

Kisner, and heard Poke say he was not mad at the time he struck Dornell. A warrant had been issued, and put into the constable of Madison's hands; and Poke came in the evening to give himself up to me or the constable. Poke's acknowledgments were made before the commitment was served.

*Cross-examined by Prisoner's Counsel.* I can't say positively that Poke said he intended to kill Dornell. There was a large company, and much excitement. My impression is that Poke said he had struck Dornell, but didn't intend to kill him.

*William Kitchen, Esq. sworn.* I had conversation with Poke in the jail. He said it was a pity it happened; that he was not intoxicated when he came from Jerseytown; that Dornell had come into the kitchen, and that he had struck Dornell on the back with the side of the axe. He said he was not angry at Dornell, but that he felt afraid of him.

*Cross-examined by Prisoner's counsel.*—I am keeper of the prison. Don't know that I ever said that Poke ought to be hung. The wife of Robert Dornell, son of the deceased, is a niece of mine. I have told the prosecuting attorney what people would say in the cause.

*Jacob Turner, sworn.* Poke came to my house on Tuesday morning about sunrise, and asked me to move up his family to Plymouth. We agreed partly, but not in full. He then told me what had happened between him and Dornell; that he had struck Dornell with an axe; that his wife had dismissed him and his eldest son the night before; that she called him a murderer, and that he supposed he was a murderer.

*Cross-examined by Prisoner's Counsel.*—Never knew any of Dornell's family until yesterday. I hauled up Poke's family, and had some angry words when we got up to Plymouth.

*James Masters, affirmed.* The morning after Poke struck Dornell, Poke came into the grist-mill where I was between 2 and 3 o'clock. He asked me whether I had heard that he had murdered John Dornell last night. I said I had not. "They say so," says Poke, "and I struck him with an axe." I asked him no questions. He said when Dornell came into the house he asked him how he was, reaching out his hand at the same time; that Dornell made no reply, but caught him by the hair and back of the neck and pulled him over. In a fright he said he struck him with the axe, but did not know what he had in his hand. He said he was not in a passion; that he had nothing against Dornell. Poke had a grist at my mill, and asked me how soon it would be done.

*John Armstrong, sworn.* In 1834, Dornell came to me, and employed me to help him to make shingles. I went with him. I first saw Poke—he raised up while we were talking about him, about 20 yards from the road, from a white pine log, with a rifle. He jumped upon the log, with the rifle in hands, putting the breach on the log. The first word he said was "Damn you, John Dornell." "Is that you," says Dornell, "Yes," says Poke. Poke asked him how it came that his boy had taken things from Mr. Bitman's saw-mill. Dornell said because he caught the boy taking the board. He said Mr. Bitman had misused an iron wedge and chisel, and that Bitman told him that he thought Poke took it. They then quarrelled, and Poke got into a rage & threatened to shoot Dornell, picking up his rifle, but not drawing it more than breast high. John Dornell had a rifle with him, which he drew up in the same way, telling Poke to shoot away and be damn'd, that he had as good a rifle as he had. They both set down their rifles, Dornell then said "Poke, what about your daughter?" Poke's wife then raised up from the same place that Poke raised, and commenced a quarrel with them, and he threatened Dornell. They quarrelled, and afterwards Dornell passed on. After he went a rod or two, Poke blasphemed highly, and said sometime or other he would kill him. Dornell replied, "kill away and be damn'd Pokey." I saw the boy carrying away the board.

*Cross-examined by Prisoner's Counsel.*—We met the son 200 yards before we came in where Poke was. Dornell asked him where he got the board. The boy said he found it by the side of the road. I expect Poke heard what Dornell told the son. I have seen Poke and Dornell together frequently since 1834. I never since

saw them on bad terms. It was the only time I ever seen them quarrel.

*James Campbell, sworn.* After the quarrel in 1834, Poke said if Dornell came out through his enclosure with a load of shingles, if he didn't go back he would shoot an arm or leg off of him. Never made threats before or after. He said Dornell had insulted him. I have seen them together once or twice since; but words passed between them, and not on very good terms. I saw them at Millville—once at David Eves's, and once at Masters.

*James McCam, sworn.* It heard Poke make threats against Dornell three year's ago this last summer. He said Dornell had insulted him twice, and if he ever done the like again, he would either blow out his brains or knock them out. Poke and Dornell have been together since. When Poke told me how he would serve Dornell, I didn't think he was in earnest; for soon after he said he always thought well of Dornell and liked to see him about his house. When together since, Poke and Dornell have never quarrelled.

