

New York Times. Cobane

LAW REPORTS.; MURDER TRAILS. Court of Oyer and Terminer--Verdict of Manslaughter against Jones for the FivePoints Murder--Trail of John Donnelly for the Murder of Charles

Cobane.

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The Jury in the case of William Jones, tried for the murder of an unknown man in the Five Points, after having been in deliberation during Wednesday night, came into Court yesterday morning with a verdict of "Guilty of manslaughter in the third degree." The defendant was remanded for sentence.

In the case of John Crowley, indicted for assault and battery, with intent to kill Patrick Lovejoy, the defendant, through his counsel, asked permission to withdraw his plea of not guilty, and to be allowed to plead guilty. His counsel stated that he had been sun-struck some time since, and that subsequently, whenever he indulged in liquor to the slightest degree, he became unconscious. Lovejoy, the man whom he shot, was his personal friend, and earnestly desired his discharge. Judge INGRAHAM replied that the statement, both of the prosecutor and defendant must be presented in writing, and when so presented the Court would consider them.

The case of John Donnelly, charged with the murder of Charles Cobane, was then called by the District Attorney, and after the usual challenges, the following gentlemen were impanelled as jurors:

Charles L. Seybold, Foreman.

Christian F Pfeiffer, Joseph A. Sweetzer, Henry T. Romaine, James R. Bartholomew, Jacob H. Laird, Edward C. Bradbury, John Drinker, Robert Russell, John Love, Edward Stone, Marquis Wise.

Mr. Anthon, for the prosecution, opened the case to the jury. The prisoner, John Donnelly, was charged with causing the death of Charles Cobane, by stabbing him, on the sidewalk opposite the grocery store of Owen Mallen, No. 220 West sixteenth-street, on the 28th October. The deceased, with his brother and some friends, went to that store to raffle for a pistol, and after the adjournment of the proceedings consequent upon the raffle, Donnelly came to the store in a quarrelsome manner, and without cause, got, into an altercation with Patrick Monahan, and challenged him to fight. The residue of the story may be found in the evidence of the witnesses.

Ex-Recorder Smith appeared for the defence. He was assisted by Ex-Recorder Tallmadge.

Patrick Monahan, examined by Mr. Anthon: I am a laborer; I was at Mallen's grocery-store, No. 220 West Sixteenth-street, on the evening of Oct. 28, 1859; I saw the prisoner Donnelly there that night; it had struck, eleven o'clock before he came in; another young man of the same name came with him; when he came in he passed through the store to the back room, where we were sitting; he asked if a raffle that we had come to attend was not going on; the proprietor said there would be no raffle that night, as there were not hands enough; we went into the store, and Donnelly said he would give \$5 to any one who would win the pistol; my brother said he would

give \$6; the prisoner proposed to my brother to throw for the pistol between them; I said, "No, it would not be fair; "the prisoner told me to shut my mouth, as I was only a hog; I said "Perhaps I was, but I am not a f??ne; "John Monahan, my brother, asked him if he knew who he was speaking to, and that he should not call me a hog; the prisoner said he couldn't prevent him from doing so, and they got quarrelling, and [???]d to fight; the prisoner challenged my brother; they went to the sidewalk; I went after them, and saw them clinched; several others came out; I got hold of my brother's arm, and pulled him, to separate them; the prisoner struck me, and I struck him; I went at him as hard as I was able; some person got hold of me by the arms and pulled me away; I then saw the prisoner and Tom Cobane caught together, and the rest separating them from fighting; I did not see the prisoner again till he was taken by the policeman; I was crossing the sidewalk a few minutes after, and saw Charles Cobane sitting on the rail, With his arms crossed under his belly; I went to him, and saw he had been stabbed in the breast; his brother, another man, and myself carried him into the house, and I ran after Dr. Webb; we did not notice the wound in the belly till the Doctor came; the "puddings" (bowels) were put in to him again, and he was taken to the Hospital.

