

THE COLUMBIAN.

BLOOMSBURG, PA.

THURSDAY, SEPTEMBER 17, 1903.

Guilty of Murder In Second Degree

(Continued from 1st page)

Sunday evening, March 29. Mr. Snyder gave it to me and I gave it to McAndrews. On being shown the iron bar with which McAndrews was hit, the witness at once identified it as the one that had been picked up near where McAndrews was found. "I saw the iron the day following the crime, it had blood on it."

Daniel Roach—"Am engaged at hotel business at Aristes, remember seeing McAndrews in the hotel on March 30, it was probably about ten o'clock, but I will not be certain about the time. He may have been there twenty minutes. He bought and drank three glasses of porter, paid for it with a quarter. He went from my place to Honabach's saloon. When he left Honabach's McAndrews went in the direction of Centralia, Amandus Levan left the saloon a little ahead of him, he went by the blacksmith shop in an easterly direction toward Centralia."

Cross examination—"McAndrews had been drinking in my place and was intoxicated. I refused to sell him any more drink. When he emerged from Honabach's saloon he staggered."

Edward Honabach—"I tend bar for my son in his saloon at Aristes, I can recall the presence of James McAndrews in the saloon on morning of March 30. It was as near as I can tell, between nine and ten o'clock. He took several drinks. My brother and Amandus Levan were there at the same time, and McAndrews treated them. He paid for the drinks, the first time with a dollar and the other time with a fifty cent piece. He took out his money in full view of us all. He had a \$20 gold certificate and some other money. Levan stood about seven feet from him and could easily have seen the money. McAndrews left probably about ten o'clock, Levan left the saloon first, ten minutes or so ahead of McAndrews. When Levan left he said he was going home to get some sleep as he had to work that night."

William Honabach—"The testimony of this witness was corroborative of that of Edward Honabach. John Knittle—"Live at Aristes. On morning of March 30 was along the railroad east of Montana, met Levan coming in from the direction of Centralia. I and some others had been shooting mark, Levan called to us. It was a little before eleven o'clock. We met Mrs. Minier on the road, she told us that a man had been hurt along the road."

Cross examination, "Before Levan called to us, I don't know from what direction he was coming. He wanted to shoot mark but had no more ammunition. I didn't see him till he called, then he was standing on the railroad."

Knittle was an important witness for the Commonwealth, at the hearing before the committing magistrate. But now he was regarded as a hostile witness, because his evidence was of such great variance from that given by him before the magistrate. For this reason District Attorney Duy sought to have admitted his testimony at the former hearing, to show the disparity in it and for the purpose of refreshing the witness' memory. To this point counsel for defendant objected. Considerable judicial authority bearing on the point at issue was presented, after which the Court ruled to admit the testimony, and an adjournment was taken.

"Open Court" said Judge Little, as he took his seat upon the bench Friday morning. The first to speak was Judge Herring assistant counsel for the Commonwealth. "I want to take occasion at this time," said he, "to make a statement," and then continuing he said in tones most vigorous. "Since the arrest of this defendant Levan there has arisen in and about Aristes a strong feeling against the prosecution and in favor of the defendant. There is being made, and this fact must be apparent to your Honor, an effort to shield him. The prosecution has met with a surprise in this case. Evidence that we considered reliable has been changed since the hearing before the committing magistrate." After describing the disposition on the part of some of the witnesses to evade the questions, he concluded by saying, "We must have the moral support of the court, if we are to get at the bottom of this crime."

Frank Fitzer—"Live at Aristes. Was out shooting mark between Centralia and Aristes on morning of March 30th. Saw Levan on Railroad. It was twenty minutes of twelve when I reached home, and it was just before that time that I saw Levan. Cannot state in what direction he came from. D didn't see him till he "holledred." He was standing with his back toward Centralia.

John Startzel—"I was with Knittle and Fitzer on the morning of March 30, shooting mark. Don't know what time it was. Saw Levan. He was standing on railroad. He called to us. Didn't see him before that."

J. C. McKeivy—"I am the detective employed in this case. I arrested Amandus Levan at Bloomsburg. Don't remember the day. He and I came to Bloomsburg from Aristes. After making the arrest, I took from him a revolver." The witness was shown a revolver and identified it as the one he had taken from Levan. "The revolver was loaded, there was a bullet in each chamber."

Harry Buck—"I am engaged in hardware business at Ashland." The witness then testified to having sold a revolver to Amandus Levan on March 31st. He had kept a record of the sale, which contained the number of the revolver, the price of it and the name of the purchaser. The witness further described the transaction as follows: Levan came into my store. He wanted to buy a revolver. I showed him a line ranging in price from \$3 to \$5. He said he wanted something better. He finally selected one for \$11.00 and tendered in payment for it, a twenty dollar gold certificate. I can recall the sale, because Levan when he first came in the store complained of being hard up, and then flashing a twenty dollar bill at me in payment for the revolver, it seemed rather strange to me." The sale slip, and the cash book, together with the record of the sale, was offered in evidence.

