Supreme Court

(Before Mr. Justice Kent.)

asked him if he could bury the body, where the blood marks were. Accusbut was not allowed to do so. The ed said he was frightened when the asked accused to go in the next taken until ten o'clock this morning. solutely no evidence against the acnext day, with Benoni Robbins and boy was killed and had told a differ-Bell Squires, they went into Bayley's ent story. The witness had no fur-Cove path. They went up to a Scrape ther conversation. He was present at which led to a hill off Bayley's Cove the post mortem examination; it was came out of the woods. He had a the prisoner was again placed on the boy, and he had gone in the box path. There they saw a bunch of dog- held on the afternoon of the same day wood trees, and also some spruce the body had arrived.

had only one conversation with Al- was of opinion that this was so. After they appeared as if they had been know if there were any footprints or told different stories. not. When witness was speaking to Dr. Brehm, sworn, examined by Mr.

o'clock.

William James Frost, sworn, exam- puscles could not be examined. ined by Mr. Hunt. Witness lives about | This finished the Crown case and a is a road connecting. There is a tele- tree to be brought into Court. asked what had happened. Accused the boy. There is a school in St. work at any time. He was standing came down to him the boy was dead. not home when it was opened, he was fall. This was the first tree that was

David Benson, brother of accused. and the accused's wife said that she fallen the way he thought it would go Constable Robert Pittman, sworn, would send the boy about February the boy would have escaped, or if he examined by Mr. Fox. Witness is 1st. On Jan. 21st witness got up and had come towards him he would have attached to the detective force of the prepared to go in the woods. The boy escaped. The limbs of the tree came Constabulary Department, and is went with him, He was a wonderful on him. He had to make two or three stationed at St. John's. On January boy for wanting to go in the woods; more chops when a squall of wind 23rd accused left for St. Jones' Within he had rabbit slips in there, and a came and struck the tree. When the General, with orders to enquire into in and set slips. They left home five feet from the tree, and the boy the death of a boy Sheppard that had about half past nine and went about put his hands up, and the tree struck been reported. On arrival there on a mile from home. They went on Hat- him in the face; as he came to the the afternoon of the 24th, witness chet Line and then turned in on Bay- tree his right side was towards him. began to make enquiries. He saw the ley's Cove Path. About half a mile in The tree fell up hill. He did not see body of the boy at the home of Ben | the horse was left, and accused went | the boy falling. He saw him with his son ,and made a casual examination. up a scrape that turned off Bayley's hands up and made a cry for him to There were some bad marks on the Cove Path (points out on map the get out of the way. The tree was at left temple and some other marks on spot to which he referred). He went the time green; the limbs of the tree the face. These were all the marks up on the top of this hill and the boy struck him. Where the tree went down witness saw. Witness had no conver- went with him. There he started to it was level. The top of the tree sation with the accused about what cut the tree that was in court. The boy would be between the east and the happened. The next day the accused was standing about eight or ten feet south. When he saw the boy first all companied the witness to where he to the left. The right side of the ac- his body was under the limbs. When said the accident occurred. Accused cused was towards Bayley's Cove Path. he saw the tree on the boy he took it said he left his horse and slide at the He was going to fell the tree diagon- off. When the tree fell it was in one foot of the path leading to Bayley's ally from him. The tree when stnd- piece; at that time nothing was done Cove path. (Witness points out spot ing was about 25 or 26 feet high. He with it. About half past twelve he on map). The boy was left about 40 told the boy to stand back, but he went in and cut the tree up. He went feet up the Scrape to remove some went contrary to where he was told in after his hatchet and gear. After logs down to the slide, and accused to go. At that time there were four lifting the tree off the boy he made

