SUPPLEMENT TO THE CHIGNECTO POST.

THE McCARTHY MURDER.

DORCHESTER, Aug. 20.

This morning Dr. Tuck began his address to the jury. He said:—

May it Please Your Honor, Gentlemen of the Jury:

I congratulate you that you are now approaching the end of this long and most important trial. It has now lasted nearly five weeks and never in my experience of criminal trials have I met a jury who gave more earnest attention to or took a more intelligent interest in a cause than you have in this one. From day to day you have watched carefully all the proceedings; have never been unmindful of your duty and have shown your intimate knowledge of the facts and bearings of the case by the pointed questions you have put to many of the witnesses and whatever may be the result of the trial I feel well assured that your own noble county and the country at large will thank you for the way in which you have performed your duty. Perhaps in the history of the Province there has never been a cause, civil or criminal, which has excited such a wide-spread interest as this one. Not only in New Brunswick, but in the neighboring provinces the public mind has been exercised over this case from the time it first came to be known that Timothy McCarthy had disappeared down to this almost the last day of the great trial. And one need not be surprised that this is so for the case is a marvellous one and has in it many facts and circumstances more thrilling and exciting than a romance. For weeks and months the public were by no means sure that Timothy McCarthy was dead, and even some of his nearest friends were in doubt as to his fate, and could hardly bring themselves to believe that he had met with foul play. By and by pressing inquiries began to be made. The wife of the missing man and his brother, Edward McCarthy, were diligent in their search, and the Sheriff of the county devoted weeks to the work, taking statements from all who he thought were able to throw any light or give information upon the subject. Time passed on; it was well known that Timothy McCarthy had been in Shediac on the 12th of October, and it was discovered that Mr. Chipman W. Smith had parted with him there somewhere between 11 and 12 o'clock on the night of that day. Further investigations continued to be made, and finally from sworn information made by Annie Parker on the 19th of January last the prisoners at the bar and John Osborne were arrested on the following day. Then followed the examination before Stipendiary Magistrate Jacob Wortman, who had associated with him William J. Robinson. The positive statement of Annie Parker that McCarthy had been murdered at the Waverley was there given. As the body was not found many doubted whether he was dead or not. Next followed the search in the Scadouc river for the body, at first through the ice without success, then on the 11th of May last, about three weeks after navigation had opened, the body was found floating in the river a short distance below the railway bridge. Then came the inquest, unlike any one which had ever been holden in the Province before. I say unlike because never before had the accused been present at an inquest with their counsel, who carefully watched all the proceedings and cross-examined all the witnesses, and now, gentlemen, the prisoners at the bar are in your keeping, and you are to say upon your oath whether they are guilty or not guilty. Before proceeding to a review of this case I feel called upon to refer to some of the personal remarks made by the learned Counsel who opened and closed for the prisoners. The learned counsel begins by saying that his address is intended for the general public and assumes either that it is of no account what your views are or that you have already made up your minds. He repeated again and again that his speech was for the general public; that being true it is unfortunate that he did not have a place equal in size to that where Sir Albert addressed the multitude the other day or he might have saved the time devoted to two closing speeches in this court house and engaged the skating rink at St. John where thousands might have been held spell bound by his oratory. Not less than fifty times commencing almost with the first sentence that he uttered on Saturday, did he tell you that some point which he made was absolutely conclusive of the prisoners' innocence, and yet he went on hammering away, as if the main part of his argument was still to be brought forward. Mr. Palmer has also found fault with the manner in which the prosecution has been conducted; he has complained that the Crown officer did not, at the outset, institute an inquiry into the character and previous habits of Annie Parker, and condemns the conduct of the prosecuting officers. The truth is the management of a prosecution is something which Mr. Palmer does not understand, and were he to undertake it, he would be found pursuing it with all the pertinacity and fierceness which characterize him in the conduct of a civil cause or the defence of a criminal one. I appeal to you all, as I have had occasion to do more than once after Mr. Palmer's assaults, if this prosecution, whilst carried on faithfully, has not been conducted fairly and honorably. Mr. Palmer finds fault with the manner in which the Crown has conducted this case. It is not the duty of the Crown officers to conduct a criminal case in merely a perfunctory manner. In trying a person for a crime he should not be tried as if some other person were guilty. Mr. Palmer's inordinate vanity and want of generosity is shown by his readiness to take all the credit for what turns out successfully, and to blame some one else for any disaster which may happen. I now refer particularly to Mr. Palmer's ignoring Mr. Holstead, the gentleman associated with him in the defence of the prisoners. Mr. Holstead, commencing with January last, has applied himself with untiring zeal to the case of the prisoners, has gone north and south hunting up testimony, has left no stone unturned; in fact has done everything possible to meet the Crown case and establish the prisoners' innocence, and yet Mr Palmer ignores him utterly, and expresses regret that he has no counsel with him! Witness Mr. Palmer's treatment of my learned friend and associate, Mr. Hanington, during the whole progress of the cause. Why, even the learned Chief Justice seemed to be astonished at Mr. Palmer's conduct when Mr. Hanington examined a witness. Mr. Palmer constantly interrupted him, and in fact sneered and carped at everything he did. It looked as if Mr. Palmer was endeavoring to make himself as personally offensive as possible. Then came his fierce attack upon him. In his first address to you upon opening the defence he accused him of having received a retainer in the cause from Ed. McCarthy some time last autumn, and applied to him the vile epithet of sleuth hound. I have yet to learn that it is a crime or is even wrong or unprofessional for counsel to take a retainer on the Crown side in a criminal cause. It is the constant practice in England to do so, and in this province I have known the present Judge Ritchie, Judge Gray, now of British Columbia, Chas. W. Weldon, and many others, to take retainers from the prosecutor in Crown cases. But when Mr. Palmer made the attack upon Mr. Hanington he knew perfectly well that he had not received a retainer from McCarthy, for in giving evidence Edward McCarthy had solemnly sworn that the advice he received from Mr. Hanington was of a friendly character; that no money was charged and none paid. Mr. Palmer, seeing the effect of his onslaught and that he had made a great mistake, endeavored to mitigate the offense in his closing speech and to say he did not mean it, but it is a poor apology after one has purposely given another a slap on the face to say that he did not intend to hit him so hard. Now gentlemen, coming to the case itself, I shall endeavor to discuss it dispassionately and with a view of arriving at the truth of the death of Timothy McCarthy, and that his body was found in the Scadouc river on the 11th of May last, no one can have any doubt. I think that I will be able from the evidence to prove to a certainty that his death was from violence and not from drowning. I then shall discuss the question as to how that violence was administrated and will conclusively prove to you that Timothy McCarthy was murdered; that Mr. Palmer's bridge theory has no facts to support it and is entirely the creature of his own imagination. After having established these points I will turn my attention to the evidence which tends to fix the guilt of the McCarthy's murder upon these prisoners. The evidence of Damien White, Philip Votour, Stephen and Edward McCarthy proves conclusively that Timothy McCarthy was found dead in the Scadouc river on the 11th May last. It seems to me that death by violence is no less conclusively proved; the three medical gentlemen; Drs. Allison, Flemming and Scott, who made the *post mortem* examination, all declare without consultation that death was caused by external violence and not by drowning. It is absurd to think that McCarthy should go to the river at all. He had no business there, was able to take care of himself when he left the Weldon house and when he parted with Chip. Smith, and to suppose for a moment that he then started up the railway track towards the river is something too absurd for human credulity. The doctors tell you too the state of the man's brain and find the cause of his death there. I think also that it has been established beyond any reasonable doubt that he came to his death by foul play; in fact that he was murdered. The evidence to support this is both direct and circumstantial.

