

The Alleghanian.

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I WOULD RATHER BE RIGHT THAN PRESIDENT.—HENRY CLAY.

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A SECOND SICKLES TRAGEDY.

Trial of Joseph Moore for the Murder of Jordan Marbourg, at Johnstown, February 12th, 1864.

In the Court of Oyer and Terminer for Cambria County, March Term, 1864.—Hon. Geo. Taylor, President Judge; H. C. Devine and G. W. Dady, Associate Judges.

A few weeks since, we gave the particulars of the killing of Jordan Marbourg, a prominent citizen of Johnstown, by Joseph Moore, Auctioneer, of the same place. The provocation was the alleged intimacy existing between the former and the wife of the latter. The case came before the Grand Jury of this county on the afternoon of the 7th inst., who, after an absence of a few hours, returned a presentment of willful murder against the defendant.

THE COUNSEL.

In addition to District Attorney P. S. Noon, the counsel for the prosecution comprised Gen. Henry D. Foster, of Greensburg, and Messrs. Potts and Kopekin, of Johnstown; for the defence, Messrs. R. L. Johnston, of Ebensburg, Pershing and McLaughlin, of Johnstown, John Scott, of Huntingdon, and Billings G. Childs, of Pittsburg, appeared.

THE PRISONER.

At 9 o'clock on Tuesday morning, the prisoner was brought into the dock. The few weeks which had transpired since the commission of the awful deed, had made a slight change in his appearance. Contention brooding over the crime; the great provocation under which it was committed; and the sundering of those social ties which wreck the happiness of the home circle, accounted, doubtless, for his subdued manner, and a general feeling of commiseration was excited in his behalf. Mr. Moore is a man of medium size, fine, florid complexion, and very handsome appearance. He is about 35 years of age. Shortly after the prisoner was brought in, at 9 o'clock, Tuesday morning, the process of empanelling

THE JURY.

was begun. The regular panel was exhausted about 11 o'clock, and but seven jurors secured. Twenty were challenged by the defence, twenty-three for cause, and four by the Commonwealth, when Court adjourned until 2 o'clock; the Sheriff in the meantime having been instructed to summon twenty-four talismen. At 2 o'clock, Court opened, when the business of completing the jury* was resumed. But three men were secured out of the twenty-four; when a writ of venire, empowering the Sheriff to summon twelve more talismen, was issued, and at twenty minutes past four, the twelve men who were chosen to fulfil the solemn duty of passing the sentence of life, or death, upon the prisoner at the bar, had been empaneled. Their names are as follows:

John Lantzey,
Jacob Kirkpatrick,
Charles Owens,
Timothy Hunt,
John G. Trenkle,
Cornelius Morris.

The case was opened by the usual question being put to the prisoner, of "guilty or not guilty?" He answered, in a clear and distinct voice, "Not Guilty," and, in accordance with the usual form, demanded that he should be tried "by God and his country." During this impressive scene, and while the prisoner was standing at the desk, nearly every person in the densely crowded room stood up, or leaned forward to get a view of the prisoner.

THE PROSECUTION.

The case for the prosecution was opened by Gen. James Potts. He commenced by a description of the terrible consequences of the crime the prisoner was guilty of, in depriving his hands in the blood of a fellow man, and sending an immortal soul to the judgment seat of God without a moment's warning. What must have been the feelings of the prisoner at the bar when that awful charge was read to him, and the question asked, "how he would be tried?" His answer was, "by God and my country;" by the Great Jehovah who, amid the lightnings of Sinai, enunciated the command "thou shalt not kill," and who said "vengeance is mine." The prisoner has recognized the human power, which is the power ordained of God, when he demands a trial by "God and his country," and the issue is thus joined. In alluding to the impressive scene of empanelling the jury, he remarked that the prisoner had every advantage of securing an impartial one, for the law permitted him to peremptorily