*Jacob W. Warner, sworn.* I was searching for Poke on Tuesday morning. When I met Poke, him and his wife said that Dornell was a dangerous man, and that he ought to have been killed long ago, and Poke hoped he had gone happy. I went with him to 'Squire Thomas's, and from thence to Danville that night. He expected us to go his bail; and when we offered ourselves the 'Squire refused. I live 6 miles from Pokes, on the road to 'Squire Thomas's.

*Cross-examined by prisoners's Counsel.* Poke was not at home on Tuesday morning, but he came down the same night, and his wife and daughter were with him. I left word at Poke's house what I was after, and that if he would come down we would go his bail. He did not refuse going to 'Squire Thomas's.

TRUESDAY, January, 16, 1835.

JOHN G. MONTGOMERY, Esq. one of the counsel for prisoner opened the defence in a speech of some length, in which he adverted to the testimony upon which the commonwealth rested their case. He did not deny that Poke had struck Dornell with the axe, nor that the blow caused Dornell's death; and he would only claim for the prisoner a verdict of either excusable or justifiable homicide on account of the provocation, and the act having been committed on the sudden impulse of passion, and in self-defence. He alluded to the scene in Sproul's kitchen—the testimony of Stephen Sproul—to Poke's fit, and the subsequent treatment of Dornell by Poke and his daughter—and to Poke's conduct previous to his going before 'Squire Thomas. He felt confident that even with no other evidence than was produced on the part of the commonwealth, no doubt could exist of the prisoner's innocence in the opinion of the jury; but he would now call witnesses to substantiate all he had promised to prove, and after the arguments of counsel, and the charge of a correct, intelligent, humane and perfectly qualified court, he would be perfectly willing to rest the cause in the hands of a jury, selected from the citizens of this county, and personally known to him for their intelligence and probity of character.

The counsel for the Prisoner then called their witnesses, who severally testified as follows:

*Dr. Russel Parke.* Stephen Sproul was examined at the inquest before 'Squire Thomas, but not on oath, we having refused to swear him for the same reasons for which the court refused him yesterday. He stated pretty much then what he did yesterday, excepting as to the blows; then that Poke had struck Dornell three different times on the back, each blow a little higher than the other. The last blow he described to be about the top of the shoulder.

*William Wolliver, sworn.* I was on the inquest at 'Squire Thomas's. Stephen Sproul said Poke had given Dornell three strokes, and that the last stroke was between the neck and shoulders. I have seen Dornell and Poke together two or three times since 1834, and never knew they were unfriendly towards one another. I seen them talking together many times. I went up with the constable to Poke's on Tuesday morning, when the boy and old lady came out, and told us that Thomas was not at home. I told them what we came for; that Poke had best give himself up,

and she allowed so too. We then went off, and that same evening Poke, and his wife and daughter came down to 'Squire Thomas's: The constable was not at the office, but being sent for, soon came and took him. I told the wife that if the 'Squire would take bail he might have it.

*David Eves, affirmed.* I was at the inquest at 'Squire Thomas's; Stephen Sproul told his story. He said there were three strokes. He never stated that the last stroke was on the head. I have often seen Poke and Dornell together since 1834 and they always appeared friendly. Poke brought me a great many shingles. Dornell has helped him to unload them since 1834. Have seen them talk together in my store friendly, on other matters than business.

*Freeman Poke, sworn.* Myself, father and mother, and a small child, went into a swamp to gather belcher tea; as we were going home we seen a board laying by the side of the road. Father told me to pick it up it would make a good bottom-board to our little wagon. I done so, after going some distance the dog treed something, and father and mother went to see what it was. Then John Dornell came along in company with John Armstrong, and accused me of stealing the board. My father said "don't abuse children, but me: I told him to do so." Dornell said "come on, by Jesus, I'll string you," and swung his rifle off his shoulder. Father said "you are a stringer by trade." Armstrong said to Dornell, "Come along John." They went on together—father and mother came on to me in the road. We went home together. The next time I saw Dornell and father together they appeared to be good friends, which was the following winter at Wm. Sproul's, in Millville. They drank together in the evening; and father went to sleep with Dornell, but came out again, saying Dornell's breath stunk so of liquor, that he could'n't sleep with him. Seen them often together afterwards. Every time Dornell came to our house, my father asked him to eat, or if at night, to sleep at our house. Jacob Turner and me had ill-words at Plymouth about a barrel of salt, and we also quarrelled the day before, because I would not treat him. After the quarrel in 1834, between Dornell and father, I never heard him say any thing about killing Dornell. He didn't raise his gun at Dornell. I have seen father and Dornell frequently together at Millville. I never heard cross words between them since 1834., when they quarrelled.

