THE CITY POST.

THURSDAY MORNING.....DECEMBER 9.

CAUTION.—Our subscribers in the lower part of the city are cautioned against a *certain* person, or persons, who represent themselves as carriers of the Post, and are procuring advertisements and business notices for a New Year's Card. None are entitled to advertisements but Mr. M'Ilvaine, our carrier in that part of the city.

TRIAL FOR MURDER.

SECOND DAY.

IN THE COURT OF OYER AND TERMINER—Before the Hon. Wm. B. M'Clure, President Judge; and William Boggs and Gabriel Adams, Esqs., Associates.

The Court met at nine o'clock yesterday morning, and the examination of witnesses for the defence was commenced.

Dr. Dilworth, recalled—Mitchell was not bloody when I saw him; from the nature of the wound, it would bleed altogether internally and not externally; the death was caused by internal injuries altogether. Thought, from seeing the man lying down, that he was a great deal better.

Cross examined—Noticed no blood on Mitchell's shirt; the wound might have caused blood on the knife.

Wm. R. Mowry sworn.—Was surveyor of the port of Pittsburgh; the water in the river was low last summer, in July; it is about 400 feet from a boat lying at the wharf, to Stang's warehouse; there is a considerable elevation from where the boats lie to the warehouse; the difference between Sahl's and Hutchinson's is about fifty feet.

Cross examined.—Did not know the stage of water in July last.

James Carnahan, recalled.—On the fifth of July last, saw Jewell early in the morning; about nine o'clock we went out with him to Turtle Creek, and staid until two o'clock; when we came in he was considerably intoxicated, but not to say drunk; when we came in we went to Lafferty's and drank three or four times, and afterwards drank at Wilkins Hall, once. At the time of the occurrence he was pretty drunk; he fell on his face when we started to run; did not know Mitchell before and do not think Jewell knew him; Jewell drank brandy during the day; we met Gaw at Lafferty's, and he took us to Wilkins Hall to treat us; quite a number of us, that live together, went out to Turtle Creek; do not recollect what Jewell said in reply to Gaw, when asked to go to Wilkins Hall; John Jones and Gaw were with us at Lafferty's; they were not out in the cars; there was no man named Hardy with us; do not know what became of John M'Mullen, he was engaged in that affray but have not seen him since; seen M'Mullen bend over the man; did not see any knife used; M'Mullen, after the difficulty, went up Front street with Jewell; M'Mullen went out with us, did not see that he was armed.

George M'Gonigle sworn.—Know Jewell; think that he is left handed.

Cross-examined.—Do not know that he cannot use his right hand.

James Reed sworn.—Assisted to arrest Jewell, and seen him in the watch-house; judged that he had been drinking some; I only jumped one fence, in arresting Jewell; passed through two gates; known Jewell since he was a boy, and know he is left-handed.

J. H. Foster sworn.—Seen Jewell on the night of his arrest; it was after dark; I considered that he was drunk, or had been lately drunk; seen his head, which was hurt, and of which he complained; a physician was sent to dress it.

Cross-examined.—Think it was about eight or nine o'clock when I saw Jewell.

Dr. J. J. Gallagher sworn.—Practice in the city. Known David Jewell, and have seen him several times intoxicated; have noticed that it made him reckless of consequences attending; his actions if made him deranged in insanity; drunkenness makes a great alteration in Jewell, from the time when he is sober; he is a different man.

David Jewell sworn.—Prisoner is my son; he is left handed, and has been so from infancy; since he has grown up as a man, he has made his labor, he has used his left hand as his right; he has a wife and one child; don't have frequently heard of him being intoxicated, but never saw him stagger; he takes considerable quantities of liquor, but he does not stagger, he gets wild. On the 5th of July, was at Pomeroy, Ohio, 250 miles from here, and I received a telegraph dispatch on Sunday night, stating the occurrence, and immediately started home; had a great deal of trouble getting up; think there were less than three feet water in the river; my son is a painter by trade.

The Commonwealth here called James Barr; he had come up the river as a passenger, on the Paul Anderson; think there was about six feet water in the river; it had raised on the 4th.