Witness made a thorough examination of the place where he had been told the dead body of Walter John Shep- tion. After arriving in St. John's He was not sure if the accused was best told. He said that half way up day. Thursday, witness called up Mr. ed the boy, and that he had picked up Frost, sub-sheriff, by telephone, and the body and laid it down on the snow

trees, but nothing else. They then | Cross-Examined by Mr. Bradley. went in Bayley's Cove path, away When witness saw the accused he from St. Jones' Within. They went was willing to go into the scene of about thirty feet and saw some blood the accident, he called at the boardmarks, they were on the right side of ing house of the accused by arrangethe path. The snow at the spot ap- ment, About mid-day they came out peared as if it had been trampled on. from the scene and in the afternoon prepared to say that the marks found The trees there were low fir trees, witness arrested the accused. He Bayley's Cove path is just a side path was not cautioned before being quesand is different widths. After that tioned previous to his arrest. Witness witness came home. He had no fur- did not examine the body of the boy ther conversation with the accused except in a casual way. He saw the after Wednesday, January 21st. The top of the tree and further down two that morning, and he never struck the more. Witness declared that what he the address on behalf of the Crown, boy's body was sent to St. John's. pieces that also belonged to the tree. In their conversation accused said he The tree was further up the hill than had found the boy half way down the bunch of dogwood. It had fallen the hill, he could not speak. Accused up the hill. There had been snow said there was life in him when he between the time of the accident and the time of the examination. Witness Cross-examined by Mr. Bradley, he did not know there had been rain but

bert George Benson. At the time wit- arrival in St. John's accused was ness was unloading his slide near brought to the police station. There his house. Accused said he was going he was again cautioned. Witness was to tell his brother David. It was curious why the accused had said about twelve o'clock when witness nothing about the boy during the passaw the accused. On Friday witness sage, and witness thought he might went in to make an investigation. On have said something. Witness told Thursday night previous to that it Benson he was not bound to say anyrained. The blood marks appeared to thing, but what he might say would spots there on the right side of the say anything after he had been cau-Within. The marks did not look fresh. was strange about finding the blood trodden over. They had a pale ap- the accused, where persons had done pearance, due probably to the rain. things either by accident or in a pasover the snow previous to the rain. he suposed the truth was the best told The rain had the snow in such a con- and then told him that the tree hit the dition that no footprints could be boy and knocked him down. Accused seen, as a matter of fact he did not said he was so frightened that he ha

the accused he was told the boy was Fox. Witness is medical officer of almost gone. The boy was not dead at health in St. John's. Witness rememwent to tell his brother when he left some snow on which were blood stains, in January last. They were Re-examined by Mr. Fox, accused brought by Constable Pittman in a said the boy was almost gone at 12 tin. On account of the contact of the blood with snow and water, the ccr-

9 miles from St. Jones' Within. There brief recess was taken to allow the

said that he and the boy went in the Jones' Within; it is open four or five about 8 or 10 feet away. There were ing down the hill, where the sticks The school closed about last May and tree was open for the length of the were, the boy tripped and when he opened about December. Accused was tree around where it was going to This was the only conversation held two days before Christmas. The school to cut, it took about 8 or 10 chops on instructions of the Inspector couple of days before they had been tree fell the boy was about four or went further up the Scrape, about 60 or five chops required to cut the tree, a couple of groans. The boy had no feet. Later he saw Walter John Shep- but a squall of wind struck it and the bled at all. The horse was not turnpard lying face down in the snow tree fell and struck the boy. About ed around until the boy was down.

Saturday night he first saw Constable logs. Pittman who came into his house and At this stage adjournment was was that of the boy. There was abmorning to where the accident happened, and they both went in. Accused was arrested on Sunday after they conversation with Mr. Pittman, in the Witness Stand and his cross-examina- and sworn that he had not beaten Court House, downstairs. He then tion by Mr. Hunt resumed. Asked if him, and his testimony was unshaken. told the constable that because he was he had cut the tree away before the Nor was there any evidence to show frightened at first he told an untrue squall came, witness said it wanted any reason why the accused should story, and the correct thing was then four or five more chops. When he re- wish to get rid of the boy. In contold. He lodged the boy down at the spot where the blood marks were. The boy was not bleeding, but he was not His reason for going out to the wood est consideration, bearing in mind were not blood marks, nor that they er, and for no other reason except to duced against him, and he felt sure

