court begun and holden at the Court House in the City of Chicago in said County of Cook and the first Monday of January A.D. 1889 for the Express purpose of disposing of Criminal business without any application on the part of Either the said defendant or of the People and without Consulting the Prisoner or his Counsel; but such

order was known to the Prisoner and his Counsel — but no objection was made to such order, nor was any dissatisfaction therewith expressed by them at the said November Term; — nor did they demand a trial;

It is agreed by the Prosecuting Attorney for and in behalf of the People, and by the County for the said defendant that the foregoing statement shall be taken and considered as a part of the record in this cause, and that the facts therein stated shall be admitted without further proof.

Carlos Hoary
State's Atty

B. F. Ayer. Counsel
for defendant

And the said Circuit Judge did then and there declare and deliver his opinion that the said motion ought not to be allowed, but that the said motion should be overruled, Whereupon the said Counsel for the said Defendant Michael McNamee did then and there on behalf of the said Michael McNamee except to the aforesaid opinion and decision of the said Circuit Judge,

And afterwards to wit, at the term of the said Circuit Court aforesaid the said Cause came on to be tried by a Jury of said County of Cook Empannelled for that purpose, that is to say

The Jury

W. Meacham, Inn-Keeper, Luke Lockore Carpenter, L. Nowlin, Jeweller, W. Winchell Farmer, H. O. Smith, Produce Dealer, J. H. Ely, Merchant Tailor, A. Danks, Builder J. L. McCormick, Manufacturer, A. A. Rogers, Merchant, W. V. Coe, Produce Dealer, J. A. Wood, A. H. Gaubert, Merchant — And upon the Trial of the said Cause the Prosecuting Attorney for and in behalf of the People to maintain and prove the charge preferred in the said indictment produced as a witness Mary P. Cullom who being duly sworn testified as follows

The Testimony

Mrs Mary J Sullivan, Sworn. — Reside on South Clark Street; in July last resided at 168 Michigan Street; moved there in May 1888; never was acquainted with defendant; knew him by sight; saw him nearly every day; was acquainted with his wife; knew her nearly two months; they moved there in May; we got acquainted soon after; spoke with her nearly every day; whenever I saw her; we lived in adjoining premises; have been in the rooms occupied by defendant and family; never was in the dark room, so called; the building was on Michigan Street, fronting north; you entered the hall; the nearest Street West was South Clark Street; defendant and family occupied the third story; there were three in the building; last saw Mrs Mc Namee on Thursday July 12th, at my house; it was ten o clock in the morning; she was in twice in the forenoon within a short interval, she appeared as usual well and in good spirits; first time she came in to borrow flat-irons; the second time to pay me ten cents, My husband was there the first time and she did not like to pay me then; the

interval was ten minutes, she had on a calico basque and black skirt; next saw her about five o'clock dead; she was lying on the bed in the front room on the premises; there were then present her husband and two children; she was lying dead on the bed; I saw her face; it was all black, bruised and swollen; seemed to be bruised or pounded, and black and blue; I bid the defendant good morning as I passed through the second room where he was, he made no answer but bowed; I took the guilt off her face; I then went and spoke to him; I was frightened and said "Good gracious, Mac, she has been murdered, I wonder who has done it. He answered, "I don't know my wife was out last night." don't know if he said what time; "I came up stairs about 9 o'clock and sat by the window until 12; went to bed; awoke up in the morning (time I do not said) about 4 o'clock, and found my wife dead." Said he went and gave the alarm to the watchman of the livery stable; he said the children one of them, the boy, I think, slept on the floor, the girl in the bed; he was then dressing the little girl; I told him to send the children down, and I would give them some breakfast; he said

She had been writing a letter home the day before; Mrs McNamee had on various occasions borrowed ink of me – once on the week before; dont know what became of it; never saw it again; visited Mrs McNamee at 6 PM on the same day she borrowed the flat-irons; the bell was just ringing for six; went to the Kitchen – the first room at the top of the stairs; saw the two children; went to get the flat-Irons; asked the boy where his mother was; asked where were the flat irons; he said he didnt know; (answer of the boy objected to by prisoners Counsel); he said he would bring the flat irons over that Evening; did not see the boy again that night; the irons were not brought over until after she was buried; next saw the flat irons after on Saturday, or one on Friday and one on Saturday, they were sent to my house; at the time I was there the door of the second room was partly shut; did not go in, but looked in the room, into the Kitchen, and looked at the Stove to see if I could see the flat irons; I did not go in, because I knew they were in the habit of quarrelling when he was in liquor; knew he was in liquor that day, and thought she might be ashamed

to see me; She used to try to hide the grapes, and didn't want people to know it; That was all that kept me from going in; again saw the body of Mrs M. Named; it was lying on the Settee; Saw the face; Saw the bed, but there was a quilt over it, I did not see the dress of deceased as she lay in bed; only turned the quilt back to see her face; can identify the dress she had on that morning (Black dress skirt and fragments of Calico shown) Identify the Skirt I think, as the one she wore; think that if a portion of the Calico basque she wore, it was then whole and clean (the fragments shown were torn and bloody) the material was the same, I think; before the Coroners jury I identified the basque; I fully identify it now by the material and the ruffle; never saw Mrs M.C Named's handwriting (don't know how much ink there was; it was black ink) but her a small bottle of ink; used some of it myself; Should think that Letter shown by the District Attorney is the same ink (opinion of the witness objected to as inadmissable); had no Conversation with the boy Andrews in the presence of the defendant; on the

day I saw her dead I had conversation with him in the forenoon; don recall the hour; Mrs McNamee's first name was Jane.

Cross Examined by Mr Wallace K—

Came to Chicago from Pittsburgh a year ago last July; went to Michigan Strub in May; don't tell the first day I saw deceased; think they came in the 8th of May; saw her within the week; saw her first when she spoke to me from the rear roof of her tenement; use often met; She used to borrow my flat-irons; She had one and I two; and we exchanged; Sent her irons on Thursday; went for them to iron a table cloth that evening; She came first at ten o'clock and then ten minutes after; the first time she borrowed the flat-irons; the next time she paid the money 10 cents for half a pint of whiskey she got on Wednesday, the day before; she told me she expected her Cousin there and wanted to treat; I think she said she bought the whiskey to treat treat him; when I went to their room on Friday saw in the room a broken rocking chair and some trunks; this was in the second room; there was a table and stove in the kitchen; had

Seen the broken rocking chair before in the kitchen there were dishes, a piece of bread, a cut or two on the table; the same were there when I went up the day before in the Evening; dont remember where the lounge or settee was; it generally stood in the kitchen; dont know whether Mrs W Crance was in the habit of treating her cousin, she got a pint of whiskey a week before; she got whiskey of me; my husband kept a saloon; She would not go to him but came to me; think she never came but twice; She may have come three times; she used to buy ale there in the Saloon; never bought ale of me; She would come into the entry and rap on the door and the bar Keeper would bring it to her; She never got any other liquor there but ale or whiskey; think I never sold her whiskey but twice; am not certain about a third occasion; pretty soon after She came there she come in with a broken pitcher and got ale; after she began to get whiskey she never got any more ale; Cant say how long it was before she got whiskey after she left off getting Beer; She used first to call at the

Hall door leading into the bar room until She got acquainted with me; then got whiskey of me; when I went in that morning did not notice any bottle or jug. But after She had been carried away I saw a small bottle in the second room; don't remember any two quart jug; often ran up there; never found the doors fastened; was there once in the evening after the gas was lit; I went up the stairway near my house; on the afternoon I went for the flatiron; I found the outer kitchen door open; the door into the second room was slightly open; it was almost shut. I supposed she was in there; I looked in through the door as it was a little ajar to see if I could see her, did not step into the kitchen; did not touch the door; the little girl and boy were in the kitchen; could not see any thing in the dining room; it was about six o'clock in the evening; there was no noise; things had a confused look; the table was in disorder; the children were eating bread; they had not been washed; the girl I had seen about noon was not dressed;

She usually kept the room neat; have seen the children before at all times of the day; cant say the children were any dirtier than usual; saw the little girl out on the rear roof with nothing on but her night gown, at noon that day; have never spoken to Mr McNamee; have seen him on the Street; in our Saloon; never saw him drunk; we SEE almost at our house from 10 to 12, husband came up and said, Mac is eating lunch here to-day, he is drunk; he used to be in there often, also the other stable boys; never knew of my knowledge, that the McNamee's quarrelled, but She told me, I don't know that they quarrelled that day. My husband told me first she was dead; was in bed when he told me; dressed and went up there; he was dressed and sitting in the dining room, the children with him; the boy was talking with him; heard him answer as I went in the door; he was dressing the little girl; No one up stairs but he and the children; no person came up while I was there; staid there only a little while; when I came in I spoke or bowed to him; he did not answer, Mrs McNamee lay on the

bed with a quilt over her face; turned the quilt down and saw her face; was frightened, not expecting to see such a sight; started back and said "Good gracious! Mac, she has been murdered! Who has done it?" He said he did not know; that he went up stairs at nine; that at twelve she had not come home, and he went to bed; that he woke up at 4 o'clock, turned over to wake her and found her dead. I told him to send his children down, and I would give them some breakfast; went and him in the front room sitting on the bed; this was after my testifying at the inquest; went saw Mrs M. Haines on the settee in the middle room; did not notice her dress; only saw her face; this was the time I saw him; she was covered with the sheet; never saw her with a dress on after I saw her at my home; remember her dress that day; she always wore it; it was a calico basque, and a black skirt; identify it by the color and material; have pieces of the material at my home the goods from her rooms were brought down to my house and sold; identify the basque by the material and ruffle; it is made the same; remember it from

knowing how the bague was made;
don't know where the Skirt and bague
have been since I saw them at the inquest
don't remember the hour on Thursday Eve-
ning he said she went out; don't think
Mr. Names ever bought liquor of my
husband by measure; he bought by
the glass.

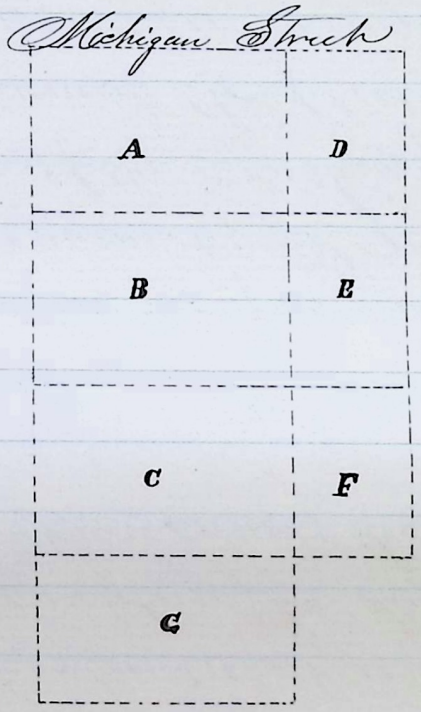
Brock resumed —. The time I saw her on
the Settee was in the forenoon; never saw
the body removed; I gave the Coroner
a description of the clothing she had on
when she borrowed the flat-irons, and
identified them when brought forward;
saw Mrs Mr. Names nearly every day,
sometimes two or three times a day; never
saw her in liquor; took particular notice
of her because she bought ~~liquor~~ whiskey of me,
but could not find that she drank
any of it by her appearance; we often
spoke back and forth from the roof.

