

The True Witness.

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MONTREAL, FRIDAY, FEB. 20, 1863.

NEWS OF THE WEEK.

OUR latest European dates are by the Asia, and to the 31st ult. The opinion in England, with reference to Louis Napoleon's scheme of mediation, is that it is a mere preliminary to more decided action; and that he contemplates recognising the Confederate States, by himself if necessary, and thus is ready to run the risk of a war single-handed with the Northerners. The many piratical seizures of British ships—sailing from one neutral port to another, and therefore legally exempt from seizure, by Yankee cruisers, is giving rise to very angry feelings in England, and may yet lead to very serious complications.—There is nothing of much consequence to report from Italy or from Continental Europe in general. A collision betwixt the King of Prussia and his subjects seems imminent, and Poland is on the eve of another insurrection.

The Yankee press is chiefly occupied with the details of a ludicrous, or rather blasphemous prostitution of the marriage service, in honor of two miserable abortions; of whom one has been long before the public as one of the curiosities of Barnum's Exhibition. The Yankees of both sexes thronged the church where this revolting parody on a Christian Sacrament was enacted; the male Yankees in full dress, and the she-Yankees in regular opera costume. Thus do the people of the Northern States amuse themselves whilst their country is distracted with hideous war, and their Constitution is crumbling to dust!

Of military operations there have been none of any great importance. We are however assured—as indeed we always have been any time during the last two years—that the Yankees are just going to begin, and intend "putting the thing through" right away.

The Aylward tragedy has furnished matter for the comments of many of our Canadian contemporaries, both French and English. Of the latter, the *Montreal Herald* gives its readers a full account of the particulars in so far as these have as yet been made public; and the general tone of its article upon the subject is, for the most part, unexceptionable. We would, however, point out two blemishes thereon, which somewhat detract from its merits; and we would desire to protest against its assumption, that the case of the Aylwards has been taken up—1st—from "a desire to make political capital against the Ministry;" and 2nd—from a desire to excite religious hatred." In so far as the TRUE WITNESS is concerned, both of these accusations are false, and destitute of the slightest foundation.

Our attention was, in the first instance, drawn to the subject by the report in the Upper Canadian papers of the Rev. Mr. Brennan's eloquent and pathetic address in his parish; and the details with which we were subsequently furnished, were of such a nature as to give us full assurance of the pertinence of that zealous and charitable priest's denunciation of a judicial murder. We defy, however, the *Herald* to point out one word in the TRUE WITNESS dictated by an anti-Ministerial bias, or unwarranted by the statement of facts given to us by our correspondent *Sarsfield*; in whose honor and full knowledge of all the particulars of the tragedy we have the best of reasons for placing unlimited confidence.—Indeed, hitherto, not one of these facts has been imagined, or its truth called in question by any member of the Canadian press. Fortunately in the Aylward case, there is no important question of fact at issue. That the deceased Munro received from Mrs. Aylward a wound, from the effects of which, aggravated by neglect, and quack-doctoring, he subsequently died, is not denied; the only question at issue is—were the circumstances under which that wound was inflicted such as legally to justify the action of Mrs. Aylward? and this is a question of law, upon which we do not offer an opinion.

That morally, if not legally, Mrs. Aylward was perfectly justified in rushing to the assistance of her husband, attacked upon his own land by, and endeavoring to defend himself against two powerful assailants; and that she was morally justified in employing for the defence of her husband the first weapon which came to hand, whether scythe, or broomstick—we have no doubt. The law may have been—we do not say it was—against the Aylwards, and may have necessitated their execution; but if so, there is a monstrous discrepancy betwixt Canadian law and morality, betwixt man's justice, and that justice which has God for its author.