True Annie Parker gives the only direct testimony and as Mr. Palmer says she is an accomplice. In this case you must associate the circumstantial evidence with her evidence. We can't ask you to convict withouther testimony, but you must look outside for circumstances to corroborate her, and if you clear the prisoners you must have a real doubt not a fanciful one. Now I wish here to say a few words regarding Annie Parker. Mr. Palmer has used harsh language with regard to her evidence with regard to her character, (which we could not contradict) yet I do not think she is all bad. She should not be disbelieved in all that she says was told her Her early life was unfortunate, and she was not surrounded by influences calculated to develop a virtuous life; she early lost her mother and was early cast out upon the world without any friend or protector. But look at her circumstantial story. It is admitted that McCarthy was at the Waverley House; she tells how he came back, had four drinks, gets stupid; his money is taken from him, then he revives; Harry proposes to finish him; does so; gets the rope and stone; goes away with the body, and so on. Can it be possible that this is a mere fabrication? It is more improbable that she could invent this story than all the other improbabilities of the case together. What inducement had she to invent this story? She lived with the Osbornes seven weeks after the murder; there is no evidence to show that she had any ill will against the Osbornes. Why does she tell this story without any assignable reason, the effect of which is, if true, to send these people to the gallows? I know the many contradictions in her statements, but they might be made by any one; and remember, these discrepancies are more likely to confirm the truth of her story than otherwise. All these statements were made before McCarthy's body was found, and when by most people he was supposed to be alive. All this was told by a girl against whom no crime had been charged, and who had never before manifested any viciousness of disposition. There is no half way in this matter; either the prisoners murdered McCarthy or they did not. If they did not then Annie Parker has sworn falsely. Remember I am not her apologist. I do not wish to extenuate her faults in any way. She has not been properly treated or looked after, and this will explain a good deal. The doctors state that it was possible for these blows to be given and yet the skin not be broken. Either Mr. Palmer must show that McCarthy was drowned or the murder must be fixed on the prisoners. Every source and avenue has been searched to find the cause of his death, without result. There is no other way of accounting for it. McCarthy had no motive for going to the railway bridge. It is said he went by mistake. That will not do. There were three cattle guards to pass on the way; also an embankment. He was capable of taking care of himself. He did not know the way to the Scadouc and did know the way to the Point. Could a man weighing 215 lbs., fall from the bridge and hit some obstacle during the descent? Would he not have smashed his head all to pieces? The small wound on the head will not explain the matter; not a sign supports him in this hypothesis. If this was the only difficulty to dispose of in this case it would be easy to solve the mystery. It has been said that the evidence of an accomplice like Annie Parker ought not to be sufficient to convict unless her statement is corroborated. I agree with this proposition and unless you can find in this testimony sufficient to convince your minds beyond a reasonable doubt that Annie Parker's story is true, then you would not be justified in finding the prisoners or either of them guilty. This brings us then to a consideration of what amount of circumstantial evidence, as it is called, is required to warrant a jury in convicting persons charged with crime. The true principle is said to be this, that the facts proved must be such as to establish beyond any reasonable doubt the guilt of the persons charged and thereby exclude every other hypothesis which can possibly arise from those facts. If the evidence associated with that of Annie Parker falls short of this so that your minds are left in doubt and you begin to hesitate, and to conjecture as to the guilt or innocence of the prisoners then, as the Crown officer here, seeking only that justice be fairly administered in this case, I am bound to tell you that it would be your duty to acquit the prisoners. But if, on the contrary, after having carefully weighed all the testimony and considered all the facts of the case, you are convinced that the prisoners murdered McCarthy, you ought to say so, and that regardless of consequences. And here let me tell you, gentlemen, not to permit yourselves to be deluded about this question of doubt which is so often and so unfairly urged upon jurors. It is not a mere fanciful doubt, a vagary or creature of the imagination which ought to influence you to acquit. The doubt must be a *bona fide* one, such as would affect the mind of a prudent, careful man in his ordinary business.