Cross Examination Resumed

The rear roof was only two stories high
and level with the Mr. Names's floor;
think she bought the first ale three
weeks after they moved there; we
moved the first of May — they the 5th;
don't think it was three weeks after that
She bought the beer, could not say exactly

how long; A little after that I got acquainted with her; she dropped a table cloth and some clothes into my yard, and so we got acquainted.

The Court then adjourned to 9 A.M. to-day, having previously, at the request of prisoner's Counsel, Mr. Ayer, given an order to Sheriff Gray to conduct the jury to view the premises lately occupied by the McNamara family on North Michigan Street, previous to opening of Court this A.M. the arrangement of which, as it has bearing upon the case, will be indicated to our readers in the following diagram;



A – Front Chamber
B – Dining Room
C – Kitchen
D – Bed Room
E – Dark Chamber
F – Stairway
G – Rear Roof

The body of Mrs W. Manee was found lying upon a bed in the room "A," opening by double doors on the second or middle room, "B." The room "D." was occupied by lodgers. The small dark chamber "E." is often to be mentioned in the course of the trial. It was there that the most abundant traces of blood were found, which however, were present in the other rooms. The Stairway, "F." is the only ascent to the rooms from the street. The roof, "G," opened from the rear of the third floor, and was used by the occupants of the premises as a clothes yard &c. The rooms are in the third story of the brick block on Michigan, near North Clark Street, occupied on the lower floor by Wright & Garnier's Livery Stable, there is another stairway on the other side of the building

And the said Prosecuting Attorney further to maintain and prove, on the part of the people, the charge preferred in the said indictment produced as a witness Charles Miller, who being duly sworn testified as follows;

Second Day ~ Morning Session,

Charles Miller sworn ~ Am a policeman, was on City police in July, 1858; Knew premises occupied by prisoner on Michigan

Street; first went there on 2nd July between 5 and 6 A.M.; Mr Hallock, policeman, was with me; I went there because I heard from Sullivan, Saloon Keeper, next door, that there had been a Murder there; saw defendant there, saw the woman lying in the bed; saw blood on the floor in three rooms; when I first came in, asked prisoner how it happened, he said he did not know; she went out night before at 9 o'clock, and he did not know when she came back that he woke up at 4 o'clock and saw her lying in bed along side of him; didn't have much talk with him; he would not speak much; it was kind of dark in the rooms; he was walking about with the two children; Hallock and I arrested him and took him to the Armory; took notice of blood on his shirt and pantaloons; there was blood on his pantaloons close to his pockets; he had a pair of shoes on, but no socks; I went back to get another shirt and pants for him, and laid the other bloody ones away; they are in the City Marshals Office. Witness described in detail the arrangement of the rooms

found blood stains in the kitchen and the appearance of others having been washed up; in a wash dish near there was Sand and water, Don't know the color of the water; Saw no cloth in it; on the floors the traces of the blood looked more like being smeared on rather than like drops; saw blood in the middle room; not as much as in the kitchen; it was scattered there just as in the kitchen, not in drops; on the door opening East on the little dark room, saw traces of blood, finger marks; behind this door in the middle of the room, I noticed a little blood on the wall, in north East corner of the room in the little room there was a good deal of blood and bloody clothes; looked as if they had been used to wipe the blood up; nothing in the room but the clothes which lay on the floor; brought the clothes away; (clothing shown); Recognize these as the ones found; think the woman had this ~~the~~ (Calico basque) on; this is the pair of pantaloons and the shirt taken from the defendant (Witness showed the stains of blood on these garments to the jury.) Examined the stairway leading to the rooms; found no traces of blood; the

Woman I found lying on the front part of the bed; her head turned to the left side face turned to the wall, and drawn downwards; her face was spotted black; on the right side of her neck there were long black spots; saw the examination of her person there were black spots on her hips

Cross-Examined by Mr Mattocks

Met Mr Cullom on Clark Street bridge, who told me of it; never went to the room before; he was walking about the room; the children were up and walking about; saw the 1st Lieut Sherman standing at the door at the head of the stairs; the woman was lying on the front of the bed, her head turned to the wall; Mr Nomer was standing right in front of her when I asked him, I said "Mac," "how did this happen"? He said, "I dont know, She went out last night about nine o clock and I did not see her again till I woke up this morning and found her lying by my side in bed." He did not tell me what time he went to bed, We did not attempt arrest him, but Kept our eyes ~~upon~~ on him until the Lieutenant came up.

Witness described from the diagram the location and appearance of the blood spots in the room. The Kitchen floor looked as if

Something bloody had been drawn over it. There were no distinct drops of blood in that room – There was no clear fresh blood on the floor – it was kind of rubbed over the floor – it was dry – perfectly dry – Looked as if the blood had been washed up in one place. The wash dish was standing on the floor. In the middle room the blood was scattered in the same way as in the back room – not so much blood as in the back room – The blood was principally between the Kitchen door and the door opening into the front room – In the dark room the blood was thicker than in the other rooms – In the front room there was also blood on the floor and on the bed. There was one place where something bloody seemed to have been dragged over the floor – There were marks of blood from the bed to the door – Did not see in any place any distinct blot of blood – Saw the water in the wash dish – It looked kind of dark – Could not tell whether it was bloody – did not examine it – None of the blood stains I saw looked as if there had been any pool of

blood which flowed out there —
It was all dry and looked like blood
The impression on the door was only
of the ends of the fingers. it was on the
darkroom. Think the mark was blood, could
not tell whether it was the mark of a
man or of a womans hand. no one
could tell — The marks were of about
middling size fingers — pretty near the
size and length of my fingers — I saw
a jug there two or three hours after, while
they were examining the deceased at the
post Mortem. Don't know the size or
what was in it. Never saw Mr Nance
before that day. could not judge of
his appearance much; on the way to the
Armory he asked me to get him a glass
of whiskey; left him in the lock up; about
half an hour came back and asked him
to give me his clothes; he was lying on the
bunk, think he was asleep; he jumped up
and gave them to me; I had gone back
for the clothes; Saw at the rooms a small
pint flask standing on the floor; some
one said there was whiskey in it; I did
not examine it; did not examine the
body on the bed to see what clothing
she had; don't know if any one but
me had been there, took no

particular notice of the clothes in the little dark room; they were in there when I went in there; could not tell if the body was cold; did not put my hand on it; the blood looked dry both on the floor and the clothing; asked the the prisoner how the blood came dragged about the floor; he told me his wife had been drunk the afternoon before, that she could not sit up and he drew her into the corner so she could sit up.

By a Juror — He told me the blood came from his wife who was unwell — that she was having her monthly courses

And the said Prosecuting Attorney — on the part of the People further to maintain and prove the charge preferred in the said indictment, produced as a witness Isaac G Hallock, who being duly sworn testified as follows;

Isaac G Hallock, sworn — Am a police man; was a policeman on July last

(Witness detailed the information as to the Murder and proceedings thereafter substantially, as by the former witness)

Prisoner stood at the head of the stairs as we came up, and said "there is a hard sight here boys" he started to the front room, and we followed him; he went to the front room

And there the woman lay on the bed; he drew down the Coverlid from her face; then he went to the window and spit out. I then asked him how it happened, he said she went out the night before, I think he said at nine o'clock, and he didn't see her again till the next morning at four, when he woke up and found her in bed by his side. I arrested him and took him over to the lock up. On the way to the lock up he asked us if we would go and take a drink with him; he asked us once near Mr. Vickar's on Clark Street, and again on South Wells Street; he was dressed in hickory shirt and black pants when we found him in the room; shoes but no Stockings; blood stains on the prisoners clothing, as my last witness pointed out; on the right leg of the pants was a large blood stain, and from this I my Self picked off a long hair; should say ten inches or longer; there were two or three of them I took off; The rooms looked as if there had been blood on the floor which had been wiped up. In the kitchen there was a Settee and a stove.

The wash basin was out on the roof, with half a gill of bloody water and sand in it. I brought it in, There were spots of blood on the floor. A spot of blood on the door leading from the middle room to the Kitchen. Helped remove the clothing of deceased, The body was lying on the Settee in the middle room, She had been taken there by the Doctors, Coroner and others, She was barefooted, had on chemise Skirt and basque, There were bruises on different parts of her person, on her limbs and privates, The bruises were all over her, There were a pair of Stockings laying in front of the Settee, I picked them up and asked Mr. Munce if they were his, He said they were, Gave them to Coroner. They were wet and saturated with blood as if they had been used to ~~wipe~~ wash up the spots. (The Stockings produced) These are the pair; I recognize them by the tops. The clothes on the body were bloody and torn. The basque was torn considerably. The garments were cut in getting them off.

Cross Examined by Mr Mallock

Don't know if I was first at the room; Miller was with me; we started from

the bridge; Met McNamee at the head of the stairs; the Conversation and movements of the Prisoner repeated as before McNamee was walking back and forth in the two rooms; told him he must come with us; he spoke of the children; told him they would do well enough; cant say how they were dressed; McNamee had on a pair of Shoes; he had no stockings; the Shoes had been worn did not notice they were new. Vicker's is the "X. 10 U 8" Saloon, corner of Clark and Kinzie Streets; on Wells Street he asked again for liquor; I went back to the lock up for prisoner and took him back to the North Side; it was in the middle of the forenoon; Miller was not with me; he was not asleep at the lock up when I was there, at the rooms in the Kitchen there was a pot on the stove with corned beef and potatoes in it; there was bread on the table. The floor looked as if there had been blood on it and wiped up. It was dry. It looked like a stain of blood and water, did not see any spot where it looked as if there had been a pool of blood. The spot on the door was not like finger marks. The floor in the middle room

looked like the Kitchen floor. Most of the stains were between the Kitchen and front room doors. It all looked like blood and water. the Stains were all dry and harde. In the front room Most of the blood was near and in front of the bed, the floor looked as if it had been washed up. In some places the blood looked thicker than in others ~ Saw no Spot of clear blood The blood on the door was perfectly dry and harde. I felt of it. I left no mark on my finger, went into the dark room but not when I first went up ~ In the front room beside the bed there was a small bed tick on the floor; did not see a jug or flask, The blood on the bed was in various places; Most from her private parts; the bed was an ordinary iron post bed stead; dont remember of any blood on the pillows; had seen Wm. Dame before but never spoke to him; had seen him at work about the stable. Could not say what Defendants appearance was that morning ~ dont know whether he was bloated. He looked differently from what he does now, Should think he was sober that morning. He walked quite straight and

talked much Enough on the way to the Armory. I never saw him drunk, never saw him to speak with him before. In the wash basin was half a gill of water – There was sand in the bottom The water was of a bloody color. I carried the basin into the house, saw no marks of blood on the sides of the dish – saw no blood on the back roof nor in the Privy – I went out there and Examined – noticed no indications that slop water had been carried out.

Direct Examination Resumed

I Examined the stairway. There was no blood on the stairs, no indications of blood or of water did not Examine the West Stairway.

To Mr Wallace – Don't recollect as to the weather. I was on my beat that night; wore a woollen coat as usual. There was an access to the rooms by way of the roof and the stairs by the billiard room in the second story; I did not go down that way at all.

To Mr. Hagan – Examined only one Entrance with reference to blood. Could not go down that way – it was fast; Can't say as to this Entrance.

