

HERALD EXTRA.

TESTIMONY IN THE FITZGERALD-MCNEILL MURDER CASE!

The Trial of Maurice Fitzgerald for the Killing of Daniel McNeill, near Greenwood, Cass Co., Neb., on the 18th of Dec. '78.

Court opened Tuesday morning, April 29th, 1879, with the case of McNeill vs Fitzgerald.

For the prosecution District Attorney J. C. Watson, G. S. Smith, J. E. Morrison.

For defence, lawyers S. M. Chapman, T. M. Marquett, and Willitt Pottenger.

About 50 Jurors were put in the box before a satisfactory selection was made.

DR. H. D. ROOT,

was the first witness called; saw the deceased, McNeill, on the 18th day of Dec., 1878; was called to dress wounds at the house of Jno. Montgomery, found a wound in the back of his (McNeill's) head, from bullet which passed through the scalp to the skull; did not enter the skull, was a scalp wound. There was another wound in the right breast, $2\frac{1}{2}$ inches below the collar bone, which I probed until I struck clavicle; ball passed backwards, examined his back, found a tender place near the spine on 3d rib; there was no feeling in hands or feet; bathed them and wrapped them in woolen cloths and gave him stimulants until Dr. Bunnell came.—He examined the wound and came to the conclusion that further examination of the wound would be detrimental.—Next morning there was scarcely any pulse, and his limbs were quite cold.—(Pottenger here asks that other witnesses for prosecution be excluded from the room. Judge does not order the same now.) From 8 o'clock there was great difficulty in breathing and he was in great pain; by 12 o'clock we had to move him by lifting with quilts and we all stayed until 8 o'clock the next morning (20th); did not see him again until I was called to the post mortem examination on the 1st of January, 1879. Dr. Bunnell and myself made the post mortem examination; we found the ball had passed upwards to clavicle, and then inward to apex of lung, and backwards to posterior 3d of second rib. Lung entirely broken down; took out 8 quarts of bloody serum from right chest; we did not find the ball; it may have been scooped out or it may have remained in the body; we were as careful as we could be.

Question by District Attorney:—When I first saw the wound, I concluded there was internal hemorrhage, and that it was a mortal wound. McNeill is dead; my opinion is that he died from the wound in his breast; (again describes wound and the effect it would have); McN. died on the 31 of Dec., I

think, at Jno. Montgomery's house.

To Q. by D. A.—There was another wound on his (McN.) chin, a bruise, only; must have been produced by a blow, but might have been caused by a kick. Am a practicing Physician of 10 years practice; know Maurice Fitzgerald, (Judge here excludes the other witnesses), I saw him at my office in Greenwood on the afternoon of the 18th day of Dec., 1878. He came to get me to dress his head. He stated that he had had some difficulty with Dan'l McNeill, about a mile north of Greenwood.

Q. by Marquett:—He come for medical advice.

Marquett objects as being confidential between patient and physician.

Watson asks: who else was present? the Doctor says the room was full.

Marquett still objects; they argue the point and the Judge finally admits the question.

To Q. by D. A.—There was some conversation about the affair. I asked him about the trouble and he said that a man was shooting across the creek in the woods; he hallooed at him and asked him if he was shooting quails over there. The man said he had not yet; he then told him not to shoot quails there; the man asked if he owned the quails. Fitz said he did. Man asked if he had any papers &c., (used other language not proper here); told him again not to shoot his quails or he'd see about it. The man answered saucily, and afterward he heard more shooting and went down and met McNeill and asked him if he was the man he had hallooed at? McN. said he was; Fitzgerald said that he then made for McNeill. McN. struck him with his gun on the head, and he fell down; he thought he was struck on the arm also. Fitz then shot McN., who started to run and he shot again; thought he had hit the man and went up to him and kicked him. McN. begged of him not to kill him, and he left him; said he went back to where the gun lay, and got the gun and the cap belonging to McN. Shot him with a revolver, he said. Witness was present when Justice Armstrong was at Montgomery's. Mr. A. McNeill sent for him. Armstrong was there at 12 or 1 o'clock at night (the 18th). Deceased was prostrated; I did not think he would survive until morning. Testimony of deceased was taken by Armstrong; (objection to the testimony).—allowed.—He was cold and in a bad state; (more objections); I think that McN. said to his mother "that it could not last long." (Objected to); objection overruled.—His mother cried and left the room.

