Dallas in a fainting condition lying across the body of Willie Wells and thought that the testimony was correct. Remembered also saying at last trial that he thought Harry had said that Dallas and Willie had been doing something to the elevator when the weight broke away and killed Willie, and could only say now that this was still his impression on that point. Witness confessed that he was more or less excited on learning of the tragic death of Wells and might not now be accurate in his statement of all that had been said and done by Harry in his presence; was only certain that Harry had told him that Dallas had fainted over the boy's body and thought, but would not say positively, that he was told that Dallas was present at the elevator when the killing occurred.

The Cellar Was Always Visible.

Coming down to a description of the cellar, witness stated that light was furnished by an ordinary window on the Colborne-street side. There was nothing to prevent a passerby hearing any unusual noise or looking into the cellar but a few panes of glass. When he and Harry went down into the cellar he had stood with the deceased's body between him and the window. The body was stretched out with left side of the face lying flat on the floor. Witness described the injuries to the body, saying it appeared to him as if some heavy weight had dropped on the side of the head. Witness declined to contradict the testimony of Dr. King concerning the blood stains about the upper part of the body and weight shaft, and the blood trail from the latter point to where the head was lying.

Witness was pretty familiar with the buffer block, it was a "square piece of hard wood about 18 inches long and just as wide as it was broad." He had seen it resting at the base of the weight shaft both before and after the killing of Wells. Did not notice the condition of the cellar floor on the fatal morning. Did notice, though, that the elevator cage was down to the bottom of the shaft. That would be the position of the cage should the balancing weight break loose and fall.

The Fatal Hoist.

Efforts by Mr. Lount to get at the witness' opinion of the position of an ordinary elevator rope in the event of the sudden releasing of the weight with a view to showing that the position of the rope after the accident, as defined by the defence was a natural one, brought out objection by Mr. Osler that it was a matter for expert opinion and one upon which the witness was not competent to testify. Mr. Osler further stated that the Crown proposed to show by the testimony of practical elevator men that the rope could never get into the position shown in the photograph submitted in evidence. His Lordship, after listening to the arguments, sustained the objection of Mr. Osler, and refused to admit the testimony as expert evidence. He was willing, however, that it should go to the jury as an opinion of the witness, who himself did not profess to be an expert in elevator building. The Judge, in commenting on the remarks of counsel, said that in his experience it had invariably been the rule that objections by counsel which provoked more than the ordinary amount of sharp debate turned out in the end to be of but little moment, and he was inclined to think that the present case was no exception.

Replying further to Mr. Lount, witness said that he had noticed the weight when he first went into the cellar on the fatal morning. It was close to the elevator shaft, on the south side, and, he thought, standing upright, though it might have been slightly tilted. Didn't know how far it was away from the deceased's head, but thought about 18 inches. This statement did not correspond with witness' former testimony by about a foot, but witness explained to Mr. Lount that his former testimony was more apt to be correct on such matters than that which he was giving now; at all events, he thought his memory must have been better six months ago than at the present time.

When the Crowds Came in.

Mr. Fox could not say when it was that Harry had asked him to telephone for the coroner, but thought it was after coming upstairs from the cellar. Harry gave him to understand that Dr. King had already sent for Coroner Aikins and he appeared anxious that the coroner should appear upon the scene. When he returned from telephoning, he found Harry still on the office floor. Did not then, or at any other time, notice any blood on Harry or his clothing except on the hands, where the abrasions had been made by handling the weight. After telephoning, witness had gone to a neighboring saloon to get a drink. He had told the people in that place of the "occurrence," and a large crowd returned with him to the warehouse. These people roamed throughout the building and elevator shaft. They may have interfered with the rope and changed its position.

Harry Broke the News.

Witness thought that it was after telephoning for the coroner that he called up Humphrey. It was less than two hours after he first went into the warehouse that he called up the undertaker. The undertaker came first and they—that is, the witness and Harry—went down into the cellar with him. In the presence of Humphrey Harry said: "Fox, drive up and let the folks know of the accident," Fox replying, "No, you are the proper person to do that." "All right," returned Harry, "I'll go and tell them. You stay here and lock up the place when the body has been removed." Harry then went out to go to his home. Later witness assisted in the removal of the body and then locked up the place.

Wells Was Fond of Riding.

Mr. Lount carried the witness through a long, tedious examination concerning the workings of the elevator, the weight and rope, and again covered the coming of the undertaker and coroner. Fox remembered Harry having told Dr. Aikins and Humphrey the details of the accident, but nothing else was said that he could remember. Witness referred to the rickety condition of the elevator. Neither of the Hyams boys knew anything about an elevator, but they were in the habit of working about it. The elevator had been repeatedly changed and repaired, but was never safe, and witness had heard Dallas on more than one occasion warn Wells when using the hoist.