*William Sproul.* I have seen Poke & Dornell together often since 1834. I never saw them, but when chatting together and lively. They have been together at my house since 1834. They appeared to be on neighbourly terms—sometimes a little warm, but not quarrelling. They argued together.

*Betsy Poke, sworn.* Thomas Poke and myself started from home with a load of shingles, and came to David Eves's store in Millville, and from thence to Wm. Sproul's tavern, where we met John Dornell, George Taylor, and Jesse Robbins. Thomas Poke stood by the stove, and John Dornell sat on the bench, and Thomas Poke went and shook hands with him and said "How are you, John?" Jesse Robbins called for a treat, and treated Thomas Poke. Then we went to Jerseytown, and traded out our shingles, and bought some grain, and then returned to Millville, where I got out at Sproul's, and Thomas Poke went on to the mill. He came back, and went to come in on the porch, & as he stepped on the porch his creature run away with the wagon into the barn-yard and upset the wagon. I went out and helped him to put the creature into the stable; and then Stephen Sproul, Thos. Poke and myself came back to the house, and when at the kitchen door, I heard a great noise in the bar-room. I thought somebody was quarrelling—the noise was great. We then went into the kitchen, and set down by the fire. They had but little fire, and Thomas Poke told them to make more fire. Stephen Sproul put a piece of board on. Then Dornell came to the kitchen door, and wanted to get in. It was fastened. Then Dornell says, "by God I will lick you when I come in," but used no names. Then he came to the door and he said, "by Jesus Christ, I'll be in dead or alive," and kicked the door in. When he came in, Thomas Poke reached his hand and said, "how are you, John?" He then clinched him by the hair of the head, and jirked him over the chair backwards. Then he let go with his right hand, and clinched Thomas Poke by the throat, and said "God damn you," and then, "by Jesus, I'll fix

you now." Then I went to strike him with a stick to make him leave go of Thos. Poke, and he knocked the stick off. That loosened his right hand, but yet he held him with his left hand in the hair. Then Thomas Poke caught the axe out of the corner with the wood. I didn't see it before he had it about half raised to strike Dornell. He pushed him with the left and struck him with the right hand. That broke Dornell's hold of his hair, and as Dornell fell, I screamed out, "my God, you have killed him!" He struck him betwixt the shoulders with the broad side of the axe; and when I screamed he went to pick Dornell up. Then he took one or two steps back and fell down on the floor with a fit; He laid a good bit without stirring, and then he began to grasp with his hands, and froth at his mouth, and his eyes turned back in his head. Then when he came to, he set on the floor, and the first word he said was "Mam," (that is what he calls his wife.) I asked him what he wanted? He made no answer. Then he asked me to help him up, and reached his hand out; and I helped him up, and he stood leaning against the mantle shelf. He trembled for a good spell. Then he wanted to help Dornell in, and I told he could not yet, for he could'n't walk good. John Dornell sat right in the door on his hands and feet; and then Thomas Poke and me went to Dornell, took hold of his arm, and he got up, and walked in by the fire. He sat down before the fire on the floor, and said he wanted to lay down. Thomas Poke told the children to get something for him to lay on, and they got a pillow; a while after William Sproul came home. When he came in there was a little cotton coverlid over Dornell. Wm. Sproul gave it a jirk off of Jno. Dornell, and said, "what's this doing here?" Then Sproul asked what was the matter, and Thomas Poke said he could not tell what; but told him to ask the children.—Then Sarah Ann Sproul and Stephen Sproul told the story—that Thomas Poke had struck Dornell on the back with the axe—that he had struck him but once. Then Sproul said he would go up to David Eves, and bring him down, and when he went, Thomas Poke went along. They returned back, and David Eves, Andrew Eves, and Joseph Masters were along. David Eves allowed it was a hard case. Andrew allowed it was drunkenness. Then they went out, David Eves saying "let us have a drink," and him and Sproul went into the bar-room, and Thomas Poke and Andrew followed. They then came out. David Eves, Andrew Eves, and Joseph Masters went off. Thomas Poke and Wm. Sproul then came into the kitchen, and Sproul allowed it would be a hard case. I went to bed, leaving Thomas Poke and Sproul with John Dornell. In the night I heard Thos. Poke going to bed in another room; but William Sproul came up and told him to come down. After being down awhile, he came up stairs, and told me to get up for company for him: I told him my head ached; but I got up for all and went down, & set by the fire with John Dornell and Thos. Poke. Dornell puked up liquor, as I tho't, and Thomas Poke would turn him over on his side, and wiped his mouth off with his hand. We remained there till daylight.—Thomas Poke asked Dornell if he was hungry, and he answered "yes." He offered him some cake; he shook his head as if he didn't want it. Thomas Poke then took a piece and put it into his mouth, and he bit some off. Dornell then asked father if he was angry at him, and he said "no;" and then Dornell said "give me your hand." They shook hands together several times. I told Thomas Poke that he bothered him too much. He replied that he wanted to make up and be good friends. In the morning after daylight, Dornell asked for pepper and whiskey. The tavern keeper said he gave it to him and that he had puked it up. Then Thomas Poke having found that the grist was done, we got it, and went home. On Tuesday morning, about an hour after sun rise, Ph. Welliver, Wm. Welliver, and Lewis Schuyler and Warner came to our house. Phineas Wolliver asked mother if Thomas Poke was at home. She answered "no." "Are you sure of it," says she. "You'd better come and see," says she. After a spell Phineas Welliver came into the house and looked all around for him; and he told mother he thought Thos. Poke had better come and give himself up. She said she would tell him so when he came home. They went away, and Thos. Poke came home about 2 o'clock in the afternoon. Mother told him, and said he must