The case for the defence closed here—one of their witnesses, Mr. Jones, having been taken suddenly sick.

The jury was addressed by Mr. Flanegin on behalf of the Commonwealth. The gentleman quoted the authorities in definition of the crime of murder, and referred to the testimony in a brief manner.

The counsel for defence next addressed the jury. Mr. Darragh made a most eloquent address, and when he left off the effect of his speech was visible in the eyes of many of the large audience. He was followed by Judge Shaler—also for defence. The Judge argued the case in a strong manner, and entered for the prisoner the plea of insanity, induced by the use of liquor. Mr. Bruce concluded for the Commonwealth.

Judge McClure, in commending his charge, said the case which had been tried was of a solemn nature. It is always a heavy responsibility to charge a jury in a case like this. And my responsibility and its weight in that behalf, has been much increased, from the fact of the very able and distinguished counsel who had been engaged for the defence—counsel unsurpassed in the Commonwealth of Pennsylvania. The counsel, however, discharged their duty well, both in behalf of the prosecution and defence.

There are two duties remaining yet: one mine, and the other yours. Let us each discharge them, as we sought. You are sworn to try the case according to the evidence, and true deliverance make; not to try it according to the punishment. With the penalty of murder in the first degree, you have nothing to do; and if you consider that penalty in your deliberations, you violate your oaths. The Governor of the Commonwealth and I have that duty to perform. To find a lower verdict than murder in the first degree, where it is warranted by the evidence, is for the jury to wrest from the Governor his constitutional prerogative of pardon. Moreover, you will find a verdict according to the law and evidence, and if it makes out a clear case of murder in the first degree, such will be your verdict; and if you should entertain of murder in the second degree, you will compromise your oaths, and neglect your duty. You might as well find a defendant guilty of petty larceny, as of murder in the second degree, where the evidence warrants a verdict of murder in the first degree. If you should think defendant guilty of murder in the first degree, second degree, or guilty of manslaughter, your verdict will vary so.

Gentlemen of the Jury—You owe a duty, and the Court we one, to the prisoner at the bar, to see that no innocent man should be convicted; but that is only half our duty. We also owe a duty to the Commonwealth, which must be discharged.

Society, gentlemen, has surrendered up its original savage rights, its tales away life, as in a primeval state of life, and courts and Juries are the depositories of that power. If an innocent man is found guilty, and a guilty man escapes, society is equally wronged. We owe a duty which, if we do not perform, we shall be the cause of every man taking the law into his own hands. For society, when it finds that Courts and Juries will not protect them, will take the law into their own hands—the lamp post will be transformed to the gallows, and cowardly Courts and Juries will see the consequences of their folly. See that we do not neglect our duty, gentlemen. Fear and favor have no right in our castle.

There is a difference gentlemen, between an erroneous opinion and erroneous acquittal: the Court can not aside a verdict, said writs of error can be granted to the Supreme Court. But if there is an erroneous acquittal, society receives a grievous wrong. Each murderer acquitted, cheapens the price of human life, and inflicts a wrong on the community.

[The above, the Judge stated were intended as general remarks; I do not suppose they apply to you, but I consider it my duty to make them.]

Each of the jurors when empanelled, stated that he had formed no opinion on the case; and if this was so, the opinion and verdict of the jury, must be formed from the evidence of the witnesses alone. I have a word or two to say, touchy to Mr. Darragh, when he spoke of the surges of public opinion entering the Court House; and effecting the minds of each and jury box. You and I, gentlemen, do not care a new what public opinion is, in or out of doors. Public opinion does not wave and surge against the bench and jury box; and if it does it will roll back rebuked as if it had struck a rock. If a man will stab another, in broad day, in open street, the public would know it. If affrays and orders occur in the streets of the city, the public will know it; and if society receives a rude shock, comments will be made on it. If the press, would not notice such events, it would disclose in duty; and would not be fit to occupy the high place it does.