Edward Lavelle—"Live at Centralia. Was on road between Centralia and Montandon on Tuesday, March 31, visited point where McAndrews was found, and picked up a piece of iron. Patrick McGinley was with me." Witness shown the iron and identified it. "The iron was blood smeared and had human hair on it. I gave it to McGinley. He dropped it in the road."

Thomas Quigley—"Live at Centralia. Visited the scene of McAndrews murder the day after the crime was committed. Picked up a piece of iron near where he was found. It was covered with blood and human hair. I took it home and the next day gave it to Dr. Biddle of the Fountain Springs Hospital."

Clarence Burke—"Am a resident of Centralia. Was with Thomas Quigley on March 31st." The remainder of the testimony corroborated that of Quigley.

William Krick—"Live at Aristes. Saw James McAndrews on morning of March 30. It was about twenty minutes after nine. He asked me to have a drink but I declined. I didn't see him after that. I went down to Treseller's bottling works, and was there when Amandus Levan came in. By my watch it was quarter of twelve. Levan appeared to be somewhat excited. He looked around and told the proprietor to give the boys something to drink. I took a bottle of porter. When Levan went out he went in the direction of Monroe Rape's. A little later Lewis Kostenbauder came in and recounted the finding of McAndrews along the road."

The witness was backward in giving his evidence and the District Attorney met with no little difficulty in extracting the story from him. At the close of this testimony counsel for the Commonwealth conferred for a few minutes when Mr. Duy announced that they rested.

FOR THE DEFENSE.

William H. Rhawn made the opening address to the jury for the defense. He explained the theory of the Commonwealth, and stated that they would produce testimony to show its falsity. "The Commonwealth," he said, "have presented a very nice theory, but have produced no evidence in support of it. We will put upon that witness stand not one, two or three witnesses but a half dozen or more to show that the Commonwealth has no more ground for accusing Levan of the crime than it would have to accuse any of the others that were in the hotel with McAndrews. The

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mere fact that he was there drinking does not say that he is the perpetrator of this crime. We will show to you how the iron bar with which McAndrews is supposed to have been struck reached the scene. We will show that it was picked up near the Centralia water works by a little boy and carried to the scene of the crime. We will show that two or three days previous to the commission of the crime Levan borrowed from a friend \$25, among which was a \$20 gold certificate. We will also show and by evidence that cannot be disputed that McAndrews was found lying in a mass of stones, some of which and one in particular and against which his head rested, was a jagged stone. We will show to you how easily his death could have been accidental. And further than this we will prove to you that before his death James McAndrews on being asked "Who struck you?" answered "No one," and that when asked, "Were you struck down or hit?" he answered, "No I was not struck down at all." In concluding, Mr. Rhawn stated, "Every point will be freely answered."

The first witness for the defense was Franklin Kostenbauder, a blacksmith at Aristes. He was shown the iron but could not recognize it. To the best of his knowledge it had never been at his shop. A short time before March 30th he had sold off all the iron about the place, and said that if the iron had been there he certainly would have seen it.

Judge Herring conducted a careful and searching cross examination and succeeding in getting from the witness the admission that there was considerable scrap iron about the shop, and that he had made no inventory. The iron could possibly have been there without his seeing it. His evidence was considerably shaken. He had known Levan since boyhood, they were school boys together, and warm personal friends.

The next witness was Edward Hoffman. He testified to having been going from Aristes to Centralia, when he met some boys. One of them was carrying a piece of iron which he said he had picked up near a spring, some little distance from the road. The boy handed it to him at the same time remarking that there was blood upon it. They had reached the point in the road where the blood was found, when his attention was attracted by something else and the iron dropped from his hand. Whether or not the iron fell in the blood he couldn't say, but if it didn't it was close to it. There was no blood upon it, he said when the boy handed it to him. The boy was of a weak mind and made the remark because he didn't know any better.

Judge Herring conducted the cross-examination, which was most rigid. "Who were the boys?" demanded Mr. Herring? They were John Knittle, Ralph Fetterman, Ad. Levan and another boy whose name I can't recall just now." "What are their ages?" "Knittle is about 17, Fetterman is about 16, and Levan is about 14." "How far away from the boys were you when the iron was picked up?" "I don't know exactly, about 200 yards I suppose." "This was at what time?" "Between four and five o'clock in the afternoon." "What boy picked up the iron?" "Young Lester Kostenbauder." "You didn't mention his name before, did you?" "No sir, I forgot about him." "What were the boys doing when you first saw them?" "They were playing dice; when they stopped playing I saw the boy pick up the iron. He walked along swinging it until he came up and gave it to me." "You say the boy is of a weak mind?" "Yes Sir."