go and give himself up right away. Mother and I went with him about six miles.— We were going to Jerseytown to the 'Squires. Mother stopped to light her pipe, Thomas Poke and me walked on 2 or 300 yards. Then he sat down to wait for mother. When mother came up, Warner was with her, and she said "here is a friend indeed, although a stranger." Warner offered to go to Thomas Poke's bail. We went on together to Millville. Warner stopped at David Eves', and we walked slowly till he overtook us again, and when opposite Master's store, John Corson came to us, and him and Warner went on before—sometimes 300 yards ahead. They walked so fast that mother and me could'n't keep up, and Thomas Poke staid with us. Warner stopped at old Billy Welliver's, & Thos. Poke, mother and myself waited until Warner and old Billy came out. Then we all went to Caleb Thomas's. It was about 8 o'clock at night. Warner went for Phineas Welliver, the constable, and he came there, and I can't tell what they talked about. I heard some one asking Thomas Poke if he intended to kill Dornell; and he said no. Then we all started together to Jeremiah Wolliver's, in Jerseytown, and got our supper, and mother and me went home. We didn't know of Dornell's death, till told by those who called at our house. Turner lives four miles from us. I was in company with Thomas Poke from Warner's to Jerseytown, all the time. Never heard Thomas say that Dornell was a dangerous man, and ought to have been killed long ago. Warner was with Thomas Poke, & mother and myself to Millville, and from Millville John Corson went with us to 'Squire Thomas's.

*Cross-examined by Commonwealth's Counsel.*—There was only one stroke with the axe. They say I am a daughter of defendant's. Dornel spoke that evening while Sproul was there. Sproul and him talked together after he was struck; sometimes he conversed easily. Sproul came into the kitchen before day light. I am certain the stroke was with the axe in one hand, and that it was on the back. Just as father struck Dornell he pushed him, and it loosened the hold of his hair, and as he pushed him, it turned his face towards the door.— I think his head fell against the door-check. Sarah Ann Sproul showed me to bed that night. The fire-place is on the left hand side as we go in. Dornell laid right in the door, with his feet in the house, when he fell. The floor of the porch is made with pine boards. The porch is not lower than the kitchen.

The counsel for prisoner here closed their testimony for defence, and the commonwealth's counsel called the following witnesses.

*Wm. Sproul—before sworn.* Don't remember that I was told that evening how many strokes there were. I am not certain that I showed Betsy Poke to her room that night. I think Dornell asked me in the morning for whiskey. I think I gave him some pepper whiskey, and its likely I put some pepper into it.

*John Batton, Esq.—affirmed.* I know Betsy Poke, have a little acquaintance. Her reputation in the neighbourhood for truth is not very favorable. Poke and I had quarrels some years ago. I never heard or knew that she had been sworn as a witness before.

*Peter Nephew—sworn.* I am not much acquainted with Betsy Poke. I never heard the neighbours say any thing about her character for truth.

*Andrew Eves—affirmed.* I have seen Betsy Poke, and that's all. I cannot say anything to impeach her character as to truth.

*David Eves—before sworn.* In conversation with Freeman Poke, the Monday after Dornell was hurt, at my store, he inquired how Dornell was, and what people said about it. I said I understood that Sproul's boy reported that he had struck him 2 or 3 times with the axe. He replied that if he had been in his father's place, and had been used so, he would have given him one stroke which would have been enough. John Armstrong's character for truth is good. I cannot say any thing against Jacob W. Warner's character for truth.

*Andrew Eves.* I have never heard the character of John Armstrong or Jacob W. Warner impeached for truth.

Here the evidence on the part of the prosecution ended, and counsel for prisoner called the following witnesses: