



Duke Trial Continued.

YESTERDAY AFTERNOON.

When the Court sat again at 2.30 p.m., Edward Holman, the third witness, was examined by Howley, K.C., and cross-examined by Furlong, K.C. This witness's evidence was much the same as that of the two former witnesses.

The fourth witness was Frederick Noland, whose evidence was also on very similar lines.

The evidence of Harry Penney was next taken. This witness was asleep in the fore-castle with Duke, and was awakened by the latter getting up. Shortly after he heard the cook call out to him to get something; he did not know what the cook meant, but thought there was trouble and took an iron baying pin. He afterwards went aft and saw Sears lying dead in the cabin. On cross-examination he said that he had missed Duke out of his berth one night, and also that Duke had been complaining of being sick. He was not alarmed about Duke being absent, Duke was pretty drunk, like all the rest, when he went aboard ship. The captain gave Duke medicine, but Duke did not take it. When they looked for Duke on finding him absent, they found him down in the fore-castle lying down. He said he wanted to get clear of the noise in the fore-castle. He came on deck again at eight bells. Duke went off watch with him on the morning of the twelfth of September. He did not see Duke with a knife when he got out of his bunk, but he saw him with a knife when he was on deck.

James Flynn (sworn and examined).—I am the mate of the Lake Simcoe. Duke was in the port watch—my watch. We came on at midnight of the 11th of September and were on till 4 a.m. of the 12th. I was asleep in the cabin. At about 5.15 I heard some noise and looked out and saw blood, came out and saw a man lying on the floor in a pool of blood; saw the boatswain standing with a long boot in his hand. Boatswain said Duke had stabbed Sears; saw the cook

John Cody (sworn and examined by the Attorney General).—I am an A.B. I was in the same watch with Harry Penney and John Duke. There was a squabble between Duke and myself when we were going out. No further trouble after that. Duke went into the fore-castle and the mate and others went down and put him in irons. Duke remained down there for some hours. On the 12th of September I went off watch at 4 o'clock; next thing I heard was some one calling out on deck. I ran out on deck and saw Cook standing in galley door with an axe in his hand, calling out "The boy is killed." Soon afterwards I saw Duke standing on deck looking aft with a knife in his hand. The captain came up, and the mate and captain and self went forward. Duke went ahead and went down into the fore-castle. I went aft then and saw Sears on the cabin floor dead. Captain and mate were then forward trying to get Duke up from the fore-castle. They could not succeed, so they barred him down there. Duke sometimes looked queer and wild looking. He slept down in the fore-castle once or twice. He said he wanted to get clear of the noise. He was complaining of his heart. I never sailed with Duke before. Duke had no trick at the wheel that watch. He was quite calm and quiet as far as I could see.

Dr. Scully (sworn and examined).—I am the mate of the Lake Simcoe. Duke was in the port watch—my watch. We came on at midnight of the 11th of September and were on till 4 a.m. of the 12th. I was asleep in the cabin. At about 5.15 I heard some noise and looked out and saw blood, came out and saw a man lying on the floor in a pool of blood; saw the boatswain standing with a long boot in his hand. Boatswain said Duke had stabbed Sears; saw the cook

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Mrs. Duke, the wife of the prisoner, (Sworn and examined).—My name is Annie Duke. I am the wife of John Duke. One Sunday night, when he was in bed I had to take the pictures from the wall because he thought there was some one coming after him to kill him. He was sober at this time and had been sober for two months. He often had a delusion that someone was after him to kill him, and was sometimes very noisy. On cross-examination:—He was on a spree at the time of the races, a long spree, for a month or two months. He had been drinking from before the races till he signed on board the "Simcoe."

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After the conclusion of this evidence, Furlong, K.C., addressed the jury for the defence, pointing out that there was absolutely no evidence for the crime, and that it was only explicable on the ground that the prisoner was insane at the time, and that insanity was a disease of all times and places. That if sometimes skipped one generation and cropped out in another. He pointed out that the evidence of insanity in the prisoner's family was quite strong. Mr. Furlong went on and made a review of the evidence, dealing particularly with the periods when the prisoner behaved in a peculiar manner. At one o'clock Mr. Furlong's address was not concluded.

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on deck with a small axe in his hand; saw Duke standing by fore rigging waving a knife. Duke said, "Come on." Captain came out and with me advanced toward Duke. Went forward to disarm Duke, but he would not give up knife until they had sworn on a prayer book an oath dictated by Duke that they would protect him. (The mate put the knife in evidence.) I gave the knife to the captain. Duke would not come up from the fore-castle. We lashed the hatch down and went aft and attended to Sears' body and afterwards buried it. About one o'clock Duke gave himself up. Duke was very drunk when he came on board. I released him from the fore-castle the morning after. He showed some signs of suffering from the effects of drink. I don't think he got much sleep. There was no drinking after the first day out.

Andrew Wilson (sworn and examined).—I am the captain of the Lake Simcoe. She is a British ship registered at St. John's. The mate came on board more or less the worse for liquor. Cody and Duke had a quarrel. This quarrel was quieted down, but trouble started again at 10 o'clock. Boatswain and I could not quieten them so handcuffed Duke. A few days afterwards Duke complained of sickness. I allowed him off duty for four watches. Thursday morning men rushed to the cabin crying out that Sears had been stabbed. I rushed out of my room and fell over Sears, who was lying on the floor dead. I went on deck and saw Duke waving a knife. The mate and I rushed for him and he bolted below.