challenge twenty, and as many more as he could show just cause for. The prisoner was told to look upon the juror, the juror upon the prisoner, and in that single look, if he imagined the juror might be unfavorable to his case, he might challenge him, and his cause be not demanded. No man could enter that box without divesting himself of all prejudice, and if any man did perjure himself by retaining a prejudice, in spite of the evidence, that man was giving a common license to his followers to go out upon the highway and murder at will. If there be a doubt of guilt, there must be an acquittal; but if the evidence given here satisfies you that the crime has been murder, then by your solemn oath you must render a verdict of guilty. You must not take as evidence newspaper opinions and reports; these must make no impression whatever upon you. And pray to God that you may have grace and strength to do your duty to the prisoner at the bar. This case is dissimilar to the majority of murders.—There is no mystery shrouding it. The killing was done in the broad light of day, and in the presence of witnesses, and I think for a diabolical and cruel act it has no parallel. [The manner of the killing was here described, but as this will appear upon the evidence, it is unnecessary to transcribe it.] Copious extracts from the Common Law and Pennsylvania Statutes defining and applying the crime of murder were read, when he closed by remarking that he did not deem it necessary to enter into any extended argument at the opening of the case; and if, at the conclusion of the trial, any doubt should exist in the minds of the jury as to the guilt of the prisoner at the bar, it was their duty to give the prisoner the benefit of that doubt and acquit him. Gen. Potts spoke about one hour.

TESTIMONY FOR PROSECUTION.

The first witness called was George W. Wehn, who, being sworn, testified as follows: On Friday morning, 12th day of February, 1864, I came to my place of business, on Franklin street, near Post Office, at about 5 o'clock. Shortly after, noticed Moore standing at Frazier's drug store. Mr. Silberman came along, and remarked that he thought Moore looked very much excited. Moore came over to my store, and I asked him to come in.—He took a seat near the stove, facing the door. I asked him if he had read the account of a battle near Knoxville; he said no; so I commenced reading it to him. Was in the store about half an hour, and I thought he was paying attention to what I was reading, when he got up hastily and went out; I laid down the paper and went to the door, and saw Jordan Marbourg coming out of the Post Office; Moore caught him by the coat collar, and told him that his wife had confessed all that morning, and began to cry, appearing very much affected; he told Marbourg to get down on his knees and repent, for he had ruined him (Moore) and his family. I think Marbourg said, "Joe, it is not so." Moore told him it was so, that he had found out all that morning; he said, "I hate to have your blood on my soul—I have always been a professor of Christianity, and think I would be justifiable in killing you." Think Marbourg replied, "I am innocent." Moore pushed him up against the building, when the latter's hat and wig fell off, saying, "I ought to shoot you; while I was out fighting for my country, you seduced my wife." Marbourg made a gesture and said something; don't know what he said. George Thomas, who does business next door to me, then came up, and said we had better take Joe away, but I thought we had better not interfere. Just then Moore stepped back a few paces and fired, the ball striking deceased in the head; while the body was in the act of falling, another shot was fired, taking effect I think in the head; after deceased had fallen to the pavement, with his head towards the curb, Moore fired two or three times in rapid succession; he then put the pistol in his pocket and walked toward the Mansion House, saying he wanted to give himself up. When he held Marbourg against the side of the building, think he hit him a slight tap with the pistol, saying, "I ought to shoot you, but don't like to do it." Deceased made no resistance whatever, and looked frightened and pale. The distance from my store to the Post Office is about fifteen feet. [A photograph of the locality was here submitted to the jury and identified by the witness as being correct.] The pistol used was an Allen revolver, six barreled. Prisoner made use of profane language seven or eight times; have known him about eight years, and never knew him to swear before. His place of residence is about five squares from the scene of the killing.

Nothing elicited on cross examination. Court adjourned at 7:10 o'clock.

SECOND DAY—WEDNESDAY.

Court met at 9 o'clock, when the trial was resumed.

Geo. J. Thomas, affirmed: On the morning of the 12th of February, I heard a loud voice outside my store remark, "You s—n of a b—h, you have ruined me, and my family;" went to the door and saw Moore have Marbourg by the collar, pulling him back and forth; in his right hand he held a revolver. I went to Wehn's store, next door, and said to George Wehn that he had better take Moore away, as he might shoot; he replied he thought there was no danger, for he didn't think he would shoot. Understood Marbourg to say he was innocent of the charge. Moore hit him a little tap on the forehead with the pistol, saying that "while he was in the service of his country, Marbourg had seduced his wife;" he then stepped back a pace, and holding up the revolver, took aim and fired, the ball striking Marbourg in the forehead; he continued firing as Marbourg was falling, and after the body had reached the pavement, he stepped back and, taking aim at his head, fired twice. Moore then walked away, and passing me remarked that "Marbourg had seduced his wife even in his own store." Deceased was a man of family, having a wife and nine children; prisoner has one son, about 16 years of age. The former I judge to have been about 45 years of age, was well formed and well built, with florid complexion, slight whiskers tinged with grey, and was about 5 feet 7 inches high. Cross examined, but nothing materially different from the above elicited.