And the said Prosecuting Attorney, on the part of the People, further to maintain and prove the charge preferred in the said indictment, produced as a Witness George P Hanson, who being duly sworn testified as follows;

George P Hanson sworn — Was coroner last year; held an inquest on body of deceased, on Michigan Street; first learned of the case between 7 and 7½ o'clock; got there about half past 7 Went into the front room and found the deceased lying on the bed In the kitchen was a stove with a pot on it with some meat and potatoes in it, a table and some plates on it and a piece of bread & butter. The floor looked as if there had been blood on it which had been washed up. It looked as if plenty of water had been used. I found a pair of old socks wet and bloody — I left them lying there in the middle room. I noticed marks as if something bloody had been dragged across between the doors from the kitchen to the front room. On the door were some marks of blood. In the little dark room were traces of blood, as of persons

bleeding); Cannot say how much. Should Say Nearly a quart; the blood had apparantly been there Some ~~time~~ hours; there was a wash board found in this room (Wash board shown); That is the one; the appearances were as if a person had lain in this room and bled; When the Jury was Empannelled the body was uncovered; She wore a calico basque and Skirt; The body was bloody and bruised all over, black and blue; The face was bruised as if it had been Struck; noticed on one of the hips an abrasion of the Skin, which looked as if it had been struck or dragged against some hard substance; the bed was bloody; when I first came there and saw the appearance of the floor, I looked about for rags, that might have been used to wipe it up.

I Saw the wash basin - very little water in it - less than half a pail I Should think - Could not tell whether it was bloody, (Returned to the Wash basin as did the former Witness) Visited all the outer premises but found no traces of blood;

Went to the Armory; then came back and examined the stairs carefully; found no blood outside of the Kitchen; going from the dark closet into the middle room found a trace of a bloody hand on the door casing; on the wall in the north East corner found a spot of blood on the wall.

Cross Examined by Mr Mattocks

The marks of a bloody hand on the door casing were rather large size Saw Mrs. Mc Manus hand, it was of ordinary size; saw no other hand marks; went there about half past seven; think there was some liquor in a Tumbler; saw a jug about one or one and a half gal. think it was in the kitchen by the table; I smelled of it; there was some whiskey in it; think I saw a little black flask; the blood in the Kitchen had the appearance of having been washed up; only clear blood on the floor in the little dark room; it covered the whole back part of the room; the light was admitted from the little front room; this room had a bed in it. Can't say if it had been occupied that night; Saw the clothing lying scattered on the floor in the little room; did not examine

the bed after she was taken off, could not tell whether the water in the basin was dirty water or bloody; saw no indications of blood outside the rooms — did not examine outside the usual entrance; in the middle room think there was a settee; saw no recently broken furniture,

Adjourned to 2 P.M.

Afternoon Session,

Cross Examination Resumed — First saw McManus at the Armory Lock up about 8 o'clock, he was on a bunk asleep, Had little conversation with him, He appeared like a man who had been intoxicated the night before; like a man who had "been on a bust".

And the Prosecuting Attorney, on the part of the people further to maintain and prove the charge preferred in the said indictment produced as witness Owen McBrien, who being duly sworn testified as follows;

Owen McBrian sworn. — Have lived in Chicago since March 1858 am a painter; Knows defendant were brought up boys together, His wife

was named Jane; She was a cousin of mine; Knew her from her infancy. They lived at New Haven before coming to Chicago; They were married five years. Defendant came to Chicago in May 57; he came before She did; Knew where they lived on Michigan Street in 58. I boarded with them before they moved there, and then, with an interval lived with them on Michigan Street to May 17th. The relations between them were not very pleasant, She would drink and get intoxicated very often and often when he came home there would be no meal ready for him, He would ask why; She would say she could not do that and take care of the Children too. There would be words and perhaps he would offer to strike her. I would interfere and Stop him. Sometimes I would get a loaf of bread at the Store, and we would Eat that. Afternoons She would often be in bed drunk and have no fire.

The following question was then proposed to the Witness by the Prosecuting Attorney;

Question. Did you See on any occasion previous to the death of the deceased

any violence offered to her by the defendant?

But to this question the Counsel for the defendant did then and there object, because the same was irrelevent and incompetant, But the said Circuit Judge did then and there decide that the said objection ought not to be allowed, but that the said question ought to be admitted and the answer of the witness thereto received in Evidence, To which decision of the said Circuit Judge the said Counsel for the said Defendant did then and there except,

To the foregoing question the said Witness then answered as follows)

Answer — Saw defendant come home one morning and no breakfast ready for him; his wife was in the middle room, I was in the Kitchen; heard me where I and was; I told him she was in the other room; heard words pass and some quarrelling; went into the room; he had his hands on her throat; asked him "Mac, what are you doing?" She went out and he followed her, and in the kitchen seized her again I interposed; he made me no answer

Except to say "what will I do?"
I then asked her why she would drink
told her there would be no quarrelling
between them if she would not drink;
advised her to quit; she said she would
never quit drinking for him;" after
some words, asked her "to stop from drink
for me;" She said she would; this was
in May; never knew her to drink or
saw liquor in the house after; this was
about a week before I left.
(The Witness then proceeded as follows;)
Saw her last alive on Sunday before
her death; I was then living on Peoria
Street keeping house; she seemed well
She was not at my house the night
before her death; had some talk with defendants on morning of her death I was there; Mac
was brought in by an Officer; I said
to him "this is a wonderful thing;" said
he "Was she not at your house last night?"
I said "she did not know where I lived"
he said "I met her on the stairs at 9 o'clock
last night going down, She said she
was going to see her Cousin;" I told him
"no She could not do so, she did not
know where I lived;" Know handwriting
of deceased (a letter shown); that is her
handwriting.

Cross Examined by Mr Mallock
Knew the parties from a child; when de-
fendant was not in liquor his character
was mild. I Saw Mc Name attempt to
Strike his wife only once.
The altercation took place in the forenoon
I Slept in the Kitchen on the Settee; I
had not gone out; Mc Name came up
for his breakfast; don't remember that
anything had been done about it;
She had the appearance of being in-
toxicated; did not See her drink;
never Saw him lay hands on her before
never knew of their quarelling Except
when she had been drinking; don't
know ~~but~~ what passed in the middle
room; as they came out don't know
what she said; when She was drunk
she generally lay abed; when She had
been drinking She would tantalise
him; She promised me more than
once that She would Stop drinking
it was after the time the quarel occurred
She promised me before. I Knew of
his bringing in liquor to the house;
I warned him not to bring it in;
he said he would not; was there on Sun-
day before the murder; She had not
been drinking; She asked me when

I would come back again, I told her I wished she would come and see me the Fourth of July; My family came into the City on May 14th; Mrs M Hamee had never called on me because she said she wouldn't for her clothes; she knew where we lived; My family had been there to see the M. Hamees, used to go Sundays, I had no appointment to visit her again that week that she died, I was not in the habit of drinking with her when I went there, I never did it, I told Mrs M. Hamee the Street where we lived she had no other relations in the City besides our family, My folks never went there when I did not go with them He would draw money from the office and give to her for necessaries; She saw to providing for the family; She leased the little bed room to lodgers, when I boarded there I paid my board to her, she was cross to him when she was drunk, and some times I would see him rise to go forward to strike her Knew them to get out of the necessaries of life; have known them to quarrell because they were out of provisions,

I would come back again, I told her I wished she would come and see me the Fourth of July; My family came into the City on May 14th; Mrs M Hamee had never called on me because she said she wouldn't for her clothes; she knew where we lived; My family had been there to see the M. Hamees, used to go Sundays, I had no appointment to visit her again that week that she died, I was not in the habit of drinking with her when I went there, I never did it, I told Mrs M. Hamee the Street where we lived she had no other relations in the City besides our family, My folks never went there when I did not go with them He would draw money from the office and give to her for necessaries; She saw to providing for the family; She leased the little bed room to lodgers, when I boarded there I paid my board to her, she was cross to him when she was drunk, and some times I would see him rise to go forward to strike her Knew them to get out of the necessaries of life; have known them to quarrell because they were out of provisions,

he always gave her money when he had it, have known him to borrow it for her; there were times when there were not provisions in the house for meals

Direct Examination Resumed
By Mr M. Terry. — The time I speak of occurred in May; never saw after that indications of drink; never saw her drink; judged of her drinking from her appearance and what she said; never knew her to buy liquor She told me after that, that they were getting along well since she had quit drinking. The last Sunday I was there I asked Jane how she got along since she quit drink — She said "first rate, Mac is real good now" — And the said Prosecuting Attorney for and on the part of the People, further to maintain and prove the charges preferred in the said indictment, produced as a witness William Hunt who being duly sworn testified as follows:

Wm C Hunt Sworn — I am a Physician was called to see the body of Mrs M. Nance, The Coroner and Doctors Paige, Angle & Bowden

& one or two others were present.
I arrived at the rooms about 9 o'clock
The body was lying on a Settee
or lounge, I went into all the rooms
The first was the Kitchen - Saw a
stove, table and wash basin with some
water in it & a cloth - did not take
particular notice of the floor. In the
middle room there were some bloody
spots - Also some in the front room
In the small room I saw blood on
the floor and wall - saw a wash board
in that room - I Examined the body
It was bruised in several places about
the arms, sides & hips. Her privates
were swollen as large as my two hands
There were marks on her head, and neck
Saw the scalp taken off. Coagulated
blood was suffused all over the sur
face. It was a complete jelly on
nearly the entire surface of the
head - noticed no cuts on the
head - Did not see the brain
Examined, noticed no particular wound
on the hip. They were taking the Skull
off when I left. There were marks
of bruises all over the body. These
bruises were produced by some vio
lence. They could not all have been

done at one time. It was Evident that there had been repeated blows All the injuries I saw might have been inflicted with the hands and feet I should think death was produced by those injuries on the head. The injuries on the body would not necessarily produce death. They may have contributed to it.

Cross Examination

I think the injuries on the body would not alone produce death. I did not Examine the privates very closely Think it would make no difference as to the effects of these injuries whether the woman was intoxicated or not Intoxication might accelerate death, Think the difference would be slight There were several large spots of blood on the floor of the Small room — should think it would take nearly a pint of blood to make the Stains I saw. There might have been as much more in the room where the post mortem was had. I saw no cut on the head — saw no deep wounds on the body — none that bled, It is more than I could do to tell where all the blood came from that

Saw

Direct Examination Resumed

I think death might have been caused by the injuries I saw if there had been effusion of blood. The injuries were sufficient to cause death to any well person.

Cross Examination Resumed

The Skull was not fractured, I saw no laceration of the Scalp. The blows might not either one of them alone have been sufficient to cause death — none were fatal ones that I saw — Should have called the case a hopeless one. She might have died from concussion of the brain

And the said Prosecuting Attorney, for and in the part of the people further to maintain and prove the charge alleged in the said indictment produced as a witness Pelaski Miller, who being duly sworn testified as follows;

Mr Pelaski Miller, sworn —

Have lived here six years; am a practicing Physician; was called to see deceased between 9 and 10 A.M.; first saw the body lying on the back in a bed in the front room with quilt and two or three garments; found bruises

over nearly the entire ~~Surface~~ surface of the body; most & every on the neck, chest and head, one incised wound on the left side of forehead— half inch long to the Skull; the Scalp was very much bruised and blood effused to cover entire top of the head; no fracture of the Scull; on removing Scull found much serum in membranes of brain; more blood than natural in structures of brain; vessels larger than natural; chest; lungs healthy, small concretion of fibrin on outside of heart, not recent; abdomen; liver healthy; peritoneum contained bloody serum; intestines in spots black, like bruises on exterior; uterus not healthy, but rather larger than natural Marks of extensive bruises on vulva; bruises very numerous externally, but generally not severe; several on head and chest; on hip an abrasion of cuticle in longitudinal lines as if made by dragging the body on the floor; in my opinion death resulted from repeated blows on the head; the other bruises might contribute, but the first named were of themselves quite sufficient as to the instrument used I thought

the bruses on the head were produced by some blunt instrument, except the incised wound on the forehead; and the other bruses were produced by blows with fists, or Kicks; they were circumscribed and not of any extent, I attributed the bloody serum of the pentonenum to the severe External injuries; I saw the stains of blood in the rooms; gave no particular attention to the blood spots; saw blood spots on the walls; never had seen deceased before; she had on two or three articles of clothing; see took off a calico basque black skirt and chemise (clothing produced) That is the basque I think and the others; they were then discolored as now Saw the woman between 9 and 10 A.M. Think my opinion was she had been dead from five to ten hours; the blood on the floor was dry except in the bed, the blood was still oozing from one part when I saw her; the death did not take place at the time of her periods The blood did not come from the arteries.