The captain's evidence as to what happened after this was practically the same as the mate's. He did not notice anything very peculiar about Duke previous to this.

Duke was kept in the sail locker for 33 days. The knowledge of Sears' death was kept from Duke. The captain told Duke that Sears was dead the day before they arrived at Penambuco. In 1910 Duke sailed with him from here to Sydney. He complained that he thought the crew were going to throw him overboard. He seemed like a man in the D. T.'s. On this voyage (the voyage to Sydney) Duke jumped overboard, but was rescued and taken on board again and was put in irons until the next day. The captain also states that there was more or less trouble with sailors recovering from drunkenness. This was the last Crown witness.

THE DEFENCE.

Mr. Furlong, K.C., then addressed the jury for the defence, and the point relied on for the defence is that the crime was committed during an attack of mania. Evidence was to be brought by the defence as to former acts, which tend to support this defence.

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I was cured of painful Gout by MINARD'S LINIMENT. BAYARD McMULLIN, Chatham, Ont. I was cured of Inflammation by MINARD'S LINIMENT. MRS. W. A. JOHNSON, Walsh, Ont. I was cured of Facial Neuralgia by MINARD'S LINIMENT. Parkdale, Ont. J. H. BAILEY.

John Fitzgerald (sworn and examined).—I know the prisoner. I knew his brother Thomas, who died about seven years ago. The brother worked with me. I know that he had been at one time in the Lunatic Asylum. I don't know how long before his death this was, perhaps a year, perhaps six months. I saw him three months before his death and he seemed all right. This was after he had been discharged from the Asylum.

William Grimes (sworn and examined).—I am Superintendent of Police. I know the prisoner. I saw the body of his brother in the morgue in July, 1905. The body had been picked up in the harbor by some fisherman. I cannot say how he met his death or my own knowledge. There was a post mortem examination made and I have a note of the finding. (At this point Mr. Furlong moved to have this note put in as evidence, and the Attorney General objected. Some argument took place, and finally it was allowed to go in as evidence that he was found drowned.) There was no evidence of foul play.

John Cunningham (sworn and examined).—I live in St. John's now. I belong to Little Placentia. I knew prisoner's mother, her name was Mary Frances of Little Placentia. I knew her brother Patrick. He was fishing with me at one time. Patrick Frances is now dead. He was very simple, silly, and had temper; he did not know how to do anything. Cross-examined by Morrison, K.C. He was never in the Lunatic Asylum.

Mrs. Duke, the wife of the prisoner, (Sworn and examined).—My name is Annie Duke. I am the wife of John Duke. One Sunday night, when he was in bed I had to take the pictures from the wall because he thought there was some one coming after him to kill him. He was sober at this time and had been sober for two months. He often had a delusion that someone was after him to kill him, and was sometimes very noisy. On cross-examination:—He was on a spree at the time of the races, a long spree, for a month or two months. He had been drinking from before the races till he signed on board the "Simcoe."

John Duke (sworn and examined).—I was on watch on the morning of the 12th of September. I went to the fore-castle at 8 bells. I went to my bunk. The next thing I remember is waking up in the sail locker in a straight jacket. I don't remember what happened in the meantime, except that it flashed through my head that I had done something with a knife. I was afterwards told that I had stabbed Sears. I did not remember the stabbing myself. I first heard that Sears was dead when we reached Penambuco. I was in the sail locker till we reached Penambuco. The crew used to tell me that Sears was getting better. I never had a quarrel with Sears. We were on quite friendly terms. I knew Sears for three years. We were both fishing out of Flatrock at one time. I used to meet him occasionally. On cross-examination:—I am sound in mind now. I was not sound in mind when I was in the straight jacket. I don't remember whether I had the knife when I went into the fore-castle. I don't remember speaking to anyone when I was in the fore-castle. I talked with the crew after I recovered my senses, they told me Sears was getting better. I cannot remember anything about having been down in the fore-castle before this happened. I was in Flatrock before the races. I came up to the races. Sears came up. I went on the spree with him. I fought with Cody when I went on board. I remember waking up in the fore-castle with handcuffs on. The captain offered me liniment when I complained of having been hurt by a fall. I wanted to sleep in the fore-castle because it was quieter. I have never been in the Lunatic Asylum. I remember being on the Clutha. I remember going down in her fore-castle and staying there for days. I drank a little at Barbadoes. I drank some bay rum and some Florida water. It was nine or ten days after this that I went down into the fore-castle. On this last voyage I had no liquor after the first day out.

After the conclusion of this evidence, Furlong, K.C., addressed the jury for the defence, pointing out that there was absolutely no evidence for the crime, and that it was only explicable on the ground that the prisoner was insane at the time, and that insanity was a disease of all times and places. That if sometimes skipped one generation and cropped out in another. He pointed out that the evidence of insanity in the prisoner's family was quite strong. Mr. Furlong went on and made a review of the evidence, dealing particularly with the periods when the prisoner behaved in a peculiar manner. At one o'clock Mr. Furlong's address was not concluded.

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