The boy did not disobey the accused

on the face and temple would be caused by the limbs of the tree; the limbs would also cause the marks on the back of the arms, but witness could not say what caused the marks on the back of the thighs. Cross-examined by Mr. Hunt. When his sister was dying, it was her wish for him to take this boy, his brother another, and his other sister the girl. After about four or five months he had been receiving five dollars a month for keeping the boy, from his father. When the boy was brought be scattered around, there were two be used against him. Accused did not his father said he would do anything road going away from St. Jones tioned. Witness said he thought it arrangement made for payment. The boy was a nice size boy for his age. marks. He had known cases, he told well. He was in the woods two or three times before that, with the ac-Witness saw no footprints, but it sion and had been too alarmed to tell cused. When he went in he would not seemed as if some one had trampled the truth. After that the accused said go out of sight and would generally be setting rabbit slips. Every time he went in the woods he went after rabbits. On this day he went with the intention of going to his rabbit slips. Just clear of the hill, on Bayley's Cove Path, there is a marsh. On the way in they went to the snares, there were no rabbits there. The boy had two 12 o'clock on Wednesday. Accused bered having to make an analysis of There were no rabbits. The day was not a cold day, it was a fine day, the wind was westward; it was squally. There had been a spell of mild weather and a spell of frosty weather. They went over the marsh to the rabbit slips; it was frozen over. They had to leave the slide to go to the snares: both saw all the snares. The horse was stopped down from the scrape. phone system connecting. In January Albert George Benson (Sworn, ex- They were about five or ten minutes witness heard that a boy had been amined by Br. Bradley)-He lives at at the snares. They then went up to killed. He received a telephone mes- St. Jones' Within. He is married; his the top of the hill. Before coming to sage about 11 o'clock in the morning. wife is alive and his father lives with the scrape he did not like to let the Accused called at the store of the him. He was an uncle of the boy, boy go home by himself, so he went witness that evening to get the burial The boy's mother, who is now dead, up to the top of the hill with him. He outfit. When accused handed the or- was his sister. His sister is dead was talking about the slips; he was der for the coffin trimmings, which two years and when she was dying it wondering why they got no rabbits. was signed by his brother. David, he was her wish that witness should take The boy was not asked to do any

with the accused. The order was from was open after the Christmas holidays either side to cut. If the tree had made by the limbs of a tree. As to which the boy met his death. He claim-