Cross Examined

There was from external appearances of the body at once a question whether

an abortion had not taken place;
we found it had not; the blood
about the organs was not from these
organs; the bed was saturated with
blood and stained with bloody semm
some of which escaped after death;
we decided there was no ~~efo~~ abortion
The blows on the body would not
alone cause death; the most severe
wound was on the genital organs;
the black spots on the intestines arose
from external injuries; the wound
on the forehead must have bled much
there were other small wounds on the
scalp where the blood oozed; the
wounds on the forehead half an inch
in length, penetrating to the skull;
no broken skin on the body elsewhere
than on the head; think no large
vessel was divided on the forehead;
it could not have been produced with
this (the wash-board shown); the bruises
elsewhere we thought might have been
given with this; cant say how much
the wounds on the head bled; think
the blows on the head would have been
more likely to cause death in an intox-
icated than in a sober person; in a
person dying of intoxication the brain

would be effused with serum and blood vessels enlarged; have examined the brain of persons who had died of intemperance; in this case we found serum and enlarged blood vessels in the brain; I cannot say that anyone of the blows on the head could produce death; they could not all of them have been given with the hands; the incised wounds could not have been; could not say how many blows there were; the soft parts were broken down and the bruises ran one into another, leaving no lines of demarcation; think she may have been dead from five or six to ten or twelve hours, not more than the latter; saw her on the bed before she was moved; if she died in the bed she had been placed there a short time before she died; her position was natural and her clothes well arranged; there was no effusion of blood on the pillow; she may have died soon after the blows; may not have lived over an hour or two; made no critical examination of anything else than the body and its immediate surroundings; blood commences to coagulate almost immediately; the appearance of the blood gave no criterion as to time

which had elapsed after death
To Mr Haven — The external injuries of the head would account for the appearance of the brain; these continuous bruses on the head would produce insensibility almost immediately she could not have been thus injured in the street, and then have come up stairs and placed herself in bed; my own opinion was that the woman was placed in bed after death; the wounds on the head must have bled; there were no marks of bleeding in the bed from those wounds; the scalp wounds and bruises must have caused unconsciousness the clothing about the person was regularly arrayed throughout; the quilt covered the body, don't remember as to the hands; the head was nearly straight with the body.
To Mr Mattocks — after these blows were given it is impossible to say positively how long she would live; she would most likely have died within three or four hours; I don't think she lived over one or two
And the said Prosecuting Attorney for and on the part of the People further to maintain and prove the charge

would be effused with serum and blood vessels Enlarged; have examined the brain of persons who had died of intemperance; in this case we found serum and enlarged blood vessels in the brain; I cannot say that anyone of the blows on the head could produce death; they could not all of them have been given with the hands; the incised wounds could not have been; could not say how many blows there were; the soft parts were broken down and the bruises ran one into another, leaving no lines of demarcation; think she may have been dead from five or six to ten or twelve hours, not more than the latter; saw her on the bed before she was moved; if she died in the bed she had been placed there a short time before she died; her position was natural and her clothes well arranged; there was no effusion of blood on the pillow; she may have died soon after the blows; may not have lived over an hour or two; made no critical examination of anything else than the body and its immediate surroundings; blood commences to coagulate almost immediately; the appearance of the blood gave no criterion as to time

Six to ten hours; it was my opinion she died in bed, at least she must have been placed there before rigidity took place, as there was a natural rest in her position she could not otherwise have assumed.

Cross Examined by Mr Wallace Should not think she could live more than three or four hours after such injuries; I noticed only one incised wound on the temple; there had been no bruises on the forehead; we could have counted the blows had there been any lines of demarcation, Could not tell that the head was swollen as the injuries were beneath the hair, We did not notice the amount of swelling, Could not say which blow caused death, The results of the injury were so blended that we could not count the blows; think she would have died from the wounds of the head; there were no distinct influences; the injuries on the head and on the body would act together; the latter alone would not cause death; Could not tell which were given first; Saw no extraordinary appearance about the bed; gave no attention to blood spots in the room

think the injuries on the head were inflicted with a stick with a sharp Corner; think the toe of a boot might do it; the hand could not in my opinion; the cut on the forehead could not have been given by a fall against a corner; it was a clean short cut, the edges retracting; it was not a serious wound; the abrasion on the hip might have been caused by a sliding fall,

Direct resumed to Mr M. Alroy

There was a good many bodily injuries they would produce a Shock to the nervous system and exercise a depressing influence, enhancing the effect of the injuries to the head (The wash bowl shown) Do not think the incised wound on the head was caused by that; it might have inflicted the bruises,

And the said Prosecuting Attorney, for and on the part of the People, further to maintain and prove the charge preferred in the said indictment, produced as a witness Gilman Palmer who being duly sworn testified as follows:

Gilman Palmer, sworn — I work for Wright & Currier — was in their

Employ last July as night watch-
man, Knew the defendant - his fam
ily lived up over the stable in the
third story - I have seen his wife
I slept up stairs in an adjoining apart
ment to those occupied by Mr. Kanes
There is a lath & plaster partition
between my room & theirs - Did not
see defendant the night of the homicide
I heard him in the stable talking with
the boys, I went on duty at seven
o clock in the Evening, Saw defendant
the next morning between four and five
I had gone out from the stable to get
some water, Mr Kanes came up to-
wards me and said "Palmer, Palmer,
Palmer, my wife is dead" - I asked
him what ailed his wife - he told me
he was going up stairs last night about
9 o clock and met her going down, and
she told him she was going over to
see her cousin and that he saw no
more of her till he woke up that morn-
ing and found her in bed dead by
his side, I went up stairs with
him - his wife was lying on the bed
her face was all bruised up, It
was black & blue - Did not notice
the floor - I was in a hurry and

went immediately down, Mr Nance was dressed as usual - did not notice his dress - He pointed to his children at the foot of the bed - Think I saw them there I went down stairs and told Connell & Brown.
I left my room the three o clock in the afternoon of the first of July and did not go back to it that Evening

Cross Examination

I went up to bed at Nine o clock on the Morning of the first of July I slept in the front room of the other tenement, the room adjoining Mr Nance's front room - The doors were open in my part clear through, I slept there from Nine o clock in the forenoon to three o clock in the afternoon. Think I could hear in my room ordinary conversation going on in Mr Nance's room, I wake very Easily - Heard no noise or loud talk that day in Mr Nances apartments And sure it was no later than 3 o clock when I got up that day. If there had been much noise in Mr Nance's rooms I could have heard it, Mr Nance's folks sometimes went down

into the carriage house below to get water and some times they went to the sink in the Kitchen of the tenement where I slept, think I heard defendants voice among the boys at work about 6 o'clock that evening

I saw a jug of whiskey in Mr D Name's rooms, don't know how much was in it, I smelt of it, It was a two quart jug - never knew or heard of any trouble between defendant & his wife, He was always a quiet and peaceable man around the stable was not quarrelsome

I had been sleeping in this room about ten days at the time of this occurrence never heard any trouble between Mr & Mrs Name & his wife, There was a billiard room below the story where I slept - when I went down stairs that afternoon I went into the Billiard room, think both the East and West doors of the room were open, I never found the doors of Mr Name's rooms fastened - used to see him every morning -

And the said Prosecuting Attorney for and on the part of the People, further to maintain and prove the charge

preferred in said indictment, produced as a witness John D Salter, who being duly sworn testified as follows;

John D Salter, Sworn

Am Book Keeper for Wright & Currier, Know defendant. He came to work for us about the Middle of September 1887 - Never saw his wife so far as I know, he did not work with us during the Winter of 1887-8, He came back in the Spring. They took the rooms over the Stable in the Spring of 1888, Saw defendant the day before his wife was found dead. He was at work in the forenoon, I called him about 2 o'clock in the afternoon. Found him on the bed in the front room of his house asleep. Saw his two Children there, Saw no one else. Took no notice of the rooms He came down and went to his work He was about the Stable when I came back from tea between Six and Seven - he was attending to his work, Don't Know whether he was there later than that or not, Saw him the next morning in his front room sitting on a trunk directly opposite the bed where his wife lay, Saw the

body of his wife. It was bruised all over – I said nothing to McNamee Did not see his children there – I just stepped inside the room and then went back – There were spots on the floor – It looked as if the spots had been washed up. The floor in the middle room was moist.

Cross Examination

Two or three Policemen were in the room when I was there, Should be likely to see McNamee in the Stable when he was at work, Could not say when I last saw him the day before, He was not around soon after one o clock in the afternoon He was drunk that day – never saw him so much intoxicated before I saw no jug in his room, Went up to call him about five in the afternoon, I had never been up there before while he had lived there The doors were all open, don't know whether the door leading into the dark closet was open or not, I went into the front room and shook him & ~~walked~~ waked him up. He woke up as a drunken man and staggered when he got up, He came down

in two or three minutes after I went down, I saw the children playing up stairs, They came to the head of the stairs when I went up.
Always before this time I had called him when I wanted him from the foot of the stairs — I called him this time from the foot of the stairs,
The children came out but he did not answer — I then went up; I noticed nothing strange, Took no particular notice of the rooms, If there had been much blood on the floors I should have noticed it; when I first woke him up he staggered, but when he came down he went to work and a stranger would not have noticed that he was drunk, His character was quiet and peaceable, when sober,
He was a good hardworking fellow, Never saw him have any quarrel
He had been there at work off and on since September 1857 —
The Billiard room was in operation that day, They used to keep it open until from 10 to 12 o clock at night
One of our drivers and a stable hand slept in McNamee's front bed

room - the corner bed room up stairs
They had no regular hours -

Direct Examination Resumed.

On the morning of the 4th of July he was not so much intoxicated as to be unable to work, He had too much liquor on,

And the said Prosecuting Attorney for and on the part of the People, further to maintain and prove the charge preferred in the said indictment produced as a witness Andrew J Wright who being duly sworn testified as follows:

Andrew J Wright Sworn - Am of the firm of Wright & Cumier; Keep a Livery Stable on Michigan Street; Knew defendant; he was in my Employ; he occupied the Basement in my building, five rooms from May previous; recollect when his wife was found dead in her room on the 2d of July; saw him the day previous, at his work; saw him hitching up a pair of horses at 2 P.M. and at 7 and 9 in the Evening; the last time he was going up to his room; Saw him about 5 o'clock the next morning, at the room

The rooms were in Confusion; noticed the floor but not very particularly; in the kitchen and dining room were traces of blood apparantly wiped up; he was sitting with one of his Children in his lap, dressing it, I think; in the front room saw the wife dead in the bed; noticed blood on the bed; saw none of the floor in this room recollect no conversation with prisoner; saw blood in the dark close did not see the body at the post mortem examination; the west tenement in the building has five rooms three immediately adjoining those of the East; there was a door between the rooms, but nailed up; access between the rooms was around on the roof in the West rooms Palmer, the night watchman lodged; our foreman had a room there, but he was then not in town; the little front room of the McNamee's was occupied by lodgers — Farley and another; they were drivers; of my own knowledge don't know if the room was occupied that night. Billiard room below

doors leading into the stairways

Cross Examination.