I will not refer to the evidence, for two reasons: first, there was no attempt made to contradict the evidence of the Commonwealth, and the learned counsel for defence did not attempt to do away with the credibility of the witnesses—the evidence comes before you, not contradicted, and I will not paint it in regard to the prisoner at the bar, in order apply the principle of law to the testimony; and by that and testimony let the prisoner be judged. The Commonwealth would be far more pleased at evidence leading to acquittal than conviction.

It appears that Jewell, on the 5th of July last, went, by the solicitation of Cochran, to the wharf, to see a man named Mitchell; and it appears that when Cochran, Jewell and others, arrived at the wharf, saw Mitchell, and made for him; they overtook him, beat him, and he was lightered by them. That the man was soon dead, and he was butchered by a knife, is too palpable for comment. The question arose, Who did it? A man on a boat, and at the wharf, saw a man with a blue coat on, make a stab at deceased. [The Judge here described the position of the parties.] You will remember that fact, and as whether it was the left or right hand that inflicted deadly blow. Jewell comes up street, he goes to Felix Carey's. Dougherty and Reed, police officers, soon came upon Jewell. Jewell hides in the cellar, emerges, runs, and is overtaken; he draws a pistol, loaded to the muzzle; it is cocked off, though pointed within killing distance of Dougherty. They secure him; and proceed to the watch-house; he tells them to let go, they refuse, and he kicks at Dougherty, twice.

Then he is taken into the Mayor's office, Dougherty notices a knife in his hand, apparently about to be used, which knocked out of his hand on the floor. A man with a tie coat on picks it up and gives it to Hague. Jewell also at places where he had stopped, that he had cut a man, had thrown a tumbler at him, in Leopold Sahl's tavern; Sahl being away from the city, his bar tender, Charles, testifies that there had been no fight at Leopold's that *Who did Jewell cut?* It was proven that there blood on the knife when the officer received it. Whose was it, if not Mitchell's, the deceased, whose was lightered? Providence interposed, the pistol did not go off; the knife had not three coats of murderous blood on it—of Mitchell's—if you think so—and Dougherty's and Reed's.

We are four kinds of testimony, gentlemen, positive or direct, circumstantial and admissions. This case embraces positive, circumstantial, and admissions; if you believe witnesses, you must find a verdict of murder in the first degree. Regard to malice, drunkenness and insanity, I treat at length, gentlemen, on account of the learned counsel employed for the defence, whose arguments bear weight. It is by no means necessary that a jury should go to find the motive for an action of malice. A person may do an act with a motive known only to God, or do an act, as a logician would say, without a motive. The motive is a test of malice, says the learned counsel; the motive is one test of malice, for if a pistol should be presented to the head of a fur man, and his brains blown out, that it would also be a test of malice. A devilish disposition is malice enough sometimes, and a disposition made devilish by ardent spirits is motive enough for malicious action.

You, gentlemen, are the judges of the testimony, and of the law as applied to the testimony as you hear it from the Court; but you, as I have said, are the sole judges of the general testimony, and are not bound to think of the evidence as the Court does.

Manslaughter is the intentional killing by one man of another, without malice. If a full grown man would take an infant, by the neck, and squeeze the breath out of it, it would be murder in the first degree, and if four men follow and kill one man, I will not insult you understanding, by telling you that, that act would be murder in the first degree.

Murder in the second degree, is where there is no intention to kill, but when the killing takes place, while in the participation of a felony, not enumerated in the Act of 1794.

Murder in the first degree, is where a felonious and malicious homicide, is connected with a specific intention to take life. Previous intention is a material ingredient to constitute murder in the first degree. Wherever, it appears that the crime was deliberately committed, it is murder in the first degree. It is sufficient to constitute murder in the first degree if willfulness were one of the ingredients of the crime.

There may be malice expressed or implied. Malice implied is where the motive is unknown, and is where a man with an axe or other deadly instrument, knocks out your brains and takes life. A crime of this kind would be murder in the first degree, because an axe is a murderous instrument, and the use of it implies malice. If a man lets fly a musket or rifle in a crowd, and kills some one, it is also murder in the first degree, because the act implies malice against all mankind. If a man stabs you to the breast with a bowie knife, it is murder in the first degree, because the use of the knife implies malice as clearly as if it had been expressed in the streets.