The cross-examination was conducted by Ex-Recorder Smith. The witness said that Donnelly was pushed down on the curb-stone; two or three men were about and over him, at a regular rough-and-tumble; Donnelly looked to be bloody when witness saw him at the Police Station the next morning; his face appeared to be cut; when witness fought with him, he gave him all he could; his brother gave him a "bat" or two; in witness' party there were eight or ten persons that night; Donnelly came in with only one his brother; witness did not hear Donnelly say, "Take these men off me; do you mean to take my life?"

John Monahan, examined by Mr. Anthon, simply corroborated the last witness.

Thomas Cobane examined: I am the brother of deceased; I was at Mallen's grocery store on the 28th October; I saw Donnelly there that night; I saw two men fighting on the sidewalk; I went outside when Donnelly struck at me, he hit me between the eyes; I made a rush at him, and ran him into the street; he fell between my feet and somebody got hold of me, and held me; I don't know where my brother was at this time; Donnelly ran away down the street, and that was all I saw of him.

John Magine, Owen Mallen, Samuel McCartney and Catherine Kattel were examined. The latter witness stated that after the quarrel the prisoner came into the store with a knife in his hand. The testimony of the other witnesses was merely corroborative of that given by Patrick Monahan.

Officer Boyd was also examined. His testimony was mainly corroborative; he saw the deceased bleeding from two wounds, and went after the prisoner Donnelly; he found him in a neighboring drinking-saloon, and searched him; in his pocket he (the officer) found a sheath or scabbard; brought the prisoner to the Station house; there were scratches on his face, and the handkerchief with which he wiped his face was bloody.

Cross-examined -- It was a small sheath about nine inches long that I found in his pocket; it was too small for the sheath of a butcher's knife; it might have been a seissors sheath; it was narrow

and this, it was too narrow and too long for scissors.

Officer Hughes was examined: He was in company with Officer Boyd; carried Cobane into Mallen's store, and afterwards took him to the New-York Hospital; the sheath found on the prisoner was about five inches long, very flat, and pointed on the end.

Dr. Henry N. Fisher examined: I am resident surgeon of the New-York Hospital; Cobane was brought into the Night Ward suffering from a stab in the abdomen, and another stab in the chest; he had not lost a great deal of blood, but was suffering from considerable prostration; his wounds were dressed and he was left in charge of the nurse; in the course of from thirty-six to forty-eight hours symptoms of inflammation began to show themselves, especially inflammation of the abdomen; he died in about three days after his admission; I made the post-mortem under direction of the Coroner; I found a stab in the chest on right side, about the cartilage of the third rib and rib itself; on tracing the wound I found the weapon had passed between third and fourth ribs, and entered the cavity of the chest; the external wound was about half an inch long; I found incipient inflammation of the lung; I found adhesions of the pleura to the walls of the chest, evidently of old formation, the result of previous disease; the wound on the abdomen was three inches above the pubis; it was an inch in length on the outside; extended downwards and inwards; the intestines were not wounded, although the weapon had penetrated into the cavity of the peritoneum; in my opinion he came to his death by inflammation of the peritoneum and the inflammation of the lungs, the inflammation of the left lung being sympathetic from the wound on the right.

Thomas Cobane, recalled: Was present at the Hospital when his brother made his dying declaration to the Coroner; had previously made a statement to his brother respecting what the doctor said to him as to his condition.

Ex Recorder Smith objected to such testimony. The prosecution should call the Coroner himself, the declarations having been committed to writing by him, so that he can be cross-examined as to the apparent condition of the patient when making these declarations. The Court admitted the evidence.

Witness -- I said to him, "Charles, tell the truth and nothing but the truth; you are not expected to live;" I do not know whether I told him that the doctor said it or not; his boarding mistress was present, and another young lady.

Dr. Schirmer, examined: I am a physician and Coroner; I took the dying declaration of Charles Cobane; I told him he was in a dying condition, and I came for the express purpose of taking his dying declaration.

By the Court -- He did not say anything to me about his hopes of recovery.

To the District-Attorney -- I took the declaration of the prisoner which you show me; it is signed by me, and by the prisoner in my presence; I told him he was at liberty to answer or not, as he might see fit; the deceased was very much frightened when I told him I was coming to examine him as a dying man.