Howard J. Roberts, affirmed: Was in the office of the Tribune, on the morning of the murder, when one of the boys remarked that a fight was transpiring below. Went to the window and recognized Moore and Marbourg. Saw the former fire, and the latter fall, when I left the window. Have known Moore for about seven years, and never saw him angry before. He appeared frantic while talking to Marbourg.

Cross examined in chief: What I mean by "frantic" is not as he generally conducted himself.

Dr. John Lowman, sworn: On the 13th February, made an examination of the dead body, and discovered five wounds, which I believe to have been gunshot or pistol wounds. I did not make a dissection of the body. I found one wound entering the left side of the head parallel with the left eye, the ball passing through the front portion of the brain. The effect of that shot would produce death. The second wound was in the left breast, about half an inch from the nipple, and near the left lung. This wound may not have been fatal. The third wound was on the back portion of the head; a mere flesh wound, and not injuring any of the vital parts. The fourth wound was on the back of the neck, passing through and lodging somewhere in the under jaw; this wound may not have been fatal, as it escaped the blood vessels. The fifth wound was a flesh wound, passing through the upper part of the left arm. There was a slight contused wound on the right side of the head.

Cross examined: Moore was of a sanguine or nervous temperament, and it is an admitted fact in physiology that such are easily excited or deranged by great emotion.

John M. Bowman, sworn: This testimony was corroborative of that elicited in the evidence of Howard J. Roberts; it is unnecessary to repeat it.

Charles Barnes, sworn: Nothing important was elicited from the evidence of this witness.

Wesley J. Wilson, sworn: On the morning of the 12th February, was walking down Main street to the Post Office and saw Marbourg coming up and turning in the same direction; he was about 80 feet in advance of me. When I got to the Post Office, saw Marbourg and Moore in the entrance; the latter appeared to be taking hold of the former by the collar with his left hand, at the same time charging him with having destroyed the peace and happiness of his family; Marbourg replied that it was not so, that he was innocent, and that he would go thro' a course of law with him. Moore had by this time got very much excited, and did not appear to notice Marbourg's replies. I then went into the Post Office and told the assistant Post-master that these two men were at the door; we could hear the prisoner swearing and calling the other hard names.

Dr. A. J. Jackson, sworn: Was walking from my office toward the Mansion House, having been attracted in that direction by hearing a screaming voice; heard shots fired from the direction of the Post Office, and looking over recognized Moore as the man who was firing; did not go over then, as I had no desire to see

a man in the agonies of death, but turned and walked a few steps in the opposite direction. After the commission of the murder, prisoner walked to where I was standing; I said to him, "Joe, this is awful—it is a terrible revenge," he said he didn't care a G—d—n, that Marbourg had ruined him and his family. Think I told him he had better give himself up; he said he would; I said it was the best thing he could do. He then started towards Squire Rutledge's office, while I went to assist in carrying the body of deceased off the street. We carried it as far as Rutledge's office, when I suggested the propriety of taking it in there, but on trying the door it proved to be locked, and the Squire came to the window and shook his head. A message shortly arrived from the wife of deceased, requesting the body to be taken home, which was done. What I mean by "terrible revenge" is, that I had previously heard of the difficulty existing between the parties.

Irvin Rutledge, Esq., sworn: Was in my office on the morning of the 12th of February. The noise outside attracted me to the door; looking out, I saw the prisoner coming toward me; as soon as I noticed him, he spoke, saying he came to surrender himself into the hands of the law, as he had shot Marbourg; he took my hand and stepped into the office. I asked him why he had done the deed; he said because deceased had seduced his wife. Noticed the pistol in his pocket, and told him to surrender it, which he did. [The pistol was here produced; it is known as an Allen repeater, six chambers; five of the chambers had been discharged, and one was capped and loaded. It was taken possession of by the Court.] On his own confession, I committed him. Asked him while in the office why he didn't think before he committed the act; he replied he thought God would forgive him for what he had done, for Scripture pointed out that a man who committed adultery should die. I asked him if there was no one present when he shot deceased; he answered, "O Rutledge, why didn't some one interfere?" Every few minutes he claimed my protection, and wanted the pistol again to defend himself, as he was afraid of Marbourg's friends. He was praying to God to forgive him. He said that all he asked was a fair trial. He wanted me to go with him to see his wife, but I refused. He looked like a man just cooling down from anger.

Col. T. L. Heyer, sworn: Observed the commencement of the quarrel from a distance, but not wishing to become a witness to it, did not go near.