Fox frequently saw young Wells fooling with the elevator, riding up and down from the cellar to the top of the shaft, and recalled one occasion when he heard a crash in the warehouse. On investigation he found that the elevator weight had become detached, the result being that both weight and elevator dropped heavily to the bottom of the shaft. He and Harry had pulled the cage to the top and witness had again adjusted the weight. Witness did not know how the weight had become detached on that particular occasion. In connection with the fixing of the elevator at that time, the witness spoke of the platform which had been erected by Dallas during his experiments with the elevator weights. This platform, however, had been removed prior to the "occurrence" of January, 1893, according to the contentions of the defence.

Where the Weight Would Stick.

Witness referred to an obstruction in the weight shaft in the vicinity of the first floor, which at times interfered with the workings of the weight; so much so that the weight had to be released by pushing against it with a piece of board. To do this it was necessary to look up the shaft, and one's head would be naturally well over to the further side of the shaft. When witness first fixed the shaft—it was some time before the killing of Wells. It required some strength to do this. Did not know whether either of the twins could have accomplished the task as he had never "seen either of them do anything to test their strength." Witness thought it was hard work even for him, a great big fellow.

Mr. Lount, to show the improbability of either of the prisoners successfully doing any work of that nature, had Dallas step out of the dock and stand by the side of Fox, directly in front of the jury box. The contrast was great. Fox, a husky individual standing over six feet and weighing in the neighborhood of 200 pounds, looked a veritable giant in comparison with little Dallas, who can't be more than 5 feet 2 inches in height nor possessed of more than 110 pounds of avoirdupois. A peculiar expression crossed Dallas' face as he faced his jurors, but he went through the ordeal fairly well.

Fox was still on the stand when the noon recess was taken.

The Tardy Mr. Fox.

Mr. Expressman Fox was late again and for the fifth time during the present session when the court was ready for business after the luncheon hour, and the proceedings experienced a delay of five minutes, while awaiting the arrival of the tardy witness.

Re-Direct Examination.

Mr. Osler announced that as Mr. Lount had finished with the witness he desired to examine him redirectly.

The Crown prosecutor remarked that Fox seemed to be pretty familiar with a good many points he had not touched upon in former trials, but the witness stoutly asserted that he had not discussed his evidence with any persons connected with either the prosecution or defence. With reference to the construction of the building, witness said that there had been some changes in the external appearance. On the morning of the killing he was not prepared to say that the windows in the cellar building were not frosted. He knew there was sleighing that morning and it may have been cold enough to have frosted the glass.

Witness had frequently called at the warehouse for orders and found it locked up. As a rule would go away under such circumstances. As a rule was in the habit of calling at Hyamses' King-street office to see if anything was wanted. Mr. Osler carried Fox along over the business he had done for the Hyamses, with a view to showing that the witness had all along been employed by the twins.

The Twins as Mortgagees

Fox had often seen people calling at the office, and occasionally he would overhear the conversations in the business office. Dallas had at times shown him chattel mortgages and notes which he supposed represented the business the brothers were engaged in; and he was oftentimes sent out to appraise the value of various things that a loan had been contemplated upon and recited the instance of valuing a horse on King-street before the killing, and which animal subsequently passed into the hands of the witness.

Fox had been in the habit of going down in the cellar, but did not think he had been down there for a week prior to the death of Wells. The first time he had ever used the elevator was when the sugar was brought in. Had never been told up to that time that the hoist was out of condition, and dangerous. At that time the platform at the top had been built. Subsequently he had seen the brothers working about the elevator and experimenting with the small weights. He told them that the weights were too small and that if they were going to put them in they would have to haul the stuff up and down themselves; he wouldn't.

"Monkeying" With the Hoist.

Referring to the time the weight broke away and the elevator had fallen prior to the killing, witness remembered having spoken to the boys asking them why they were "monkeying" with the elevator. Harry said to him that he was changing the weights and the larger one slipped out of his hand and fell, the elevator cage also coming down. He knew of no reason why the elevator should have attracted the attention of the Hyams boys that day, as there was no goods to come in or go out. In speaking of the platform erected for the convenience of the Hyams experiments, witness said there was no occasion for cutting into the shaft for the purpose of putting up the platform. Witness testified to removing the platform and thought it taken away before the killing; but on this point he was not certain. Speaking again of the first falling of the weight and cage, witness said he didn't see them fall and only judged that they had from the noise made. The noise might have been made by the falling of the elevator and the rattle of the rope and hook against the sides of the weight shaft as they were dragged to the top. Didn't know whether any one else was present at that time except the Hyams boys and himself, though Miss Lattimer may have been in the office.