Far from manifesting a desire "to excite religious hatreds" out of the execution of the Aylwards, we have pointed out in our columns, that the petition in their behalf was signed by Protestants as well as by Catholics, and that even Orangemen exerted themselves to procure a remission of the doom pronounced upon the unfortunate Papists. So far we have cheerfully acknowledged the true liberality of many of our separated brethren and political opponents; but, at the same time, when we call to mind the strange selection of a solemn Festival and Holyday of the Catholic Church for the ignominious execution of two Catholics charged with the murder of a Protestant; when we call to mind the brutal conduct of the Protestant mob at the foot of the scaffold, thirsting for the doomed Papists' blood, and giving expression to their blood thirsty desires by yells to "hurry them up," and other acts, without a parallel in the records of any professedly Christian community—when, we say, we call these things to mind, and put them together, it is not easy to get altogether quit of the suspicion that the fate of the unhappy condemned was in some degree determined by their peculiar religious opinions. We cannot, for instance, doubt that the Feast of the Immaculate Conception of the B. Virgin was expressly, and after mature deliberation pitched upon for the execution of the Aylwards, with the design of insulting, and outraging the feelings of Catholics; neither can we doubt that, if the victims on the scaffold had been Orangemen expiating the murder of a Papist, the demeanor of the spectators would have been very different from what it was. But God forbid that we should be so unjust towards our Protestant brethren, as to attribute to them in general the sentiments by which we fear that some amongst them have been actuated. How it is with others we know not, and care not; but for ourselves we repudiate all designs, either of making capital against a Ministry against which we have as yet no cause of complaint, and which has expressed the best intentions towards our separate schools—or of exciting religious hatreds.

The Quebec *Mercury* is another English paper which has taken up the case of the Aylwards, but deals with it in a different spirit from that which inspired the comments of the *Montreal Herald*. The *Mercury* is a mere Government hack; and as its sole design in approaching the subject is to justify the inexorable determination of the Executive Council to hang the Aylwards, so, as the only system of tactics by which that end can be accomplished, it vilifies the dead, and sets facts at defiance. It speaks of the homicide of Munro as of a "premeditated murder"—an accusation incompatible with the undisputed fact, that it was the Munros who went to the Aylwards, and not the Aylwards who went to the Munros, with the view of picking a quarrel with them. The fact that Munro received his wound, not upon his own land, but upon that of the Aylwards, where he had no right to be, and where he was a trespasser, must to every mind not the victim of invincible stupidity, or insuperable prejudice, be conclusive that the Munros were the aggressors; and that therefore, the charge of premeditation insinuated against the Aylwards by the Quebec *Mercury* is as absurd, as the spirit which dictated it is hateful to every honest man.

Since writing the above we have received the Toronto *Globe*, containing a report of the trial from sources exclusively Protestant, which we lay, in its integrity before our readers; presuming only to mark in Italics, certain passages to which we beg especially to direct their attention, and upon which we will make such remarks as obviously suggest themselves.—We have in the *Intelligencer* of the 31st Oct. a report of the trial, slightly condensed, we believe, from the *Bellefleur Chronicle*. We find, in the first place, that the accused were defended by a very able barrister, Mr. Jas. O'Rielly. The first witness called was Alexander Munro, a son of the murdered man. He stated that the farm of his father adjoined that of Aylward. The two families had had some differences occasioned, there is little doubt from the evidence, by fowl belonging to Munro trespassing upon Aylward's wheat field. On the afternoon of the 16th May, 1862, while witness and his father were working together out of doors, they heard a shot upon Aylward's farm, and when they got home Mrs. Munro told them that one of the hens was missing. Munro at once suspected that Aylward had shot it, so, together with his son, he crossed over to the house, and asked about the bird. Aylward denied having shot it, but said he wished he had. Munro, not satisfied with the reply, proposed to go to the field and look for himself. The three started off together, Aylward having a gun in his hand and a pistol under his waistcoat. When about one acre and a-half away from the house, Aylward lifted the gun, pointed it at Munro with his left hand, and with his right took the pistol from his breast. A scuffle immediately ensued. Munro, who was the stronger man, forced the pistol from Aylward's hand, and either kicked it or threw it ten or twelve yards distance, when he called to his son to run and pick it up. The lad stooped down to obey. As he was rising he saw Aylward with the gun pointed at him, which was immediately fired, and the charge lodged in the boy's back. Twenty-six slugs were subsequently extracted. Meanwhile Mrs. Aylward had come up, and with a scythe had struck the elder Munro on the head, inflicting a fearful wound. The son did not see the blow struck, but it is not denied that Mrs. Aylward gave it. Munro went home, was attended by an in-

competent herb doctor, and after ten or eleven days of great suffering, died.

This is the son's statement. But, to prove murder, it was necessary premeditation should be shown. The next witness, a Mrs. McCrea, says that about a week before the murder, Aylward and wife came down to her house with a scythe—belonging to Munro—which they sharpened together upon a grindstone. Some of the children wanted to know what they were going to do with it. "Were they going a-haying?"—for at the time there was no grass on the ground, though the witness remembered there was some snow. Immediately after the murder Aylward and wife came to McCrea's house again, he with the scythe, she with the gun. Mrs. Aylward said "she had cut the head off Munro, and Richard had shot Alick." She then showed the blood upon the scythe, and the witness at once identified the weapon as the one which had been sharpened on her grindstone a week previously.