boy. He then lifted the tree off the brought in the road and where he was neither he nor his client could acboy and picked him up; he then took put down was about where the blood count for them, but it possibly could the accident occurred. Going farther the boy in the path and laid him down marks were. If the boy was put on be done by one of the lowest limbs When the trial of Albert George in Bayley's Cove path witness saw on a bag of hay. He was taken in the the edge of the scrape he would have on the tree. He claimed that the Benson charged with the murder of his nephew, Walter John Sheppard, was resumed yesterday afternoon the still quite a number of marks around. Path because on the outer side there to be put on the junks and he did not was a marsh. He took him in thirty want to do that. The coat was about the marks on the boys body. Had he Benson charged with the murder of some blood stains scattered around. path because on the outer side there to be put on the junks and he did not Crown had produced no evidence to following witnesses were called:- Accused was standing near at the time | the horse. It took about half an hour | the boy. The coat was an old one he | been beaten there would be bruises. Simeon Boyd King, sworn, examined and he could not account for the blood to come out. After getting in the sometimes were in the woods. On the There was no evidence of his being by Mr. Fox. Witness knew the ac- marks. He said he thought they woods that was the first tree he start- way out he met nobody; the first per- beaten by a stick and unless the accused and also his nephew, Walter might be caused by a horse's foot hav- ed to cut. On the way out he heard son met was his wife who asked what cused clawed the boy he could not had happened the boy, and he told produce the scratches. Dealing with boy. He was tall but not so very marks on it was taken in to St. John's. asked him what was wrong with the her that the boy had tumbled down the lying statements, he said it was stout. He was nine years and nine About twenty feet beyond the blood boy and he said he did not know, the side of the hill to the dogwood. natural judging from the type of man months old. On January 21st he saw marks, he saw an old coat lying on a He then sent for his brother's wife He was so frightened that he did not the accused was that he should fear the accused just down from his house. tree. Accused said it belonged to him and Mrs. Brown but when they came know what he was saying. He did what would happen him because of In a conversation witness asked ac- but said he had left it there several the boy was dead. He then went in not know why he was so frightened the boys death. He knew he was cused what had happened John Shep- days before. Where the blood marks the woods to tell his brother about to say the tree had fallen on him and morally responsible in allowing the pard and was answered he did not were there were only small trees. the occurrence. On the way in he was not frightened to say the boy had tree to fall on the boy, and in this know. He said he left the boy to pull The top of the tree was about sixty met Mr. King. He met his brother tumbled into the dogwood. After go- state of mind he was full of fear that down some logs and when he looked feet also from where the boy had been just clear of the woods. That evening back the second time he took the he might be held responsible, and it he saw him lying face down among left according to Benson's story. The ing he made ready to go to Hillview to bottom parts on to Bayley's Cove Path, was human for him to tell lies in orsome small trees. This was about 12 body of the boy, and also the accused, get the trimming and the casings for he took the two bottom parts on to der that he would not be brought into o'clock. After dinner wifness went to were then brought in to St. John's. the coffin. He wanted to get them the path and left the top part where trouble. The stories told the witthe house of accused and there saw The accused was given the usual cau- from Mr. Frost and carried to him a it was. On the road he met his bro- nesses were, he claimed, in toto a note from his brother. On Thursday ther and told him the same as he clumsy attempt of the accused to dispard. There was a mark on the boy's accused, in a further conversation, morning Robert Miller came after him had told his wife. He met King be- associate himself from the death. Retemple and also bruises on his lips. said he supposed the truth was the to go in and show what had happened fore he met his brother. The boy died garding the blood marks found on the to the boy. The boy's father was in about five minutes after he was snow, he claimed that had a murder in the house at that time. The next the Scrape a tree had fallen and kill- telegraphed that morning. Accused brought in the house. He told King being committed, the accused would cannot read and write very well. On he left the boy to pull down some have removed this evidence. Further

THIS MORNING'S SESSION.

about them. The boy was a good boy. King that he left the boy to gather in their hands. some logs whilst he went to cut some boy in his life. He had no stick in his hand, and he did nothing at al! to man to the scene of the accident and told him about finding the boy by the is false. There was no reason to deny dogwood trees, and gave other parti- that the tree fell on the boy-if it did

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there was no evidence that the blood cused beyond that which was circumstantial. There was no evidence that

When the trial began this morning the accused had beaten or throttled turned after bringing the boy home, clusion, Mr. Bradley asked that the he said he cleared it from the stump, jury should give the facts their closthe second time was to see his broth- that no direct evidence had been prowere not the blood of the boy. He get his hatchet and saw. He told his they would do every justice to the acwas not prepared to swear anything brother the same story as he told Mr. cused knowing that his life rested

told his brother was false. It never and pointed out that murder or manentered his mind that it was best to slaughter were difficult crimes to injure him. He would say the marks let the tree alone until the authorities bring home to an accused because saw it. At Hillview he met Mr. Frost the crimes are committed in secret. and he repeated to him the same as Crown Counsel pointed out that there witness said. The accused admitted was no way in which to get the story that this also was a false story. Wit- of what happened on that day except ness on further cross-examination from the accused. He held that there said his story to Miller was false, and is nothing to be hidden the truth is the boy was not under the dogwood told, but when some wrong is done bush. He did not know why he told lying stories are resorted to. The adall the people that the boy was found mitted facts in the case pointed to lying face down. It was a falsehood the guilt of the prisoner. He was the that he sang out to the boy and then only one who saw the whole transaccame down the hill towards him. On tion, yet when he came home he told the way out of the woods with the dy- falsehoods to his wife, his brother ing boy he passed seven or eight and others. On eight different ochouses and it never came in his mind casions he told a story different to to get any assistance. After arriving that which he told on the witness home he left the boy there and re- stand, and it was not until he was turned again to the woods. Four brought to court that he told anydays after he brought Constable Pitt- thing of the tree falling on the boy.