I will now state the hypothesis of the Crown in this case, and in doing so I will put forward some propositions for which there is no direct proof, except in so far as they are to be deduced from the evidence of Annie Parker. Her story is as follows:—McCarthy left Osborne's at half-past ten; he said he was coming back; the Osborne's planned to drug and rob him; he did return and had four drinks, some powder was put into the liquor which produced stupor; he became insensible and his money was taken. Shortly after he revives and Harry proposes to finish him; Mrs. Osborne tells him to do so; he then strikes several blows on the head with a hatchet which cause death. Harry then gets the stone and rope and brings the horse and wagon to the door and takes the body away, puts it in the Scadouc and returns in about a half an hour. The girl goes to bed and then gets up and scrubs the blood from the floor of the barroom, hall and platform. She states that McCarthy breathed hard and died. This hard breathing takes place when a person has been drugged and is known only to medical men. Could she, a novice, have known this? I never thought what they used was a deadly drug. He had been drinking all day and then had taken four drinks at Osborne's, so it was not necessary to use a powerful drug to render him insensible. It was probably some powder which they thought would have a soothing effect. His coats, watch and the shell were all left at Osbornes. It is impossible for us to say whether Harry put the body in the river alone or not. On the Sunday or Monday following the body was taken up and placed further up the stream in the channel; then two or three weeks after the body is taken up again and the clothes put on, the money and watch placed in the pockets. As soon as this is done they think themselves safe, and this accounts for the stories that we have heard of them afterwards asking: If the body was found with the clothes on and the money in the pockets, whether anything could be done to them or not? They had found as inquiries had been made about McCarthy that it was dangerous to have the clothes or watch in the house or Harry carrying the shell. It was known that he had been at their house and search would be made, so these things must be got rid of. I see the difficulty, almost the impossibility, of this boy disposing of the body. We have not been able to prove an accomplice. There seems to have been no preconcerted idea of murder, not even when they determined to rob him: it was only when they found he was coming to and they were fearful that he would know where his money was, that they determined to kill him. When John Osborne recovered he saw the difficulty. The body must be looked after. It was first put in shoal water, and when the tide was high John Osborne was unable to go himself, but he was able to understand the position and saw that speedy action was required. My theory is the body was at once taken up to where the stone was found and there put in the channel. It corroborates this that the horse, wagon, boy and man were seen there in the grey light of the morning. White and Wharman prove that the boy had a rubber on one foot and a shoe on the other, and the evidence shows that Harry had worn a shoe and rubber. It certainly was an unusual thing to find a man and boy with a horse and wagon in the field at that time in the morning. The horse was dark brown, white spot on the face and white hind foot, like the horse owned by Osborne. All this may seem strange, but when Osborne recovered he saw the necessity of making the body appear natural and then, if found, the conclusion would be that he was drowned. It would not be impossible to reclothe the body.