The next witness called was Isabella McCrea, who swore that previous to the murder she had a conversation with Mrs. Aylward in her own house. She (Mrs. Aylward) said "she would tempt Munro till he came over the fence, and back up until she got him into her dooryard, when she would shoot him with a gun or pistol, and leave him dead at the door. She would then get two witnesses to show how he had followed her into the dooryard, and that her husband could testify for her, while she could not testify for him, if he committed the deed." William Johnston, another witness, met Aylward and his wife, who told him they had killed Munro. The woman said, "I lifted up the scythe and struck him on the head, and as that did not do, I gave him another cut; Dick shot young Baldy; and if he is not dead I hope he is. She also said she did not mean to strike him on the head, but on the neck, and cut his head off;—and showed witness with the gun how she intended to do it." Subsequently, when told by another person, in the presence of this same witness, that Munro was "very bad," she said "May God Almighty increase his pain." Margaret Glenn testified that Mrs. Aylward showed her Munro's hat with the cut in it made by the scythe, and wanted the witness to go with her "to see where the fight took place." She even told witness that the deed did not cause her any trouble—"if it was to be done over, I would do the same again." To Theophilus Golden she expressed a similar sentiment. "She was glad old Baldy was dead. If he was alive she would cut the head off him again, or any person who did anything to her."

These are the main features of the evidence for the prosecution. For the defence an attempt was made to prove that Munro, while conscious that he could not survive, had taken the blame of the transaction upon himself. One witness was called for this purpose, named John Rouse, who testified that, when he advised the deceased to have Aylward and his wife arrested, he said "he had no business interfering with them." This statement was partially refuted by the son, who was present when the interview between Rouse and his father took place. He swore that no such expression was used by Munro. "Had it been used, he would have heard it." Other witnesses were in court to testify to character but the counsel for the defence did not think it well to call them.

The judge, in charging the jury, is reported to have said that "the character of the witnesses" was not impeached; that the son "had witnessed a most searching cross-examination with a view of shaking his testimony, but without effect;" that the theory of the defence that the man should be acquitted and the woman convicted of manslaughter, could not be entertained, because "it was clear that the prisoners first began the affair, and however much the law might protect the wife for assisting her husband, that protection did not extend to her when he was engaged in an unlawful act;" that if the evidence of Mrs. McCrea "were believed, the jury would have no hesitation in believing that the act was one of premeditation;" "The sharpening of Munro's own scythe was a fearful testimony." His lordship also said:—

"Taking this woman's whole conduct through the whole case, we find nothing but the most cold-blooded barbarity, and not an act committed in the heat of passion. The sharpening of the scythe—the showing Johnston how she intended to cut his head off—her reeking in blood, when she was ordered out of the house—thrusting her disgusting confidence on every one with whom she came in contact—and even dragging a woman to see the place of the fight, and the cut in Munro's hat. The presence of the woman at the place where the death struggle took place, is not attempted to be accounted for, and unless she brought the scythe with her, we would have to arrive at the very improbable conclusion that it was found lying in the field."

In no one important particular does the statement now put forth by the *Globe* in justification of the hanging of the Aylwards, take from, or add to, that given some weeks ago in the TRUE WITNESS. The case is by the *Globe* put in the strongest light against the prisoners, and the evidence by it cited contains, we may presume, all that can be urged against them. After a careful perusal of that evidence, we arise with the conviction stronger than ever that the Aylwards were judicially murdered. Let us analyse it.

In the first place, the sole witness of the affair which terminated fatally for the elder Munro, was the son of the latter; himself an interested party, and therefore, morally, a very incompetent witness. As the *Montreal Herald* of the 11th inst. very honestly admits:—

"The evidence of the younger Munro under the circumstances could not have been regarded as of the very highest character."

And yet there was no other evidence of any kind to show that the man Aylward commenced the fray. The two Munros, it is admitted, uninvited, and of their own mere motion, came over to Aylward's house, and commenced a verbal altercation with him, concerning the shooting of their fowls in his wheat-field. The three then proceeded towards that field, Aylward armed with a gun and pistol; and when about "one acre and a half away from the house," the latter, we are told, commenced an assault upon the two Munros. It is moreover asserted that this assault was "premeditated" on the part of the two Aylwards, man and wife. This story is itself highly improbable; and to be believed requires evidence of "the very highest character," which that of the younger Munro "could not have been."—vide *Herald*.