Court adjourned for dinner.

DR. ROOT ON THE STAND.

Cross-examination by Mr. Marquett:—I was the first physician called. He was conscious. It was between four and five o'clock; left next morning at 8 o'clock; (shows where the head wound was); could not tell which way the ball came; passed through the back of the head; died of wound in the breast; didn't measure wound in the head but think it was about half an inch in length. Saw Fitz. before I went to see McN., about 2 or 3 o'clock.

WHAT FITZ. SAID.

He wanted me to dress his head, on the top of the head. It was during this dressing that he told me of the difficulty; only one place where the scalp was broken; (repeats the conversation about shooting the quails, &c.; brings it out in more detail. The language is not suitable to print). Fitz. said his eyes were blinded with blood when he shot, and couldn't tell if he hit, but thought he had, as he seldom failed; had been hauling hay and was by his team at first conversation; Montgomery's half or three quarters of a mile from Fitz's; house was a fair house, reasonably warm; was not perceptibly better in the morning. I went home from there; don't remember what I might have said to Chevrant or Maston; don't think I said he was better at that time; he was not materially better; am not positive whether I told Fitz. about how the man was in that store; never stated to any one that he would get well; might have said there was a reaction for the better. Was sworn in preliminary examination, before Squire Mathews; never swore that this might result in the death of both parties; have no recollection of stating any such thing; no such question was asked. Bunnell and I agreed as to McN.'s condition; did not hear Bunnell's testimony at that time; can't state if Chevrant was at Montgomery's house; the room was full; couldn't tell all who were there; deceased was not materially better in the morning; did not go back to attend him, as Bunnell had been called in; did not probe for the ball in the morning; think deceased died on the 31st.

By Watson:—It was in the afternoon between 2 and 3 o'clock when Fitz came to my office. He said he went home and got a cup of tea and then came to my office. His house was a mile or more from Greenwood. There was dried blood on his forehead and temples, in hair, &c. I examined no other wounds.

SHERIFF HYERS SWORN.

By Watson:—Know Daniel McNeill;

—In December 1878 I saw him at Jno. Montgomery's in this county. Acted as Coroner at the Inquest. It was the 2d or 3d of January, 1879. He was found dead. It was his body.

TOM MCNEILL SWORN.

Am a brother of deceased, remember when he was shot. Was shot the last of December, 1878. Saw him at Montgomery's; was there after he was brought to the house. It was about 3 p. m. Was with him until next morning; He wanted a drink of water. I said you had better not drink too much. He said he could not live long and wanted a good drink of water; this was about 12 m. Justice Armstrong was there that night and about 12 o'clock he took the affidavit of Daniel McNeill; This conversation about the water was before Armstrong came. Was present when he died. It was on 2d of January.

Cross Examination by Marquett:—He was an older brother; I was with him the next day too, but slept part of the time; I was there in the morning of the 19th; Don't remember if I asked as to his condition next morning; he said he never expected to raise to his feet; not the next day, he was too low, but afterwards he said this. Don't know that he ever said he was going to get well. Don't remember if he told Chevrant that. Several days after he said he hoped to get well—thought he wouldn't; wasn't next morning. Armstrong lives in Lancaster Co., Montgomery's is in Cass County, two miles apart, and two or three miles from Greenwood; Armstrong was sent for.

By Watson, re-direct:—Several days after he said he couldn't live and wanted the water, he said that he hoped he would get well.

By Marquett:—I told him to have courage.

THOMAS MCNEILL SWORN.

By D. A.—I am a brother of Dan'l McNeill; Saw him the evening he was shot, at Montgomery's. I heard him say he couldn't live; (tells about the water, same as John); I saw Armstrong there; I saw Armstrong take an affidavit.

Cross examination:—Can't say what answer my brother made to Daniel at the time he asked for water; don't remember; I was never examined before on this case; I have heard Daniel say he hoped to live, but can't swear it was that evening; think it was before Armstrong came there, but I couldn't swear to it; I don't know who sent for Armstrong; I was up with him all that night, and in the morning.