If you can find sufficient corroboration to Annie Parker's testimony, then you must conclude that the Osbornes did the deed. There is no doubt McCarthy was murdered: if the Osbornes did not kill him some other person or persons did and whoever killed him, Annie Parker knew all about it. Mr. Palmer has stated that she never mentioned that the body was in the Scadouc until the hat was found, but you have the positive testimony of Edward McCarthy that before any statement had been made at all, she had said the body would be found in the Scadouc. She told this most important fact before the hat was found. When the body is found, sure enough it is where she said it was. She goes up the Scadouc and points out the place where the wagon went down to the river. Can there be anything more confirmatory than this? Look through all the history of British jurisprudence and you will not find stronger circumstantial evidence. This was the only stone found in the river this spring, and the only piece of rope. Mr. Palmer says the stone and boards of the wagon have been tampered with. A gentleman who is slow to believe that a murder has been committed, really seems to think there are persons wicked enough to do this. It is also said that the stone was put in the river. Who would do such a thing and for what reason? The lime on the stone was covered with mud when taken from the river; when this got rubbed off, the lime was plain to be seen. It has evidently been used in a building and it was found where Annie Parker said it was put. Agnes Buchanan says this bed cord was there when Grattan lived in the house, but I submit it is not probable it is the same. It was evidently changed after the body was taken away, as the cord produced by Mrs. Buchanan and Marshal Steadman is new. Jude Hibbert says the cord in the bed was softer than that produced by Miss Buchanan. Is it probable that this cord would remain unused so long? Again, the rope found in the river don't correspond with any rope used for rafting. The reason that the rope was so knotted as it was, is no proof of its having been used on the river for lumbering purposes, but rather that the body had been taken up more than once and was knotted in that way. I view the evidence in reference to both the rope and the stone as corroborating the girl. The evidence in reference to White's wagon, although I confess it is met by strong testimony, is corroborative of the girl. My learned friend abuses Moore, Linkletter, Allen, Hayward and every other witness that at all corroborates the girl, and has them all named; Linkletter is the butter man, Allen is Annie Parker's mysterious stranger, Hayward is a drunken lout and Moore was an unwilling witness. If the money was paid White on the 13th, he could not have been in Buctouche. I am inclined to think the evidences for the defence, in reference to the wagon, were mistaken; Mrs. Ward could not see a wagon at five o'clock on the morning of the 13th at a distance of 30 yards. Philip White's evidence depends upon a date in Melanson's memorandum book of money paid him. Melanson was travelling around and may be mistaken as to the date. White says he drove home of a fine night, but we know that Friday night was stormy. The evidence is not conclusive that White's wagon was not there, and even if it is, the tree men say they saw two express wagons there. The blood stains could not get on it if it was only used as White says for carrying beef. Another important point is that when White came back two weeks after, Harry run right into the house and told his mother that the man was here who left his wagon when he went to Amherst. This is strong evidence that there was something wrong. If you believe that this wagon was there on the 12th of Oct. it is strong corroborative evidence of the girl's when taken in connexion with Harry's conduct. Taking Hickey's evidence you can have no doubt that the wagon came from the direction of the Osborne House. This is a strong circumstance but not conclusive. It is said Annie Parker and Hickey don't agree in time and they may both have been mistaken as to the hour; but was this not an unusual hour for travellers? French people with oysters would come from the other direction. Hickey could hardly see whether there was a body in the wagon at the distance of 30 yards. [His Hon. the Chief Justice here interrupted Dr. Tuck and said that he thought the distanc stated by the witness was only 7 yards. After some discussion by the Chief Justice and counsel, Dr. Tuck proceeded.] He said, I thank your Honor for correcting me, as I have no desire to mis-state one tittle of evidence. It may be that the wagon could not have passed with anything in it without his seeing it, but the weight of testimony is the other way. Hickey hears the wagon come back, and his evidence is strongly corroborative of the facts being as stated by the girl.