James F. Campbell, sworn: Came out of my office when I heard the shot; assisted in conveying the body of deceased home; think it gasped once or twice when we raised it up.

Francis Sloan, sworn: Assisted in carrying the body home.

John F. Barnes, sworn: Have been acquainted with the deceased for 18 or 20 years; his voice is pretty strong, and when raised to a high pitch becomes shrill.

A photograph of the scene was here submitted in evidence by the Commonwealth.

Thompson Kimmell, sworn: Prisoner came to me on the 6th February, and said that he had heard I had seen Marbourg and his wife in close quarters; I said it was not so, but would tell him what I did say; I then told him that I had seen Jordan and his wife on the street near Geis' store, that they walked off together, but that I didn't know where they went, but that some time after I saw deceased come out of the alley at Geis'. The prisoner said this was bad enough, and if true he could settle with Marbourg in a minute. On the 8th, they both came to my place of work, and the prisoner asked me to repeat my story to Marbourg; I did so. The prisoner then turned to him and said, "If this report is true, I would kill you in two minutes." Deceased said if he had injured him or his family, he would willingly bare his breast to him. The prisoner asked me as to what caused me to notice the two so particularly; on my replying that I did not like to tell, they both said I should not get into trouble about it; I then said it was from surmises I had heard with regard to them. The prisoner asked me if I could give him the exact date of the time; told him he could ascertain it from an entry of several arrests, made the same day, at the Burgess' office. They talked a little longer, and went off together. The next day the prisoner told me that he had found the date to be the 16th of January, and that he thought I must be mistaken, for he had persuaded his wife, against her will, not to go to church that night, because she had complained of being sick; told him I was positive in reference to

what I had informed him. The witness was subjected to a rigid cross examination, but did not vary from the foregoing statement.

Adjourned at 7 o'clock.

THIRD DAY—THURSDAY.

Court opened at 9 o'clock, A. M., and case resumed.

J. K. Hite, sworn: On the evening of the 5th February, 1864, the prisoner called me out of the store of D. C. Morris, in Johnstown, and asked me if I had heard any report at Stoystown, or Johnstown, in regard to the alleged connection between his wife and deceased; told him that I had heard something from the police officers, but that they were not always to be relied on. He thought it was a slander on his wife, but said that if he found them guilty of the alleged crime, by the eternal God he would kill them in their tracks, or the slanderer, if the story were false.

Cross examined: The prisoner and myself have been intimately acquainted from infancy. This was the only time I had ever heard him swear. He was out under my command in the nine months service.

At this stage of the investigation, the prosecution rested.

THE DEFENSE.

The case for the defense was opened, at 9 A. M., by Billings G. Childs, of Pittsburg, who spoke substantially as follows:

"Gentlemen of the Jury—It devolves upon me, the youngest member of the bar engaged, to tell you the simple, unvarnished tale of the much wronged prisoner, and I would ask you to weigh it well, for this is probably the most serious case you have ever been called upon to decide. You will remember that a short time ago, upon one of the most public streets of Johnstown, the bright rays of the morning sun fell upon the lecherous body of the adulterer, Jordan Marbourg, and bore back to heaven the piteous tale of the poor, crazed, broken-hearted prisoner at the bar. You all remember the time when your faith was plighted to the different women of your choice—when pure, and simple hearted, they pledged to love, honor, and obey you always. To you the sky never looked brighter, nor birds sang sweeter, than then. So it was with the prisoner and this abandoned woman. They lived in happiness for many years, and the first fruits of their happiness, a son, was born unto them. You who have children know how you watch their budding infancy, and how your fond hopes are centered upon them. The parent was poor, but honest, and respected—laboring by the sweat of his brow for his daily bread. He possessed those traits which made him esteemed and respected by the people of his town. Let a man be honest, and upright, as the prisoner has ever been, and he will have the sympathy of all who know him. This was the life of the prisoner until the lecherous eye of Jordan Marbourg looked in upon his earthly paradise. Just God! breathes there a man who can thus enter the social Eden of a family and rob it of its peace and happiness! The confiding husband went forth to battle for his imperilled country's rights and liberty, and from that moment dates the foul wrong done him. Marbourg had accumulated a fortune, but in this country money does not shield a corrupt heart. He also had a family—a wife, children. Ingeniously he worked his plot. He gets the boy where his eyes may not observe the mother's overthrow by persuading him to enter his store; but there is still a danger, and he at length makes the boy sleep in that store. There is another yet in the family, a young niece, simple and honest-hearted; go where they may, and disguise their doings as they will, her eye appears to follow and read them. And at length, in that house, she discovers them in the very act of adultery. He seeks to buy her silence, but is not as successful as he might wish; she writes to her parents about the matter. I do not wish to tread upon his grave with aught of contumely. Although when he wrongs the prisoner, he wrongs you and me, and all of us, I hold no resentment against him, yet here the truth must prevail.