In regard to insanity. If a man is insane, he is not responsible for any of his acts. If the plea of insanity be put in, that was sufficient to clear defendant, if proved to the satisfaction of the jury. I notice an argument of Judge Shaler—if defendant was insane, how could he urge a verdict of murder in the second degree. If the Court thought a prisoner insane, and the jury so found the prisoner, the question of punishment would not enter their minds. An insane being is not responsible for the acts he may have committed, while in that state. There was not, however, a jot or tittle of evidence to prove the insanity of the prisoner, and I so charge the jury, for such I consider to be my duty.

If you deliberate, gentlemen, about insanity, you do not deliberate about your duty, for there is not a jot or tittle of evidence to support such a statement.

And, as to drunkenness, it is time the Court and you, gentlemen, should understand what kind of a defence of crime drunkenness is. I mean to tell you what the law is; and if the law was otherwise, life would not be one worth a pin. If drunkenness was admitted as an excuse for crime, what would have to do, would be to take a drink of brandy, kill you, and leave you lay, like Mitchell, dead on the street. I did think, gentlemen, that it was rather hard, that in all those eloquent and sympathetic touches, we have heard in regard to the wife and child of Jewell, there was not one tear for poor Mitchell and his wife.

As drunkenness excites the understanding only, it may lower a crime from murder in the first, to the second degree. This was the law, as laid down by Judge Addison: drunkenness clouds the understanding, and excites passion; it may be evidence of passion only, and not of malice. If it be satisfactorily established that there was a want of malice, this alone would mitigate the offence. No man ever said drunkenness excused crime. Drunkenness does not incapacitate a man from executing a premeditated plan of murder; and to make it premeditated, it does not require long time. If the design formed when the knife was in the hand, and before it sinks into the body, that was premeditated. The question would be, did he intend to kill? Drunkenness clogs the understanding, but does not lower malice, unless the absence of malice was proven. If malice was away, drunkenness may be introduced. When a dangerous instrument is used, drunkenness can have no effect on the crime of the party. If there was a heinous offence, the state of drunkenness could have no bearing on the conduct of the prisoner. Where a deadly weapon is used, drunkenness is no excuse—for the weapon is a stronger evidence of malice existed, than drunkenness was that it did not exist. It is well known the effect of drunkenness is different on different persons. The temperate man is never less himself than when he is drunk, and the sot never less himself than when he is sober. Drunkenness can never be received as an excuse for crime, and it was so decided by the ablest authorities.

Insanity should not be punishable at all. It was a plea often put in, but drunkenness never. The great wrong that would be done by the admission of such a plea was apparent to all. It is a common thing, for criminals to nerve themselves to commit crime, by drink. In such cases, the intoxication is willful, deliberate and premeditated. If the criminal feels that his reward bear to the injury he is tempted to slay his victim, and he drinks to nerve himself to the deed, then he is guilty of willful, deliberate and premeditated murder.

I have tried to discharge my duty, as well as I know how. The Court, in the discharge of their duty, will apply the evidence, to the law as laid down, and if it makes out a case of murder in the first degree, or in the second degree, you will compromise your oaths, and neglect your duty. You might as well find a defendant guilty of petty larceny, as of murder in the second degree, where the evidence warrants a verdict of murder in the first degree. If you should think defendant guilty of murder in the first degree, second degree, or guilty of manslaughter, your verdict will vary so.

Gentlemen of the Jury—You owe a duty, and the Court we one, to the prisoner at the bar, to see that no innocent man should be convicted; but that is only half our duty. We also owe a duty to the Commonwealth, which must be discharged.

Society, gentlemen, has surrendered up its original savage rights, its tales away life, as in a primeval state of life, and courts and Juries are the depositories of that power. If an innocent man is found guilty, and a guilty man escapes, society is equally wronged. We owe a duty which, if we do not perform, we shall be the cause of every man taking the law into his own hands. For society, when it finds that Courts and Juries will not protect them, will take the law into their own hands—the lamp-post will be transformed to the gallows, and cowardly Courts and Juries will see the consequences of their folly. See that we do not neglect our duty, gentlemen. Fear and favor have no right in our castle.