Ralph Fetterman of Aristes, one of the boys who found the iron testified to having met Hoffman on the road. They had been at Ashland witnessing a parade and had stopped there on their way home. He recognized the piece of iron as the one young Kostenbauder had picked up. Kostenbauder, he said carried it to the place where McAndrews was found, when he spoke of the rust resembling blood. He handed it to Hoffman, who examined it, and said it was not blood. Then we all looked at it and handed it back to Hoffman, who dropped it in the road.

Marshall Fetterman another of the boys corroborated the testimony given by Fetterman.

Dr. J. W. Gwinner was called and sworn next. The doctor was one of the witnesses at the hearing when Levan was arrested. He said he was familiar with the place where McAndrews was found. He was on the road the morning of the crime. He

testified to having seen McAndrews. That he picked him up placed him in his wagon and took him home. He looked about for a weapon with which the blow might have been struck, but found nothing but a fresh cut sapling, but there was no blood on it. Two days later he visited the scene, when he saw a piece of iron lying near the spot of blood in the road. The spot where McAndrews was found, he said, was stony.

David C. Black, a merchant of Centralia testified that he went to the scene of the crime before noon on March 30, and made a thorough examination. There was a sharp stone near McAndrew's head that had on it some blood and skin. "A fresh cut club," said the witness, "was the only weapon I could find. I did not examine the wound on McAndrew's head. I spoke to him and he muttered something in answer but I could not understand what he said. He opened his eyes and extended his hand to me."

Dr. Davis, of Centralia was the star witness for the defense. He attended McAndrews before he was removed to the hospital, and held a brief conversation with him. He was interrogated by Mr. Rhawn, as to whether or not he had asked McAndrews if any one had hit him, and was about to answer when Judge Herring objected. "I object to the question," said Mr. Herring, "until I have had an opportunity to question the witness as to who was present at the time. We are entitled to know who was present if anybody, when the conversation took place." The objection precipitated quite a legal tilt, after which the offer was allowed by the Court subject to cross examination by Commonwealth's counsel.

Judge Herring then proceeded with the cross examination, "In what condition physically did you find McAndrews?" "He was lying on a couch." "No I mean what was his physical condition." "I don't understand the question." "What, a physician, and don't know what the word physical means?" "Well his physical condition in regard to what, his hands, his feet, his body or what? His feet were all right."

The witness turning to the Court, stated the question was too ambiguous, and that if counsel would put it in some specific form he would answer it.

"Will you answer my question?" demanded Mr. Herring. After some hesitation the witness answered, "He was in a sleepy condition." "How big was the wound?" "It was about the size of the end of this," holding up a lead pencil. "Was there any blood flowing from it?" "No sir." "Did you diagnose his case?" "No sir." "What did you prescribe for him?" "I did not prescribe for him, he was not suffering." "Was he drunk?" "I don't know whether he was drunk or asleep." In answer to a question as to whether or not there was any one in the room when he held the conversation with McAndrews, he said, "I don't know, there were several people around there. I asked him a question and he answered and I followed it up with another question and he answered it." "Was he in full possession of his mental faculties at the time you talked with him?" "I don't know. He was sensible to touch and pain. I pricked his leg and arm with a pin. The response to the first prick was prompt, but to the second not so much so." "But would you swear that he possessed all his mental faculties?" "No I would not testify positively to that effect."

"Then," said Judge Herring facing the Court, "I object to the admission of this conversation between Dr. Davis and McAndrews on the ground of invalidity." A heated discussion followed. Counsel for the defence were anxious to have this evidence admitted as it had a heavy bearing and involved their strongest point. "We ruled on this point yesterday said Judge Little. The testimony will be admitted. It is for the jury to determine as to whether or not it is reliable." "Will your honor please," said Mr. Herring, "note us an exception?" At once Mr. Ikeler and Mr. Rhawn were on their feet and objecting most strenuously, claiming that the Commonwealth had no right to it.

"The exception is noted and the bill sealed for the Commonwealth. If the Commonwealth has no right to the bill the action will not injure the defendant's case," returned the Court. "You may just state what conversation you had with McAndrews," said Mr. Rhawn to the witness. "Well I had to slap him on the face to arouse him. Then I asked him if he had been hit and he answered, 'No.' I then asked him who hit him and he answered, 'Nobody.'"