For, if the two Aylwards had meditated a combined assault upon the two Munros, the former would have kept together; they would have commenced the assault at their own house, where they were as two to two; and the man Aylward would not have been such a fool as to have left his accomplice, upon whom he relied for assistance, at the distance of "one acre and a half" behind him—for, be it remembered, that

it is not pretended that Mrs. Aylward accompanied her husband and the two Munros, when the three started together for the wheat-field.—Now, we say, it is in the highest degree improbable, that, if the two Aylwards had formed a design to assault the two Munros, they would have deferred the execution of that design, until the conditions were highly unfavorable to them; and should have commenced it, only, when they were separated from one another by a very considerable distance, and when one of the conspirators would necessarily have to deal single handed with his two intended victims. The fact, that the fatal struggle did not take place at the house, nor until the parties thereunto had left Mrs. Aylward and her scythe a considerable distance behind them, is, we think, morally conclusive—that the man Aylward, when he left his house accompanied by the two Munros, did not anticipate, much less meditate, any resource to physical force; and it is far more probable that the two Munros, irritated by the shooting of their fowls, and confident in the great odds, two to one, in their favor, commenced an assault upon the solitary Aylward, by endeavoring to wrest the gun from his hands—then that the solitary Aylward commenced a fight with two powerful opponents, of whom one alone was more than his match. Against this probable hypothesis there is only the evidence of the younger Munro which "under the circumstances could not could not have been regarded as of the very highest character."—*Herald*. Again, we repeat it, the fact that the assault did not commence until the Munros were as two to one against Aylward; until the latter had left his pretended accomplice an "acre and a half" behind him; and that, if so disposed, the two Aylwards might conjointly have assaulted the two Munros at the house where the verbal altercation took place—is morally conclusive both against the hypothesis of "premeditation," and the evidence not of the "highest character," given by the younger Munro.

But, as the *Globe* admits, even from the *ex parte* and unsupported statements of the younger Munro, a charge of murder against the Aylwards could not be made out; and it was therefore "necessary premeditation should be shown." As against the man Aylward, the only evidence of premeditation adduced was, to the effect that he, in the month of May, had had the scythe with which the fatal wound was inflicted, sharpened. Upon this the judge laid great, and most dishonest stress; for it the sharpening of the scythe, in the month of May, when there is no "haying," can be accounted for, or explained upon any hypothesis consistent with Aylward's innocence of any guilty design, it furnishes no presumption even, far less evidence, of his guilt. Circumstantial, or presumptive evidence is excellent, provided only that it be exhaustive, or incompatible with any hypothesis of the prisoners' innocence.

Now the scythe is said to have been Munro's scythe; and it is not insinuated that the Aylwards had acquired possession of it surreptitiously. It may therefore be assumed that it was in their possession with Munro's knowledge, and consent—and that in fact he had lent it to the Aylwards; from whence, again, it may logically be inferred that Munro saw nothing extraordinary in their demand for a scythe even in the month of May. Nor was there; for both sickle and scythe are commonly used in the Spring, both in Upper and in Lower Canada, to cut down the young underbrush which springs up thickly on newly cleared lands; and it was avowedly for this purpose that Aylward procured, and caused to be sharpened, the scythe in question—which again was the only evidence of a "premeditated" guilty design urged against him. Having thus disposed of the evidence against the man, we will turn to that adduced against his wife; and first we will deal with that of Isabella Mac-Rae.

This witness, by way of making out a case of "premeditation" as against Mrs. Aylward, swore that the latter had revealed to her a diabolical plot to entice the elder Munro "into her dooryard;" when upon presence of defending her honor, "she would shoot him with a gun or pistol." Now, even if true, this testimony was irrelevant, and had nothing to do with the question before the Jury. Even if Mrs. Aylward had formed this design, she had never carried, or attempted to carry it, into execution, and at worst it was a crime *in posse* only, and not *in esse*. The Munros were not, either by Mrs. Aylward or her husband, enticed, or "tempted" to come over to the Aylwards' land; and the evidence of Isabella Mac-Rae would have been relevant only, if the design said to have been meditated by Mrs. Aylward, had been carried, in whole, or in some of its details, into execution.