First became acquainted with McNamee in September 1857 He worked for us until about the first of December. He came back again about the first of March. He took the rooms over the Stable about the first of May Never saw anything about him but what was orderly; think he was not of a quarrelsome disposition Saw him on the day previous Early in the morning; Saw him late in the forenoon; did not notice him particularly until after dinner time; then saw that he was the worse for liquor; Some one of us dont say who, told him, about 2,0' clock, he had better go to bed, he was too drunk to attend to his business; he went to bed, or at least left the stable to do so; Saw him about 9 in the Evening; was in the Billiard room near the west door he was going up stairs; as he looked into the room, his eyes looked like those of a drunken man, did not see him after that, nor until

never saw him so drunk, or so that he could not attend to his business before that day; I considered him so intoxicated that day as not to be able to attend to his business; I was in the Billiard Room in the Evening; the door from the billiard room opening into the stairway leading up to Mr Nance's rooms was open I saw him when he went upstairs Don't remember how long I remained in the room after Mr Nance went up stairs, heard no noise while I was there; Several persons were there Mr Cumin, Mr George; cannot say who else; the partitions between the two tenements are lath and plaster of the usual thickness — doors of the usual thickness; should think ordinary conversation could be heard in the ordinary tone of voice between the East and West rooms; have tested it and find it so; there were two doors connecting the front and the rear rooms; Pinks described the location of the two suits of rooms, the East stairway leads to Mac's room; at the time I was there in the morning saw a Jug of Whiskey

think a two quart Jug; saw no little flasks; the Jug was either in the kitchen or middle room; didn't take up the jug; there was some whiskey in it; have never spoken to Mrs McNamee; don't know where he got his liquor that day; the bed in the drivers room was troubled; they had no regular time for going up; went up at all hours; one of these men is still in my employ; the other has gone; can't say where he is; it is rumored he is dead; he left my Employ in August or September Know nothing of the relations existing between Mr McNamee and his wife.

And the said Prosecuting Attorney for and on the part of the People further to maintain and prove the charge preferred in the said indictment produced as a witness John Heenan, who being duly sworn testified as follows:

John Heenan, sworn.

Work for Wright and Comer; know Mr McNamee saw him on the first of July; saw him at five o'clock when Mr Sadler called him; testified before the Coroners

Jury; he asked me if I had my horses bedded down; said I had; went into his own stable; did not see him again until next day.

Cross Examined, — I have known defendant between three and four years; knew his wife; we used to see them; we visited them together twice, and they came to my house visiting perhaps four or five times, we lived in an Alley off Lasalle Street; helped Mac to move; they lived peaceable and quiet together, for all I could see; he was quiet and peaceable when sober; don't know if Mrs McNamee was in the habit of drinking; never saw her in liquor; saw Mac, first on the day before about 9 A.M. we had two drinks together that morning; don't know that he was drunk; had no trouble with him then, nor ever before saw him again at 3 o'clock; don't recollect if I saw him after.

The witness Owen McBrien was here recalled by the Prosecuting Attorney and testified as follows:

Owen McBrien, recalled, The rooms occupied by McNamee were over

Wright & Carrier's stable in Chicago in the County of Cook,

The foregoing being all the evidence which the Prosecuting Attorney proposed to lay before the jury, the said Prosecuting Attorney here rested the case on the part of the People.

Defence.

The Counsel for the said Defendant then proceeded to call and examine the witnesses for and on the part of the said defendant.

The first witness proposed was Thomas Mackin who being duly sworn testified as follows;

The Defence.

Thos. Mackin, Sworn, — Reside 108 Michigan Street; Keep a boarding house and Saloon next building West to Wright & Carrier's stable; Knew prisoner Have known him since he came to work there, He used to get liquor of me; saw McNamee on the day before his wife's death, in my own house; could not say how many times; he was in six or seven times that day; first saw him in the forenoon; could not say

What hour; think it was between nine and ten; his general errand was to get something to drink; he was not sober in the morning; should say when he first came in he was not sober; saw him in the afternoon pretty far advanced; in the evening, think it was about 5 o clock he was under the influence of liquor; had a bar tender; was not in the saloon all day of my knowledge saw him drink three times that day, once in the morning and twice in the afternoon; thought he looked unusually strange all through that day; that there was something peculiar about the man that day; he had a raised look; have seen him in liquor before but he did not look quite so wrathy Knew his general reputation for quietness and peaceableness; it was good

Cross Examined.

Have known defendant since he came to work for Wright & Currier, he was more in the habit of coming to see me than I him, he used to come to see me prilly often. he was considered a good man to work

and as being quiet and peaceable,
The hands in the Stable spoke of him
in that way; he attended to his work
and was always willing to do an
extra job when called upon, he
was a quiet man; there were one
or two others with him when I saw
him in my place that morning.
Cross Exor - He did not stagger on
the day I speak of but there was
something strange in his expression.
The next witness produced by the
Counsel for the defendant was John
Sullivan, who being duly sworn
testified as follows!
John Sullivan, Sworn - Know defend
ant, also knew his wife, Have been
acquainted with Mc Namee nearly
two years - boarded with them
a year ago last spring, a couple of
months on Illinois Street - last
March I went there again to board
& remained until the latter part of
April, over a month - I have worked
with Mc Namee - his character was
always good as a quiet and decent
man - Saw him on the first of July
last in the Stable - did not speak
to him. He was between 12 and one

o clock – he was harnessing a horse, McNamee lived on good terms with his wife except when she would get intoxicated, She would get drunk and not have his meals ready when he came home and at such times she would aggravate him, I have gone home with him to his meals and she would not have them ready nor any fire built, He would go to work and build a fire and she would sit on the bed and aggravate him, Mrs McNamee was in the habit of getting drunk and would neglect the house & children, when he came in she would raise at him – Never saw McNamee commence any difficulty except when they had been drinking, I left them on account of her getting drunk and not having the meals ready,

Cross Examination.

The condition of things I have described existed in March & April, Had not noticed it before that, it began about the first of April & lasted through the month – I boarded with them because he owed me, I stayed there

awhile to board it and he had been out of Employment during the winter and owed him fifteen or twenty dollars – he could get no work – never saw her drink, but have seen her stagger – Mc Brien boarded there with me, Some of the time Mc Manus had to do the cooking but she did it often, he always provided plenty to Eat, he used to go to work at five in the morning & he came back to breakfast about Eight

Direct Examination resumed

After I left, towards the first of May I went to their house and found some liquor in a dinner pail – I spilt some of the whiskey on my hand I asked who owned the whiskey – she said "Old Aunty" got a pint and drank it all but that – neither Mc Manus or myself ever brought liquor there

The next witness produced on the part of the defendant was Simon George who being duly sworn testified as follows

Simon George sworn – In July 1858, lived on Illinois Street; Kept a Billiard room over Wright & Carriers Stable; the rooms of Mc Manus were over the East End of the

there were two entrances to the rooms Billiard room; he used the East I used the West to my room; there was a door out of my room ~~to~~ at the East end; was not in the habit of using the door; it was open on the day before Mrs W. Hanes was found dead This door opened into the East passage way at the head of the first flight of stairs about five feet from the foot of the stairs that led up to the defendants' rooms — I opened that door about 11 o'clock in the forenoon and kept it open till about 11 o'clock at night between Eleven & twelve; Mr Wright & I were playing on the East billiard table near the East door of the room that afternoon, I went to tea about 6. o clock — was not gone over half an hour — was in the Billiard room all the afternoon and Evening, Saw W. Hanes's boy that afternoon at the door in the East passage way Saw the little girl too on the stairs between three & four o clock in the afternoon — She were playing there together, The boy appeared as usual I heard no noise overhead during the afternoon or Evening, None whatever

Saw Mc Vane about five o clock going into the Stable. He was not in the Billiard room that day. Never saw him in my room. Do a Juror. I did not see Mrs Mc Vane that day or evening.

Cross Examination

Mr Wright and I played billiards till about five o'clock that afternoon.

The next witness produced on the part of the defendant was Johnston Rollston who being duly sworn testified as follows:

Johnston Rollston - Sworn

Reside nine Miles out in the Country - work at haying and deal in it, used to team hay to Wright & Currie's Stable - Knew Mc Vane - Have known him since last spring - got acquainted with him when delivering hay at the Stable - Saw him at the Stable on the afternoon of the first of July last pretty late in the afternoon, took him into Mackins Saloon and treated him, as I always did when I went there - He drank brandy. He afterwards placed me to go back and treat him again - only a few minutes

after the first drink – I told him I thought he had a plenty. he was drunk at the same time, I went & treated him a second time – he drank brandy again – We then went out and after a little he came at me again and I had to go along with him again He drank brandy – After that I drank with him again – we drank four times altogether – he drank brandy Each time, We drank four times inside of half an hour – he was drunk – Could scarcely travel – I never saw him so before, always saw him sober and nice before that – He was a little wild like – had too much liquor he asked me the three last times to treat him, The first time I asked him to drink, I left him in the barn and went home, He was drunk when I first got there

Crop Examined

Brought in no hay that day; went in to see if they wanted any; saw "the boys" there; think it was after 5 o'clock in the afternoon; drove home after this; got home, nine miles distance at a little after dark; first

heard of Mrs McNamee's death when I came in next time, a feews days after; got the drinks all at the same Saloon; we drank four times; I was not drunk; McNamee was pretty near drunk when I first saw him; one could tell by looking at him; my team was standing on the alley; took me about an hour and a half to get home, left home before dinner; stopped and got the horses shod on Blue Island Avenue, and at different places; know I got to the stable after 5 o clock, and left before 6; Mac. was nearly drunk when I first saw him.

The next witness produced on the part of the said defendant was Ebenezer E Putnam, who being duly sworn testified as follows:

E E Putnam, Sworn — Am employed at Knight & Currie's; have been with them about four years as a carriage driver; knew Mr McNamee and his wife lodged in the little front chamber, fronting on Michigan Street; had to go through their kitchen, dining room and the dark closet to get into my room; used to go up the East flight. William Bailey roomed with me

We had occupied the room a month hired it of McNamee; we had no regular hours for retiring, were sometimes obliged to be out all night the doors were not fastened at night; could go up or down at any hour; went up to bed that night a little after twelve; William was there; he went up he said about 11; heard or saw nothing unusual that night, William was asleep when I went in; heard nothing during the night; waked up about 4 o clock, one of the ostlers came and called me; have known prisoner from time he first came there; his character was of a peaceable and quiet disposition never saw him so drunk that he could not attend to his ~~business~~ work; was not at the stable from half past 1 to a little after 5 o clock; was gone to take out a carriage.