Mr. Fox's Experiment.

The witness then related having, two years subsequent to the killing, cut the weight and hook from the rope. He was accompanied by Mr. Curry and Detective Cuddy. He was asked by Mr. Osler if he had then allowed the elevator to drop to the bottom of the shaft, the purpose being to show that the position of the rope after the death of Wells was not a natural one, and that, consequently, the elevator could never have fallen at that time. Mr. Lount objected and the contending counsel indulged in an argument which was really the first of the case. Through the direction of His Lordship the witness stated that the elevator shaft and machinery were practically the same when he cut the weight off as when the Hyams brothers occupied the premises, except that it merely went down to the ground floor instead of to the cellar. The witness was put under cross-examination by Mr. Lount and the court sustained the objection, declaring the testimony to be inadmissible.

That Tricky Weight.

Continuing, to Mr. Osler the witness said that on the occasion when the weight caught when he was using the elevator he was on the office floor, but went down into the cellar and looking up the weight shaft saw that the weight had caught on a piece of flooring which projected into the shaft. He released the weight without difficulty by probing it with a stick and pulling on the hoist rope at the same time.

The End of Mr. Fox.

After an hour or more had been consumed in the examination of witness on matters pertaining to the elevator, Mr. Osler began questioning him about the doings of the fatal day. Fox did not see either Aylesworth or Miss Lattimer when he first went into the warehouse. He could not say whether the crowds which followed him to the warehouse building from the saloon reached the building prior to the arrival of the coroner. At 4 o'clock exactly the examination of Fox was concluded, and he was permitted to step down, after having been on the stand 8 hours and 20 minutes.

The Sixth Witness.

The next witness called for the Crown was Walter Davenport, a young man employed by Undertaker Humphrey, who, on the morning of Jan. 16, 1893, was despatched to the Colborne-street establishment by his employer.

To Crown Attorney Curry, Davenport said when he entered the building he found Humphrey, Fox and others present, and the body of young Wells stretched out on the floor. The witness said that the body was lying southeast of the elevator, with the head about a foot or 18 inches from the weight shaft, and about two feet from the west wall of the building. The weight was leaning against the southeast corner of the elevator shaft on the east face. Witness saw a pair of spectacles lying either on the weight or on the shaft of the elevator. The glasses were badly bent, particularly the right rim and the right glass was broken out. When witness first saw the body it was lying on the back and partly on the side, the head being inclined so as to show the right side plainly.

Those Cruel Wounds.

The head was fearfully smashed, being crushed from the right to the left, and there was a deep cut over the right eye. Witness unfastened the deceased's collar and got some water and prepared to wash the blood from the face. He assisted in carrying the remains over to another portion of the room. There were gloves on Wells' hands at that time. I took one of them off and I think Fox took off the other; then I washed the face of the dead boy, after which Humphrey, Fox and I put the body on the cooling board and carried it upstairs, where we halted a moment to fasten it more securely. We then put it in the wagon and I drove slowly to the store on Yonge-street, where it was taken out and I then drove to the stable.

Found Glass in the Eye.

That same afternoon witness stripped and cleaned the body. It was without injury below the neck. The neck appeared to be broken. In the right eye was found a piece of glass. There was a heavy bruise running along the right side of the head just below and around the ear. A wound about five or six inches was found at the back of the head, a large wound on the top of the head, and another in front, just above the forehead. he flesh about the wounds were very ragged and witness had to sew it up. When the body was cleaned and taken into another room the cut in the eye was filled with plaster of paris.

The cut over the eye was about two inches in length and half an inch wide. The right eye itself had been driven right into the eye. The left eye was slightly bulging and the nose appeared to be broken. When in the basement at Colborne-street saw a hammer and chisel lying on the ground.

Cross-Examined

In cross-examination the witness said that the circumstances surrounding the death of Willie Wells, as he knew them, were fresh in his memory. To Mr. Johnston he said that he did not pay much attention to the body as it lay on the floor of the cellar, nor to the people who had already gathered there. The cut over the eye, as he had found it afterwards, was ragged, but not so much so as the wounds on the head, and looked as if it might have been caused by great pressure from within.

Mr. Johnston took the witness all over his direct testimony, but failed to break him down at any point. The cross-examination was concluded at 5.15 and court adjourned.

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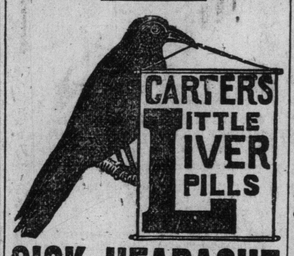

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