But besides being utterly irrelevant, or foreign to the question at issue, the evidence of Isabella Mac-Rae bears on its face evident marks of perjury. If Mrs. Aylward had been astute enough to conceive the diabolical project imputed to her, she would have been sufficiently astute to perceive that to its accomplishment, the strictest secrecy and silence were essential; and that, if

through any channel the elder Munro should obtain an inkling of her plot, its success was impossible. She would therefore never have been such a fool as to give her gossiping neighbors information, not only sufficient to frustrate her designs, but certain also to furnish most damning evidence against herself, even should those designs be carried into execution. Conspirators do not, as a general rule, proclaim their deep laid plots to the world; and the mere fact of Mrs. Aylward's having, in conversation, given utterance to the hostile expressions attributed to her, would be a proof that she was a mere braggart, and that her tongue was the most dangerous weapon she could or would use.

Other witnesses swore that immediately after the fatal fray, and whilst labouring under the hysterical excitement thereby occasioned, the female prisoner, boasted of having struck Munro with the scythe, gloried in the act, and gave utterance to wild, and most uncharitable sentiments. But as the language of Mrs. Aylward subsequent to the fray, could not have had any moral or legal bearing upon the act *preceding*—could not have changed a justifiable homicide into murder, or murder into a justifiable homicide—all this evidence as to the hysterical language of Mrs. Aylward, fresh from a life and death struggle with the two Munros, was utterly irrelevant, or mere idle twaddle. Had Mrs. Aylward been indicted as a scold, this evidence might logically have been adduced, and thereupon she might have been sentenced to the "ducking stool;" but it had no bearing on the sole question at issue—*to wit*—"Were the circumstances of the struggle betwixt her husband, and the two Munros, such as to justify her running to the aid of the former, and striking with a dangerous weapon one of his antagonists?"

The law as laid down by the judge, calls for a few remarks. He said:—

"However much the law might protect the wife for assisting her husband, that protection did not extend to her when he was engaged in an unlawful act."

This is strange law indeed. How was Mrs. Aylward to know whether her husband—or the other party with whom he was engaged in deadly strife on his own land, was the aggressor? She saw that husband struggling single handed with two men—of whom one had a pistol in his possession, and the other "was a stronger man" than her husband, and therefore, alone, more than a match for him; and according to the *dictum* of the judge, she was not to rush to that husband's assistance, until she had assured herself by a careful study of the best writers upon the subject of Assault and Battery, that he was not engaged in "an unlawful act!" Again this model Judge tells us that:—

"The presence of the woman at the place where the death struggle took place, is not attempted to be accounted for."

What! does it seem unaccountable to the Judge that a wife should rush to the aid of her husband, engaged in a death struggle against such overwhelming odds? Does it seem to him unaccountable that a wife should not allow her husband, and the father of her infant children, to be beaten, perhaps murdered, before her face, upon his own land, by two fellows who had no right to be there at all; and of whose hostile intentions she had ample proofs in the fact that they had come over expressly to pick a quarrel with her husband for having shot their fowls? Does not our Judge then know, "furens quid feminis possit?"—what a loving woman is capable of, in defence of those whom she loves? Perhaps he may not; in which case he is as ignorant of the sacred mysteries of the human heart, as he is regardless of law and of justice. God have mercy upon the Catholics of Upper Canada who have such law administered to them by such a Judge!

One other point only have we space to notice this week. It is with reference to the assertion of the *Globe* respecting the positive testimony of John Rouse; who swore that the elder Munro, when pressed to have Aylward and his wife arrested, refused to do so; saying "he had no business interfering with them." This testimony, which if accepted by the Jury would have been conclusive to the fact that the elder Munro recognised that he, and not Aylward, had been the aggressor, is set aside by the *Globe* as "partially refuted" by the son who swore that he heard no such expression used, and would have heard it if used. Still the fact remains, that, though incessantly pressed to have the Aylwards legally proceeded against, the elder Munro refused to make any depositions or to take any steps against them; did not as if he recognised himself to have been the sole aggressor and sole guilty party in the fray, in which he received his death wound; and did, by his persistent refusal during the "ten or eleven days" of great suffering" which intervened betwixt his death, and that fray, and in spite of the "pressing" upon the subject to which he was exposed to have the Aylwards arrested—amply, and in the strongest manner confirm the statement made by John Rouse on the trial. This fact, alone, conclusive as to whether, in the opinion of the dying Munro, the Aylwards, or he and his son were the aggressors, and guilty parties in the struggle which took place on the 16th of May