There is a difference gentlemen, between an erroneous opinion and erroneous acquittal: the Court can not aside a verdict, said writs of error can be granted to the Supreme Court. But if there is an erroneous acquittal, society receives a grievous wrong. Each murderer acquitted, cheapens the price of human life, and inflicts a wrong on the community.

[The above, the Judge stated were intended as general remarks; I do not suppose they apply to you, but I consider it my duty to make them.]

Each of the jurors when empanelled, stated that he had formed no opinion on the case; and if this was so, the opinion and verdict of the jury, must be formed from the evidence of the witnesses alone. I have a word or two to say, touchy to Mr. Darragh, when he spoke of the surges of public opinion entering the Court House; and effecting the minds of each and jury box. You and I, gentlemen, do not care a new what public opinion is, in or out of doors. Public opinion does not wave and surge against the bench and jury box; and if it does it will roll back rebuked as if it had struck a rock. If a man will stab another, in broad day, in open street, the public would know it. If affrays and orders occur in the streets of the city, the public will know it; and if society receives a rude shock, comments will be made on it. If the press, would not notice such events, it would disclose in duty; and would not be fit to occupy the high place it does.

I will not refer to the evidence, for two reasons: first, there was no attempt made to contradict the evidence of the Commonwealth, and the learned counsel for defence did not attempt to do away with the credibility of the witnesses—the evidence comes before you, not contradicted, and I will not paint it in regard to the prisoner at the bar, in order apply the principle of law to the testimony; and by that and testimony let the prisoner be judged. The Commonwealth would be far more pleased at evidence leading to acquittal than conviction.

It appears that Jewell, on the 5th of July last, went, by the solicitation of Cochran, to the wharf, to see a man named Mitchell; and it appears that when Cochran, Jewell and others, arrived at the wharf, saw Mitchell, and made for him; they overtook him, beat him, and he was lightered by them. That the man was soon dead, and he was butchered by a knife, is too palpable for comment. The question arose, Who did it? A man on a boat, and at the wharf, saw a man with a blue coat on, make a stab at deceased. [The Judge here described the position of the parties.] You will remember that fact, and as whether it was the left or right hand that inflicted deadly blow. Jewell comes up street, he goes to Felix Carey's. Dougherty and Reed, police officers, soon came upon Jewell. Jewell hides in the cellar, emerges, runs, and is overtaken; he draws a pistol, loaded to the muzzle; it is cocked off, though pointed within killing distance of Dougherty. They secure him; and proceed to the watch-house; he tells them to let go, they refuse, and he kicks at Dougherty, twice.

Then he is taken into the Mayor's office, Dougherty notices a knife in his hand, apparently about to be used, which knocked out of his hand on the floor. A man with a tie coat on picks it up and gives it to Hague. Jewell also at places where he had stopped, that he had cut a man, had thrown a tumbler at him, in Leopold Sahl's tavern; Sahl being away from the city, his bar tender, Charles, testifies that there had been no fight at Leopold's that *Who did Jewell cut?* It was proven that there blood on the knife when the officer received it. Whose was it, if not Mitchell's, the deceased, whose was lightered? Providence interposed, the pistol did not go off; the knife had not three coats of murderous blood on it—of Mitchell's—if you think so—and Dougherty's and Reed's.

We are four kinds of testimony, gentlemen, positive or direct, circumstantial and admissions. This case embraces positive, circumstantial, and admissions; if you believe witnesses, you must find a verdict of murder in the first degree. Regard to malice, drunkenness and insanity, I treat at length, gentlemen, on account of the learned counsel employed for the defence, whose arguments bear weight. It is by no means necessary that a jury should go to find the motive for an action of malice. A person may do an act with a motive known only to God, or do an act, as a logician would say, without a motive. The motive is a test of malice, says the learned counsel; the motive is one test of malice, for if a pistol should be presented to the head of a furryman