"After his long absence, Moore returned to his family. Soon he heard reports of meetings in houses, and distant places, between his wife and Marbourg, where they had passed themselves as man and wife. He tracks these rumors with avidity, seeking their truth, but still placing confidence in the wife of his choice.—Different witnesses have testified to your excitement, and that in him at that time they could not recognize the Joseph Moore of childhood. Gentlemen, I apply the case to yourselves. Were you to hear rumors of a Jordan Marbourg defiling your bed, and finding them to be true, would not your reason totter, and would

not this wrong burn and harrow your very souls until you would wash it out in the blood of the adulterer? The able counsel on the other side has told you that one of the principal ingredients of murder, was sound mind and discretion, and you are to decide if this be the case here. Great God! if there is a mind that could live under all this, then indeed it must have been a remarkable one. We are prepared to prove that several members of the prisoner's family are insane, that he himself is of strong emotional feeling, and that men constituted like him are liable to insanity. All this led him to think in his madness that the Fountain of Mercy would justify him in the act of murder. The Scripture says "the adulterer shall die." It is true there is a command, "Thou shalt not kill," but then there are two others which say, "Thou shalt not commit adultery," and "Thou shalt not covet thy neighbor's wife."

"The gentleman proceeded to briefly recapitulate the evidence they intended laying before the jury, and also read a number of extracts from eminent authors, upon the subject of insanity. And in conclusion, thanking the jury for the patience evinced by them, he said that the prisoner required no embellishment of language in this, his plain and unvarnished tale. He entreated them to give the case their utmost attention.—Their presumption was that he is innocent until proven guilty, and if after all, there is still a doubt in their minds of his guilt, they are bound by their oaths to give him the benefit of that doubt. Lastly, let their verdict be tempered with mercy.—Mercy is the paramount virtue before which all others sink into insignificance; therefore forbid not this element to enter into your councils. The day must surely come when we must all appear before a merciful judge, and a tenfold greater judgment awaits us than can possibly attach to the prisoner at the bar."

TESTIMONY FOR DEFENSE.

The first witness called for the defense was Albert B. Petriken, sworn: Am assistant Post Master at Johnstown; was in the office on the morning of the 12th February, when the noise of the disputants attracted my attention; I let down the upper sash of my window, and leaning over looked out; recognized prisoner's voice as saying, "No man can do that with me," and saw him strike Marbourg in the face with the revolver. Prisoner looked wild and desperate through his eyes. The distance from where I was standing to the prisoner was about 8 or 10 feet. This witness' testimony in regard to the killing was similar to that of those who preceded him.

Cross examined closely, but nothing further elicited.

Mr. Silberman, sworn: When I was going to the Post Office on that morning, saw the prisoner standing at Frazier's corner; I went on to Wehn's store, and remarked to George Wehn that he looked just as if he wanted to kill Marbourg that morning; he looked very much excited, and I was frightened at his appearance. While we were talking he came over; I said "good morning" to him and left. His face looked wild and his eyes large.

John Slick, Esq., sworn: Met prisoner that morning at Post Office; spoke to him, but he didn't appear to notice me; his eyeballs were wild, and I was startled at his appearance. He went to the inner door of the office; I came out and opened a letter to read it, when Moore came out, walked to the corner, and looked up and down the street; observed his eyes again as being very red.

E. Shaffer, sworn: This evidence was a repetition of that adduced from other witnesses who were nigh at the time of the killing.

John S. Moore, sworn: I am a son of Joseph Moore, and am 16 years of age. Deceased spoke to me of going into his store just after father went to the army; went into it on the 7th of March, 1863; remained with him about six months, two of which was after father's return from the army. He said if I would stay two years he would give me an interest in the store, and on father's return he would start him and his own son in business, with a capital of \$1600. He also told father on his return that he had not business enough going on, and that he would start them. I wrote to the army to father concerning the proposition he made; father came home before they were sworn out, and the night he was going away I went to the depot along with him; we met Marbourg at William's store, and he offered father some money, but father said he didn't want it. Father and he were very sociable, and he was backwards and forwards at our house after father came from the army; he took tea at our