The District-Attorney moved to place as evidence the dying declaration of the deceased, as taken before the Coroner. It was objected to by the prisoner's counsel, on the ground that the deceased did not know that he was in articulo mortis, and was excluded by the Court. The following is the dying declaration:

Charles Cobane, being sworn, deposes and says: I am a laborer and lived at No. 79 Ninth-avenue; I am a single man; I went into the liquor-store of Owen Mallen, in Sixteenth-street, between Eighth and Ninth avenues, about 9 o'clock last evening, for the purpose of attending the raffling of a pistol; I found in the store two brothers, of the name of McCartney, and two brothers of the name of Monaghan; my brother and three girls, named Mary Monaghan, Sarah Dewise and Catherine Kattel, and the mother of Miss Dewise; at a little after eleven o'clock, the two prisoners came in, whose names I understand are McGinn and Donnelly, and whom I have seen before; they were in liquor, as indicated by their actions, and commenced, right away, to quarrel about the raffling with some of the parties, I was in the back room, sitting on a settee, smoking; when I heard the confusion and quarreling, I ran out into the store; they were then upon the sidewalk, and I went out and found them pulling and fighting, holding each other and striking; I then tried to separate them, and while so engaged I received two stabs -- one on the upper part of the right breast, and another in the lower region of the bowels; the little man gave me the stabs; they were given in quick succession; I saw an instrument in his hand, but I cannot tell what kind of an instrument it was; I began to stagger shortly afterwards -- felt pain; my bowels protruded and swelled up, and I felt the blood trickle from my breast; I was then carried back into the liquor-store, and my brother went for Dr. Webb; he and Dr. Thompson both came, and advised my removal to this hospital, which was done about two o'clock; there was also in the liquor store, in addition to those named, the proprietor, Wm. Bell, Charles Mathews, and one named Bell, whose given name I do not know; it was about twelve o'clock when I was stabbed; to the best of my recollection, I did not strike any one; I recognize the man now present, who says his name is John Donnelly, as the person who stabbed me last night.

CHARLES COBANE, (signed by a mark.) Taken before me, Oct. 29, 1859.

WILLIAM SCHIRMER, Coroner.

The testimony for the prosecution here rested. Counsel for the defence made no formal opening to the jury, but proceeded to call their witnesses.

Thomas Donnelly, examined by Ex-Recorder Tallmadge: I went to Mallen's store that night about eleven o'clock; Mr. Mallen asked what we would have to drink; Donnelly, the prisoner, refused. The witness proceeded to detail the proceedings of that night, much the same as given by the witnesses for the prosecution, except that he deposed that the brothers Cobane, assisted by others, first knocked Donnelly down on the sidewalk, and kicked him when he was down; he had no knife about him; they beat him and kicked him so much that he was very bloody; that he went into Mr. Rigg's liquor store to wash himself; while he was there the Policeman came and arrested him; he did not say in Mallen's store, that he would lick anybody there; the prisoner is a blanket maker; he used a large port of scissors in his business; the sheath to the scissors is made out of

pasteboard, with brass at the end next the handle.

Thomas Sherry was examined, and Owen Mallen and Thomas Cobane were recalled. Their testimony was of no value, either as rebutting or otherwise, except that they did not hear any threatening or aggravating language used by Donnelly.

The testimony on both sides being closed, Ex-Recorder Smith proceeded to sum up for the prisoner. He carefully reviewed the evidence, and contended that there was no proof whatever that the prisoner inflicted the wounds of which Cobane died. On the contrary, it was shown that the prisoner was the first party attacked, and that Donnelly was satisfied that Cobane was not one of the persons who attacked him. Consequently there was a lack of motive on Donnelly's part to injure Cobane. Again, none of the parties in conflict saw any weapon in Donnelly's hands, and the only inference that he had a weapon was the fact of a scissors sheath being found in his pocket. The learned counsel spoke at great length, contending that nothing had been proved to connect the prisoner with the homicide.

At the conclusion of Ex-Recorder Smith's address, the Court was adjourned till this morning at 10 o'clock.