Cross Examined —

Reccollect seeing Prisoner about the stable in the morning; he hitched up the carriage for me about half past one; we came back about 5; don't reccollect of seeing him again until about half past six when he hitched

up the same team again; dont Know who put them out the first time I came home; noticed nothing unusual in his appearance when he hitched up the last time; got back the last time about 9; left my team and went about town; was alone; went to the stable about 12; think it was a few minutes later; went up to bed; saw no one, heard nothing had no light; was called in the morning before light; Mr Name was in his sleeping room; the man who called me told me of the death; saw Mrs Mr Name lying on the bed; several persons were there; William got up when I did; don't know what time William went to bed; he said he went at 11; hear that he is in New Orleans the story of his death has been contradicted! saw Mrs Mr Name in her dining room as I came through on the morning of July 1st about 8 o'clock spoke to her noticed nothing unusual Mr Mr Ayers Kept my things at my room; went up when I choose to get my things

The next witness produced on the part of the said Defendant was Ralph M ~~Johns~~ Basham, who being duly sworn

testified as follows:

Dr Ralph M Wickham, Sworn.

Am a practicing Physician - was present when Dr Miller was examined as a witness, Menstrual blood is not Coagulable, It dries up sooner than other blood in various particulars Heard nothing stated by Dr Miller which would convince me that the blood from the genital organs of the deceased was not menstrual -

Cross Examination.

Think there would be no difficulty in determining by actual Examination whether it was menstrual blood. If Dr Miller came to the conclusion it was not menstrual blood I should have confidence in his opinion

The foregoing being all the testimony produced on either side upon the trial of the above mentioned cause, the Court on the part of the People, instructed the Jury as follows:

Instructions on the part of the People

Instructions.

1. Murder, as defined by our Statutes is the unlawful killing of a human being in the peace of the People, with malice aforethought either Express or implied See, 22, of the Crim. Code.

2, To constitute a killing murder under our Statute, the act must have been perpetrated with Express malice viz; with that deliberate intention to take away the life of a fellow creature which is manifested by External Circumstances capable of proof; And this description includes every case of deliberate and premeditated murder or the the act must have been done under circumstances where malice is implied by law. And the Statute declares that Malice shall be implied where no considerable provocation for the killing has been shown; as where a person strikes another with a deadly weapon in manner likely to kill or produce great bodily harm under a sudden heat of passion not caused by that serious and highly provoking injury inflicted on the person killing, and which is apparently sufficient to make the passion irresistable, required

by the Statute to reduce a Killing to Manslaughter; or 2nd Where all the Circumstances of the Killing show and abandoned and malignent hart, Sec. 24 of Crim. Code; or 3d, Where the Killing is involuntary and happens while the party Killing is engaged in the Commission of an unlawful act; which in its consequences naturally tends to destroy the life of a human being or while he is engaged in the Commission of a felony, Proviso to Sec 28 Crim Code.

3. To constitute, therefore, that malice requisite to the crime of murder, it is not necessary to prove that the mortal injury was given with a settled and deliberate design to take life, legal malice not only includes hatred and revenge but every wrongful and wicked act toward an individual without just cause or excuse; and is intended to denote any action, flowing from any wicked and corrupt motive or wicked disposition indicating a heart regardless of social duty and fatally bent on mischief, And in all cases where the law implies malice, the proof is complete and the presumption of malice cannot be removed by evidence

tending to prove that the party did not intend to Kill, but only to inflict a serious bodily injury.

4. Under our Statute there are no degrees of murder, All felonious Killing is either murder or manslaughter, Hence Every Killing whether of express or implied malice, is murder in the first degree without regard to the particular intent with which the fatal blow was ~~given~~ inflicted; whether the intention were to Kill or only to inflict a grevious bodily injury, And in no Case where the Killing is proved to have been perpetrated with express malice, or under circumstances where the law implies malice, can the offence be graded down to man slaughter by any proof of an intention not to Kill; The Crime of man-slaughter is thus defined by our statute:

5. Manslaughter is the unlawful Killing of a human being, without malice express or implied, and without any mixture of deliberation whatever

It must be voluntary upon a sudden heat of ~~passion~~ passion caused by a provocation apparently sufficient to

make the passion irresistable; or in
voluntary in the commission of an
unlawful act, or a lawful act
without due care or circumspection
6, In cases of voluntary manslaughter
there must be a serious and highly
provoking injury inflicted upon the
person killing, sufficient to excite
an irresistable passion in a reasonable
person, or an attempt by the person
killed to commit a serious personal
injury on the person killing,
7, The killing must be the result of
of that sudden violent impulse of
passion supposed to be irresistable;
for if there should appear to have been
an interval between the assault or
provocation given and the killing
sufficient for the voice of reason and
humanity to be heard, the killing shall
be attributed to deliberate revenge, and
punished as murder,
8, The distinction, therefore between
the crime of murder and manslaughter
consists in the presence or absence of
actual or legal malice, And all felon
ious killing, not the result of that sudden
impulse of passion caused by a provocation

of the character described in the Statute, is Murder.

In the application of these principals to the Evidence, the Court instructs the Jury,

1, As to express malice;

That if the Jury shall find from the Evidence that the prisoner deliberately assaulted and beat the deceased, Jane M. Hamee, in the manner and with the intent charged in the indictment, and that such beating resulted in her death; and if they shall also find that such assault and beating proceeded from hatred, revenge or ill will, and to have been accompanied with an intent to Kill, then the crime is murder and Express malice is ~~given~~ proven,

2, As to malice implied;

That if the Jury shall find from the Evidence that the prisoner deliberately assaulted the deceased and inflicted upon her such blows as were naturally calculated to produce death, and death did actually result therefrom and no considerable provocation for such beating appears to have been given such as would reduce the Killing to the grade of Manslaughter; or if all the circumstances of the Killing show an abandoned and malignant heart in either case the

law implies malice and the crime is murder though the prisoner may not have intended to kill; or

4 If the Jury shall find from the Evidence that the prisoner made an unlawful assault upon the deceased and beat her in the manner charged in the indictment, And if they shall also find that the manner of such unlawful assault and beating tended naturally to destroy life, and death did in fact result therefrom, then such killing is murder, although the Jury may believe from the Evidence that the prisoner at the time of such assault and beating had no intent to take life

5 Drunkenness is declared by the Statute to constitute no excuse for any crime or misdemeanor unless such drunkenness be occasioned by the fraud, ~~or~~ connivance or force of some other person or persons for the purpose of causing the perpetration of an offence, See, 9 of Criminal Code

6 And if the Jury shall find the defendant guilty of killing as charged in the indictment, the mere fact of drunkenness of

proved, will not mitigate the Killing from murder to manslaughter, if the Jury shall find that the crime would have been murder, if drunkenness were not proved to have existed, Drunkenness cannot ~~cannot~~ change the grade of the crime.

13th It is the duty of the Jury to reconcile all the facts and circumstances proved in Evidence consistently with the innocence of the Deft, if they can do so upon any reasonable hypothesis; but on the contrary if the facts and circumstances proved cannot be reasonably reconciled on any other hypothesis than that of the guilt of the Deft, then it is the duty of the jury to convict

14. It is the duty of the Jury to hear and consider any confessions or statements proven to have been made by the Deft precisely as any other testimony and hence if the Jury believe the whole confession or statement to be true they will act upon the whole as truth, But the jury may believe that which charges the Deft and reject that which is in his favor if they see sufficient grounds in the Evidence

or in any inherent improbability in the Statement itself. The Jury are at liberty to Judge of it like other Evidence, by all the circumstances of the case

{ Jackson vs People
18 Illinois p 271 }

15 A reasonable doubt is not such a doubt as requires the ingenuity of a mans mind to invent, or an effort or search to find. It is not such as may be made to appear by imagining the possible existence of facts not proved

16, But a reasonable doubt is only such as arises upon consideration of all the facts which are actually in proof and because of which the mind acting reasonably is still unsatisfied of the guilt of the party charged with the offence.

{ Jackson vs People
18 Ills p 272 }

To all of which instructions the said defendant by his counsel then and there excepted.

And the said defendant by his counsel moved the Court to instruct the Jury as follows:

or in any inherent improbability in the Statement itself. The Jury are at liberty to Judge of it like other Evidence, by all the circumstances of the case

{ Jackson vs People
18 Illinois p 271 }

15 A reasonable doubt is not such a doubt as requires the ingenuity of a mans mind to invent, or an effort or search to find. It is not such as may be made to appear by imagining the possible existence of facts not proved

16, But a reasonable doubt is only such as arises upon consideration of all the facts which are actually in proof and because of which the mind acting reasonably is still unsatisfied of the guilt of the party charged with the offence.

{ Jackson vs People
18 Ills p 272 }

To all of which instructions the said defendant by his counsel then and there excepted.

And the said defendant by his counsel moved the Court to instruct the Jury as follows:

Defendants Instructions

1 Under this indictment the jury can find either of three verdicts, viz; not guilty, guilty of manslaughter, or guilty of murder.

2. The presumption of law is in the outset, that the defendant is innocent, and unless the proof rebuts that presumption and proves his guilt to a moral certainty he will be entitled to an acquittal.

3 The jury would not be authorized to render a verdict against the prisoner without plain, direct and manifest proof of his guilt; and this implies that when there is a reasonable doubt, however strongly they may suspect him, there should be an acquittal.

4 In this case the evidence against the prisoner is circumstantial and should therefore be rigidly scrutinized by the jury.

5 Circumstantial evidence depends, in the first instance, like positive, upon the credit due to the witnesses who testify to the facts; and then upon the correctness of the inferences

which are drawn from these facts;
And thus circumstantial Evidence
is exposed to one additional ~~Source~~
Source of Error that does not affect
positive testimony.

C In weighing circumstantial evidence
in this as in all other criminal
cases, several considerations ought
to be kept severally in view;

Stability

1st Every one of the facts and circum-
stances from which the defendants
guilt is to be drawn must be proved
beyond a reasonable doubt.
If the jury are in doubt respecting
the truth of any essential fact from
which they are asked to infer his guilt
that conclusion cannot be reached

2d All the facts and circumstances relied
upon must be consistent with the
hypothesis of guilt sought to be established
If any one of them is inconsistent with
the hypothesis the whole falls to the ground

3d The facts and circumstances proved must
not only be of a conclusive tendency
but they must to a moral certainty
Exclude Every other hypothesis,
If they do not to a moral certainty
exclude every other hypothesis than the

defendants guilt, they do not constitute that body of proof beyond reasonable doubt which is necessary to justify a verdict of guilty

7. The burden of proof is upon the prosecution, and the defendant is not bound to prove or account for the mode by which the deceased met with her death

8 Murder as defined by our Statute is the unlawful Killing of a human being in the peace of the people, with malice aforethought either express or implied

9 In the commission of the crime of murder as were as all other crimes, under the laws of this State, there must be a union or joint operation of act and intention or criminal negligence

10 Intention is manifested by the circumstances connected with the preperation of the offence, and the sound mind and discretion of the person accused

11 To constitute murder therefore, these circumstances must concur — the agent must be of sound mind and discretion there must be an unlawful Killing there must be malice aforethought and there must be a union or joint operation of act and intention

12 It is essential to the crime of murder that the killing should be committed with Malice aforethought Either express or implied. It is this circumstance which distinguishes murder from other killing

13 The expression "Malice aforethought Either express or implied" does not in legal contemplation signify two different or distinct kinds or species of malice. The words "Express" and "implied" relate rather to the mode of proof than to the moral quality of the act.

Express malice is where the slayer acts out with an express design to take the life of a particular person and deliberately effects his purpose.

Implied Malice is merely malice proved by the circumstances and means employed.

14 Malice can never be implied where the facts and circumstances of the case negative its existence. If in point of fact it does not exist, it cannot be inferred, for that would be a contradiction in terms

15 The intent which coupled with the act is necessary to constitute the crime of Murder must be ascertained by the Jury from a consideration of all the circumstances and facts proved in the case, and the jury are the sole judges of the law and the facts.