culars. Witness said all the story he fall on him. According to his evidence gave the policeman was false. To the accused was willing that the boy neither his wife brother nor the five should be buried without anyone knowor six other people did he tell a true ing what happened him. Reviewing story, and the first time he spoke of the story of what transpired after the the boy being killed by the tree was boy was picked up, the Crown counsel when he was in the lockup at St. claimed that all actions of the accused showed a most callous nature, and he Re-examined by Mr. Bradley wit- asked why he had gone back to the ness said he did not know why he did "scrape" to saw off the log within an not seek assistance at the nearest hour after the tragedy unless he had a house. He wanted to get him home as reason for doing so. The Crown claimquickly as possible. The boy was ed that it was when he went back the standing about 5 feet away when the second time that he cut the tree. The tree fell. At 11 a.m. Mr. Bradley be- end of the log did not bear evidence gan his addres to the jury. First he of the tree being blown down by dwelt on the history of the boy for gust of wind, and he claimed that this the two years he was living with the end of the log which was clean cut accused, dwelling particularly on the through was a silent denial of the story boy's proclivity for going in the of the accused. He put it to the jury woods. Then he reviewed the story as a probable fact that the boy wantas told by the accused. He urged that ed to get to his rabbit slips and the too much reliance could be put on the accused wanted him to work. In constory of what particular part of the nection with the death it was not the tree struck the boy. Falling on him duty of the Crown to show exactly it would have crushed him. It was how it was brought about, the jury evident that the trunk did not strike had to be convinced that the accused him. Mr. Bradley, continued the was the responsible party, and if it story of the occurrence as related by was brought about by premeditation the prisoner, and claimed that it or on the spur of the moment. If they woods to get some whiteends. Com- months, principally in the wirer, other trees standing around but this squared with the proven facts. He found in the former, they could but said he did not propose to impeach bring in a verdict of murder. If in the the veracity of the Crown witnesses, second case it might be either murder Cross-examined by Mr. Bradley, then at Corner Brook and returned cut. It would take about five minutes The scratches and abrasions on the buttooks pointed to the marks on the face and those on the face and arms were such as could be buttocks pointed to the manner in ed that the defence was put to the extremity of practically admitting a charge of manslaughter in order to hide the tree story of the occurance. The circumstantial evidence produced by the Crown was compatible with the charge made. It was not compatible

court room as exhibits. Kyle Jammed Off Channel Head

with the story told by the accused. Mr.

Hunt concluded his very able address

at 1 p.m., when recess was taken until

2.30 p.m. Before retiring to lunch His

Lordship the Chief Justice directed the

jury to make an examination of the

portions of the tree which were in the

The management of the railway eceived a message from Capt. Cross, s.s. Kyle, at 8 o'clock this morning, stating that the ship was jammed 8 miles S. by W. Channel Head. A later message stated that a gale of wind was blowing from S.E., and there is every possibility of her getting clear during the day. The Kyle had not reached Port aux Basques up

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nisunderstood than some of the fam- guard of civilization and one day en- come from retirement to ous gunmen who flourished in the gaged in a desperate fight with a "Wild Bill Hickok," for palmy and romantic days of the old notorious gang of stage robbers, the release. "Wild Bill Hickof" McCord outlaws. It was a brave and fearless crew, Hickok's fame was great. He be- ductions which Mr. Hart w

who daily risked their lives in the came marshal of Hays, Abilene and under the direction of Cliff pursuit of duty as peace officers. They Ellsworth. Wild Bill never killed a In this picture the star i were Bat Masterson, who died in New man until forced to. To uphold the by such prominent players York recently, Wyatt Earp, who still law he had to kill forty-six men. For lives, Charlie Bassett, Bill Tighlman, a time Wild Bill worked as a faro Grey Terry, Kathleen O'Co Gerard, Jack Gardner, James Luke Short, Joc Holliday, Chalk Bee- | dealer in Dodge City. Bat Masterson son and that most famous of all old was sheriff of Dodge City and he de- and others.

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