Another very important point and one on which a great portion of the weight of the defendant's case rested was that of the money. "Where did Levan get the twenty dollar gold certificate?" was a question of deep significance to the defense and one that if incapably met meant the loss of the case. This fact was realized by defendant's counsel and to answer it they put upon the stand Peter Alabach of Aristes, who testified that on

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Saturday afternoon preceding the crime, he had loaned to his friend Levan, the sum of twenty-five dollars, the money being in the denominations of a twenty dollar gold certificate and a five dollar bill. He had earned the money while working in the capacity of hoisting engineer for the Lehigh Valley Coal Company. He was on the road home from work, having been paid that afternoon, when he met Levan and gave it to him. He had frequently loaned money to Levan before. He had made a note of the loan in a little book which he had with him. The book was found to contain but the one entry, this the witness said was because the other amounts loaned Levan were so small that he didn't consider entries necessary. His salary amounted to \$31.01 and he had been paying his mother \$25 a month board. The Commonwealth in cross examination endeavored to break down the story, and though the witness remained firm in his testimony regarding the loan, he didn't know at what rate he was being paid, whether by the day or by the hour. He was badly rattled, and would frequently thrust his hand in his coat pocket for the memorandum book when it laid on the stand in front of him.

Allabach's evidence concluded the testimony for the defense and the remainder of Friday afternoon's session was occupied by counsel in argument to the Court. Judge Herring and Mr. Ikeler could not agree. The former contended that it was the duty of the court to instruct the jury whose province it is to fix the degree. Much authority was given. The variance of opinion was finally reconciled and court adjourned.

ARGUMENT TO THE JURY.

Argument to the jury for the defense was made by Hon. Fred Ikeler Saturday morning. His plea for the man Levan whose life or liberty was in the hands of the jury was one of the most eloquent ever heard in the court room. With that pleasing voice and facile delivery for which he has long been noted, he struck telling blows at the theory of the Commonwealth. He took up all the evidence piece by piece. "The Commonwealth," he said, "presents nothing but theory in the case. There are no facts. Theory on the part of the Commonwealth's attorneys and imagination on the part of its witnesses. Continuing he said, "Circumstantial evidence is where one circumstance follows another and the connection is shown. It is like a chain, link upon link, but if one link is broken or missing, the entire weight or burden of the rest falls flat." He explained how McAndrews, staggering blindly along the road could have fallen among the rocks and striking his head upon a jagged stone received the injury which caused his death. He said he could not see how the iron bar could have been used, as it was not there until the boy had carried it up from the spring. He laid considerable stress on the question of time, and referred to the Commonwealth's testimony on this point as mere guessing. In closing he said, "If Levan is guilty at all, he is guilty in the first degree. If you think the

evidence shows that he murdered McAndrews, whether for his money or no matter what motive he had, hang him, but if not, and I for the life of me can't see where they have made out any case against him, set him free. Let there be no compromise in the matter." He talked for an hour and a half. It was indeed an admirable address, and was given breathless attention by the jury as well as the large audience present.

In the closing address for the Commonwealth, District Attorney Duy established a reputation for himself. His clear voice and quiet delivery made doubly attractive his address. He expressed himself in plain terms respecting the evidence given by Dr. Davis. "When he testified that he held a conversation with McAndrews and McAndrews told him that no one hit him I believe he lied." He showed how the iron reached the scene, or at least their theory of how it reached there. He said Levan in their opinion had reached home, when it occurred to him that he had left the iron lay near his victim, and that on March 31, under the cover of darkness, he stole back to the scene of the crime and hurled the iron down where it was picked up by the boys, and referring to this point Mr. Duy said, "It seems to me that it was the hand of fate that guided that little half minded boy in carrying the weapon back to the scene of the crime." He didn't believe that Alabach told the truth when he testified that he loaned Levan \$25. In concluding Mr. Duy said this has been no pleasant task for me. It has required time and a great deal of labor, but I have done my duty, see that you do yours."

Judge Little's charge to the jury was brief, fair and impartial. He explained the difference between direct and circumstantial evidence. He instructed them to weigh carefully the evidence. "The case," he said, "is now in your hands. Amandus Levan is here with the presumption of innocence; if you find him guilty, you may determine whether he be guilty of murder in the first or in the second degree."

The jury retired at three o'clock. At seven o'clock, the Court House bell announced that they had reached a verdict. There was a rush for admission. Every seat was taken and the aisles were filled. Levan sat facing the court. There was nothing to show that he was in any way excited.

He heaved an occasional sigh, but other than that he was utterly indifferent to what was going on. "Gentlemen of the jury," said Judge Little, "have you agreed on a verdict?" On receiving a nod of the head from the foreman, clerk C. M. Terwilliger walked over and took the paper and handed it to the Court. Judge Little requested that there be no demonstration of approval or disapproval, and then the verdict was read, as follows: "We find the defendant, Amandus Levan, guilty of murder in the second degree."

Fred Ikeler immediately made a formal motion for a new trial, reasons to be filed within four days.

Judge Little thanked the jury, discharged them from any further attendance at court and the case was over.