16 The law seizes upon acts to shew intent by presumption and implication only when there is no conclusive proof of intent; and implications should never do away with conclusive proofs.

17 Implications cannot do away with conclusive proofs. If the proofs do show conclusively that there was no malice then the jury should not imply it.

18 In cases of doubt the accused is entitled to the benefit of such doubt. Should the Jury or either of them therefore have any reasonable doubt as to whether the Killing of Jane McNamee was with malice afore thought, they should not convict of murder as the defendant would be entitled to the benefit of that doubt.

19 Voluntary drunkenness is no excuse for the commission of crime, yet where the question is whether an act was premeditated, or done only from sudden heat and impulse, the fact of the party being intoxicated is a circumstance proper to be taken into consideration.

20 To regard the fact of intoxication as meriting consideration in such a case is not to hold that drunkenness will excuse crime, but to inquire whether the specific crime which the law defines and punishes has in fact been committed. If the mental state required by law to constitute the crime be one of deliberation and premeditation, and drunkenness or other cause excludes the existence of such mental state then the crime is not excused by drunkenness, or such other cause, but has not in fact been committed

21 Drunkenness is often properly taken into consideration in deciding upon the malice or intention of the offender as it clouds the understanding and excites passion, it may be evidence of passion and of want of malice and design

22 If the Jury shall find from the evidence in the case that the defendant committed the homicide and was intoxicated at the time, that fact may be considered with others as showing whether the killing was done deliberately and with premeditation,

23 If the Jury shall find from the evidence in the case that the defendant committed the homicide and that at the time of committing it he was from any cause incapable of harboring that malice aforethought which is necessary to constitute the crime of Murder, they should find him guilty of manslaughter only.

24 If the jury shall find from the Evidence in the case that the defendant committed the homicide and that at the time of committing it he was from any cause incapable of forming an intention, they should find him guilty of manslaughter only

25 If the jury shall find from the Evidence in the case that the defendant committed the homicide and that at the time of committing it he had not in his ~~own~~ mind that intention and malice aforethought

which are necessary to constitute the crime of murder they should find him guilty of manslaughter only

26 Evidence tending to show that the prisoner was intoxicated at the time of the alleged commission of the offence charged has been admitted by the Court as bearing upon the question of malice and design, and may properly be considered by the Jury in that connection

27 If the Jury should find from the evidence in the case, that the defendant committed the homicide and at the time of committing it he was in such a state of intoxication as to be incapable of forming a design, they should find him guilty of manslaughter only

28 If the jury taking all the evidence together are satisfied that the defendant committed the homicide – still if they have any reasonable doubts or if they cannot come to any satisfactory conclusion whether the offence amounts to murder or manslaughter, they ought in that case to find him guilty of manslaughter only

The first, second, third, fourth fifth, seventh, eighth, ninth, tenth twelfth, fifteenth, sixteenth, and seventeenth of the foregoing instructions were given by the Court as requested

The Sixth was given with the following modification at the close of the third paragraph, being the second proposition contained in said instruction, to-wit: The sentence "If any one of them is inconsistent with that hypothesis the whole fails to the ground", was altered so as to read as follows: "If any fact or circumstance is morally inconsistent with that hypothesis the whole fails to the ground."

The Eleventh was given with the following modification - to-wit: The words "Express or implied" were inserted immediately after the words "there must be malice aforethought" as they occur in said instruction

The thirteenth was modified by adding to the instruction at the end the following: "And is implied by law where no considerable provocation appears or where all the circumstances of

the Killing shew an abandoned and malignant heart"; and was given as thus modified,

The fourteenth was modified by inserting immediately after the word "inforced", in the last sentence, the following, viz; "Except where the statute declares it may be implied"; and was given as thus modified.

The Eighteenth was modified by inserting immediately after the words "malice afore thought", the words "express or implied"; and was given as thus modified.

The twenty eighth was modified by Erasing the following words immediately succeeding the words "still if they have any reasonable doubts"; to wit; "or if they cannot come to any"; and was given as thus modified,

The Nineteenth, twentieth, twenty first twenty second, twenty third, twenty fourth, twenty fifth, twenty sixth and twenty seventh of the said instructions were refused; And the following instruction was given instead viz;

Voluntary drunkenness is no excuse for the commission of crime. — Yet if the Jury shall find from the Evidence that the defendant committed the act in the manner charged in the indictment, and that at the time of the commission thereof he was in such a state of body and mind, such as idiocy, lunacy or insanity, whether produced by drunkenness or otherwise as to have been incapable of distinguishing right from wrong, then the defendant is not responsible for the crime and the Jury should find the defendant not guilty.

To all which said several decisions of the Court in modifying the said Sixth, Eleventh, thirteenth fourteenth, Eighteenth and twenty eighth and in refusing the Nineteenth twentieth, twenty first, twenty second, twenty third, twenty fourth, twenty fifth twenty sixth and twenty seventh of the aforesaid instructions asked for by the said defendant as above mentioned, the said defendant by his Counsel then and there excepted.

The Jury having retired to consider as to their Verdict afterwards

returned into Court and rendered their Verdict, that the said defendant Michael McNamee was guilty of Murder as charged in the indictment

Thereupon the said Counsel for the said defendant did then and there propose their aforesaid exceptions to the decisions of the said Circuit Judge and requested him to sign and seal this the said defendants bill of exceptions, and make the same a part of the record which is done

Signed and sealed this Sixteenth day of January 1859

George Manierre Seal
Judge 7th Judicial
Circuit Ills

State of Illinois
County of Cook } ss Circuit Court of
Cook County
January Special Term A.D 1859

The People of the State of Illinois
vs
Michael McNamee } Indictment
for Murder

And be it further remembered that
on a subsequent day of said term of said
Court to wit: On the 23d day of February
1859 the said Defendant moved the
Court to set aside the verdict of the
Jury rendered in this cause and to grant
him a new trial for the following reasons
to wit:

The People of the
State of Illinois
vs
Michael McNamee } Circuit Court of
the County of Cook
January Special
Term A.D 1859
Indictment for Murder

And now the said defendant Michael
McNamee by B. D. Ayer and
William Wallace his Counsel, moves
the Court here that the verdict render-
ed in this cause be set aside and that
a new trial be ordered; And for cause
of the said motion the said defendant assigns
the following:

1st Because the verdict is contrary to the Evidence,

2nd Because the verdict is contrary to law,

3d Because improper questions were allowed to be asked and improper testimony to be given in Evidence to the Jury;

4th Because illegal and improper instructions were given by the Court to the Jury,

5th Because legal and proper instructions were refused by the Court,

6th Because the said Defendant Michael McNamee was never arraigned or put to answer, nor did he ever plead to the indictment upon which he has been pronounced guilty by the jury; — in proof whereof the said defendant refers to the affidavits of himself and of William Wallocks herewith submitted

Wm Wallocks
B. D. Ayer
Counsel for Defendant

And in support of said Motion the affidavit of Michael McNamee & of Wm Wallocks were introduced.

The People of the State of Illinois
vs
Michael McNamee

Circuit Court of Cook County
Jany Special Term 1859

Michael McNamee being first duly Sworn Says that he is the Defendant in the above entitled suit, which is an indictment against him for the murder of Jane McNamee, that said indictment was as he is informed found against him at the September term 1858 by the Cook County Court of Common Pleas, That on or about the 18th day of September 1858, and at the said September term of said Court of Common Pleas, he was taken into Court by an Officer & asked by the Court if he had Counsel upon his replying that he had not the Court assigned to him as Counsel Nathan Allen and William Wallbridge and that after a few moments consultation with his said Attorneys he was taken back to prison, Since which time had not been brought into any Court till he was brought into this Court on the 11th day of January inst for the purpose of being tried upon the said Indictment

He further says he was in the Cook

County Court of Common Pleas but
once, and that was when Messrs Allen
& Mattocks were assigned to him as Counsel
And that Every time he has been in Court
since the said bill of Indictment was said
to have been found against him, he has
been attended by his Counsel Mr Mat-
tocks. He further states that he never
has been arraigned upon the said indict-
ment before any Court that the said
Indictment has never been read to him
by the Clerk of the Court or by any
other person in Court or out of Court
Nor has he at any time been called upon
to Plead to said Indictment, Nor
has he ever plead to the same

Mich. M Mannee

Subscribed and Sworn to this 26th day
of January A.D. 1859 before me

William T Barron
County Judge

The People of the State of Illinois
vs
Michael McNamee

Circuit Court of Cook Co
Jany Special Term

William Mattocks being first duly sworn says that at the September Term A.D. 1888 of the Cook County Court of Common Pleas to wit; On the 18th day of September 1888, he was in said Court, and while there Michael McNamee was brought into the said Court in charge of an Officer upon an Indictment for the murder of Jane McNamee, which said Indictment was found at that term of the Court, and upon his informing the Court that he had no Counsel, Nathan Allen Esq and this affiant was assigned to him as Counsel, A copy of Indictment was furnished Prisoners Counsel, And the said Michael McNamee the prisoner was remanded to prison ~~and~~ without being formally arraigned or pleading to said Indictment, as his Counsel wished time to examine the Indictment and Enquire into the facts of the case,

That on the 21st of said September the said Allen & this affiant applied to

the Court for a continuance of the Case, and after a hearing of the motion the Case was continued, that at this time the said M^c^Manus was not brought into court, but when the motion for a continuance was granted the Court directed the Clerk to enter upon the Docket the Plea of "Not guilty" and that at the time said order was made and the Plea entered upon the Docket of the Court, the Prisoner Michael M^c^Manus was not present in Court, but his Counsel were & the said Allen assented to the entering of said Plea of "Not guilty". And this affiant further says that according to his best knowledge information and belief he has been in Court with the said Michael M^c^Manus every time he the said M^c^Manus has been brought into Court upon said Indictment and that he the said Michael M^c^Manus has never been arraigned in any Court upon the said Indictment for the Murder of James M^c^Manus, nor has he ever plead to the same except as above stated

William Mattocks

Subscribed & sworn to this 26th day of January A.D. 1859 before me

William J. Barron
County Judge

Mr Allen introduced as a witness Walter Kimball Esq who being duly sworn testified as follows, that he was Clerk of the Cook County Court of Common Pleas and had been from the 18th day of September 1838 for a long time previous, And that after the said Indictment was presented to it, on the 18th day of September A.D 1838 the Defendant was brought into Court, and Messrs Allen & Mattocks were assigned to him as Counsel and the Defendant was then furnished with a Copy of the Indictment, And afterwards on the 21st day of September Mr Allen was present in Court and by his direction the Plea of "not guilty" was entered, the Prisoner was not present, My impression is that the Indictment was not read to the Prisoner

The People by Mason moved to exclude the Affidavits of Mattocks and McNamee and the Evidence of Walter Kimball on the ground that they contradicted the record of the Court of Common Pleas which motion was sustained and the Evidence Excluded,

The Court overruled the motion and refused to grant a New Trial, and also refused to set aside the verdict of the Jury. To which decisions of the Court the Defendant excepted And that at a subsequent day of said term towit; on the 25th day of February A.D 1859 the Defendant also by his Counsel Mattocks and Ayer moved the Court to suspend the proceedings in the case and continue the case to the next term of the Court - for reasons set forth in the motions as follows towit

The People of the State of Illinois vs Michael McManus | Circuit Court of Cook County, January Special Term A.D 1859

Indictment for Murder

And now the said Defendant Michael McManus, by P. Ayer and William Mattocks his Counsel moves the Court here that Sentence of death may not now be pronounced against the said Michael McManus and that all further proceedings in said cause may be suspended until the next term of this Court; and for reasons

why said motion should be granted he assigns the following;

That there is a material error in the record in said Cause, as certified to this Court by the Clerk of the Cook County Court of Common Pleas, in this; That it appears from the said record that the said Michael McManus was on the 21st day of September A.D. 1858 in the said Cook County Court of Common Pleas, arraigned in due form of law and forthwith demanded of Concerning the Crime alleged against him in said indictment how he would acquit himself thereof, and that the said Defendant for Plea in that behalf said that he was not guilty as charged in said indictment, upon which plea issue was joined by the Prosecuting Attorney for and in behalf of the People; Whereas in truth and in fact the said Defendant Michael McManus never was arraigned upon the said indictment nor did he ever plead thereto as stated in said record, but the said record if any such exists, is in respect to the matters aforesaid entirely erroneous and contrary to the facts as it can and will be made to appear if proper

time is allowed for an application to be made to the said Cork County Court of Common Pleas for an amendment of the said record,

In proof whereof the said defendant refers to the affidavits of himself and William Matlocks now on file in this Cause and to the testimony of Walter Kimball heretofore taken upon the motion for a new trial

Wm Matlocks
& D Ayers
Counsel for defendant

Which said motion was overruled by the Court,

And to which decision the defendant excepted;

And afterwards towit: on the 25th day of February A.D. 1889 the Defendant by his said Attorneys Matlock and Ayers moved the Court, that Sentence of Death might not be pronounced against the said Michael McManee and that Judgment might be arrested in said Case for the following reasons to wit!

Michael McNamee
as
Of the People of the
State of Illinois

Circuit Court of
Cook County
February Special Term
A.D. 1859

And now the said Defendant Michael McNamee by his Attorney William Mathews and B. S. Ayer, comes into Court after Verdict and before Sentence and moves the Court here that Sentence of death may not be pronounced against him the said Michael McNamee, and that Judgment may be arrested in said Cause

And for reasons why said motion should be granted he assigns the following,

1st That the indictment and the matters therein contained are not sufficient in law to warrant any Judgment against him for the reason that it does not and cannot Judicially appear from any matter or thing before this Court that the said Indictment against the said Michael McNamee was Ever returned in open Court by the grand Jury

2d That it appears affirmatively from the Copy of the Record in this Cause ~~transmitted~~ transmitted to this Court by the Clerk of Cook County Court of

Common Pleas, that there is no record in said Court of Common Pleas that the said Indictment against the said Michael McNamee was ever returned to said Court in open Court by the Grand Jury

3d That it does not and cannot appear Judicially to this Court from any matter or thing before it, in the record or proceeding that the said Indictment, was found to be a true bill by a Grand Jury lawfully constituted Empannelled and sworn according to law

4th That this Court did not acquire Jurisdiction of the Indictment against the Defendant

5th That it does not and cannot appear Judicially to this Court from any matter or thing before it in the record or proceedings that the said Cook County Court of Common Pleas made any order or adjudication at the Term of said Court when the said Indictment purports to have been found directing that the said Cause should be Continued, or when the same should have day and be tried in that or any other Court

6th That it does not and cannot Judicially appear from any matter or thing before this Court in the Record or proceedings that the said Indictment was transferred from the said Cook County Court of Common Pleas to the first Term of the Circuit Court of said County of Cook, that was holden subsequently to the adjournment of the September Term of the said Court of Common Pleas at which said Indictment purports to have been found

7th That it does not and cannot Judicially appear to this Court from any matter or thing before it in the Record or proceedings that the Cook County Court of Common Pleas made any order or adjudication directing that the said Indictment should be transferred to this Court, nor the term when it should be entered at and have day in this Court

8th That no notice of the transfer of the said Indictment from the said Cook County Court of Common Pleas to this Court appears ever to have been legally served upon this Defendant So that in fact the Defendant was not legally transferred from the said Court

of Common Pleas to this Court,

9th That it does not and cannot Judicially appear to this Court from any matter or thing before it that the said Defendant was tried, at the first term of any Court Competent to try the said Indictment which was held in the said County of Cook after the adjournment of the September Term A.D. 1858 of the Cook County Court of Common Pleas at which Term the said Indictment purports to have been found

10th That it appears from the Records & proceedings in this case that the said Defendant was not tried upon the said Indictment at the time and before this Tribunal prescribed by law

11th That it appears from the Records and proceedings in this cause that the said Defendant was not tried upon the said Indictment on or before the Second Term of the Court having jurisdiction of the offence, although he has ever since the finding of said Indictment been confined in Jail to answer to the charge therein preferred and has not been admitted to bail

that the delay in bringing him to trial upon said Indictment did not happen upon his application, nor in consequence of the absence ~~absence~~ of any witness on the part of the people, and that the said Defendant was therefore Entitled, by the laws of the land to be set at liberty by the Court without trial and cannot now be lawfully restrained or Kept in custody upon this charge

12th That it does not and cannot judicially appear to this Court from any matter or thing in the records or proceedings that the Jurors Empannelled to try said cause were ever lawfully summoned elected and sworn.

13th That the regular panel of Jurors having been exhausted, before a Jury was formed to try this cause, a special Venire was issued by the Court, directing the Sheriff of said County of Cook to summon twenty four good and lawful men of said County forthwith to appear and serve as Petit Jurors And no official return was made by said Sheriff as prescribed by law of the manner in which he had discharged his duty further as to

appear that said Venire was ever executed by the Sheriff of said County of Cook or by any other Officer authorized by law to serve and return venires

14th That four of the Petit Jurors Empannelled to try said cause, to wit: A A Rogers, Watson V Coe, J A Wood and C H Garbert do not appear to have been lawfully summoned and Elected to serve as Jurors and that the process and proceedings in relation to the Empannelling of the Jury were informal, irregular and invalid in Law

15th That in other respects the proceedings in this cause are irregular and are not warranted by, or in accordance with the laws of this State, but are contrary thereto

Wm Mallock } Attys
B. F. Ayer } for Defendants

And in support of said motion introduced the transcript of Record sent up in this Case from the Cook County Court of Common Pleas and filed in this Court Nov. 15th 1858

State of Illinois }
County of Cook } ss

Pleas before the Hon
orable John D. Wilson Judge of the
Cook County Court of Common Pleas
within and for the County & State aforesaid, at a Regular Term of said
Cook County Court of Common
Pleas began and holden at the Court
House in the City of Chicago in Said
County & State on the Second Monday
being the Fifteenth day of September
in the Year of our Lord One thousand
eight hundred and fifty eight and of
the Independence of the United States
of America the Eighty third

Present the Hon John D. Wilson Judge
Carlos Hagan Prosecuting Atty
John L. Wilson Sheriff
Attest Walter Kimball Clerk

Be it Remembered that heretofore to wit
on the Eighteenth day of September
Eighteen hundred and fifty eight said
day being one of the days of the September
term in the year aforesaid of said
Cook County Court of Common
Pleas, the following proceedings

Were had and entered of record herein;

The People of the State of Illinois vs Michael McNamee } Indictment for Murder

And now on this day come the said People by Carter Haman Prosecuting Attorney, and the said defendant in his own proper person also comes and he being without Counsel the Court appoints Messrs Allen Wallbridge Counsel for the said Defendant.

And afterwards, to wit, on the twenty first day of September in the year last aforesaid being yet of the said September term of said Court, the following further proceedings were had in the above entitled cause and entered of Record to wit:

The People of the State of Illinois vs Michael McNamee } Indictment Murder

This day again come the said People by their said

Prosecuting Attorney, and the said Defendant in his own proper person as well as by Allen P Wallace his Counsel also came, and said Defendant being furnished with a Copy of the Indictment against him, a list of the Names of the Jurors and Witnesses and being arraigned in due form of law and forthwith demanded of Concerning the Crime alleged against him in said Indictment how he would acquit himself thereof, for Plea in this behalf says he is Not guilty as charged in said Indictment and of this he puts himself upon the Country. And the said People by their said Prosecuting Attorney do the like, and thereupon it is ordered that said defendant be remanded to the custody of the Sheriff

State of Illinois }
County of Cook } ss

I Walter Kimball Clerk of the Cook County Court of Common Pleas in & for the County & State aforesaid, do hereby certify that the foregoing contains true Copies of All the proceedings had in the above entitled

Cause as the same now appears on the Records of said Court, and that the Paper hereunto transmitted marked "A" is the Original Indictment presented by the Grand Jury at the said September Term of said Court, and the defendant being now in custody of the Sheriff of Cook County, I do herewith transfer said Indictment to the Circuit Court of Cook County, in pursuance of the Statute in such case made and provided

Witness Walter Kimball Clerk of our said Court & the Seal thereof at Chicago this 15th day of Nov A.D. 1858

Walter Kimball
Clerk

And the Venires returned into this Court. Whereupon the people asked leave to supply the record by producing & filing a certified copy of the record of said Court of Common Pleas showing the Empanneling of the Grand Jury and the finding of the bill in this case which said Motion was sustained, to which the defendant

Excepted; which said amended record is hereinafter set forth;

Thereupon said Motion in arrest was overruled by the Court - And to which decision the defendant excepted,

And afterwards to wit on the said 28th day of February 1859, And before the overruling of said Motion in arrest the Prosecuting Attorney offered an Amended Copy of the record of the Cook County Court of Common Pleas which said record was amended on the said 28th day of February 1859 to the admission of which the Defendant objected, the objection was overruled And the amended Copy of the Record was allowed to be admitted of said

To which decision of the Court the Defendant excepted,

Thereupon the said Counsel for the said Defendant, did then & there propose the aforesaid exceptions to the decisions of the said Circuit Judge & requested him to sign seal this the said Defendants Bill of exceptions & make the same a part of the record which is done

George Manierre Judge (Seal)
7th Judicial Circuit Illinois

State of Illinois, }
COUNTY OF COOK. } S. S.

I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of all the papers & proceedings in a certain cause lately pending in said Court on the ? side thereof, wherein the People of the State of Illinois were Plaintiffs and Michael McNamee was defendent

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our said Court at Chicago, this 26th day of April A. D. 1859

Wm L Church

Clerk.

(Copy of Venire refered to in bill of Exceptions)

State of Illinois
County of Cook } ss. The People of the State of Illinois, to the Sheriff of Cook County. Greeting: We command you, that without delay, you summons twenty four good & lawful men of your County forthwith to be and appear before our Circuit Court within & for the County of Cook, at the Court House in said County, and so from day to day until discharged there and there to serve as petit Jurors within and for the County of Cook, and how you shall execute this writ make appear to our said Court forthwith, and have you then and there this writ.

Witness William L Church, Clerk of our said Circuit Court and the seal thereof at Chicago this 11th day of January AD 1859 (Seal)

Wm L. Church
Clerk

(Endorsed)

"S. B. Walker, A. A. Rogers, R. B. Storm, J. A. Knight, J. E. Crandall, Thomas Good, W. H. Bigelow, Oliver Lozier, James O Fora, Watson V. Cox, B. F. Taylor, Benjamin Pillsbury, J. A. Wood, C. H. Garbut, W. V. Dana, M. W. Leavitt"

A true Copy

Wm L. Church
Clerk

State of Illinois
Cook County } Shereby certify that the foregoing Record contains a full and true history of the Proceedings on said Trial

Carlos Haven
States Atty

18
McNamee
~~McMahoney~~
vs
People

18 P.D.

Filed May 2. 1859
L. Leland
Clerk

12881

1859