Adjourned for dinner.

After dinner Dr. Tuck continued. He said: Hickey's evidence is important as it shows that the last time McCarthy was seen he was going in the direction of the Osborne house. There is no evidence that he went to the Point and putting aside my learned friend's bridge theory, the last time he was seen he was going to the Osbornes'. My learned friend is careful to shut out what McCarthy told McDonald as to where he was going, but admits Millican's testimony, as to his going to the Point. Another point I shall refer to, and if it makes in favor of the prisoners let it do so, and that is that the two men must have been there. It is singular that both the Osbornes and Parker should be mistaken. Was it not convenient for the Osbornes to forget they were there if a murder was committed for fear they might give evidence against them? Notwithstanding they were in the house the murder might be committed and they not hear it, as it does not appear that any great noise was made. I offered an important piece of testimony to show what money John Osborne had paid after the 12th October last, but my learned friend shut this out on the ground that Osborne was not on his trial and the prisoners should not be held responsible for what he did. But there was the piano to be paid for; Osborne had been sick, the house was not prosperous, they were in need of money and probably were ambitious. All this looks suspicious. My learned friends were industrious in trying to break down any evidence offered by the Crown, but when this was offered they shut it out. Then again the wagon tracks corroborate Annie Parker. Mrs. Atkinson's evidence on this point is important. It is not likely she could be mistaken. She says the men were threshing until 12 o'clock on the night of the 12th October; they did not go to bed for some time after that; she remained up and heard the wagon in the lane. Mr. Hanington and Mr. White testify as to the tracks in the lane, and farmer Atkinson gives evidence about the fence being taken down and of seeing the tracks as well. This wagon did not track by three or four inches; there was only a single track at this place. One witness affirms that no wagon could go down at this place to the river; farmer Atkinson, Mr. Hanington and others affirm that it could; and this all strongly corroborates the girl. Notice her graphic description of the death scene! She says the dying man calls his wife Ellen and his boy Hanna. If this is not true, it shows an infernal ability to do evil. Dr. Campbell, a friend of the prisoners, gives another important piece of testimony; he tells you there was only one occasion when he saw the bar-room scrubbed, and that was some time in October. He says he spoke to Harry about the matter, and Harry said there was a row in the bar the night before and he had to take a drunken man home. Why has this man not been produced? It would be easy to find him or show who he was. What was the motive of the Osbornes in committing the crime? Lawrence, money. We find them with a piano unpaid for and bills to meet. Jealousy and revenge are motives in the commission of crime but the desire for money is the greatest of all. McCarthy is there with a roll of bills, and one of ten dollars is on the outside of the roll, and no one else but the Osbornes is proved to have seen this roll of bills that night. Desire for money to meet these claims was the inducement. According to Williston he had a large roll of bills when he borrowed the $391 from him, and he could not have deposited in a bank, after he returned, the money borrowed. Beside that he receives $20 per day from the 24th of Sept. until his death. In reference to Mrs. Botsford's evidence she may have been mistaken as to what Mrs. McCarthy told her. Both she and Crossdale may have strong feeling for which I do not blame them as they served them faithfully. They may have been trustworthy when with them but have changed since. Whose character stood higher than John A. Murroe's? Annie Parker knew who murdered McCarthy and there is no suspicion pointing to any one but the prisoners. How could she have known anything about it? It is not proved she was out that night, and she could have got that knowledge in no other way than she stated. You have the fact that before the hat or anything else was found she stated the affair as she does now. Mr. Palmer says that there is stronger evidence against Chip. Smith, had Parker charged him. I deny it. Hickey clears Smith for he saw McCarthy and him part that night and Smith go in the direction of his home, and there is no evidence that Annie Parker saw Smith that night. If the defence have evidence pointing to any one else they should bring it forward and not state it by way of inuendoes. Apart from Smith being at the Weldon House and Adams House with McCarthy, there is do evidence against him. Mrs. McCarthy and Morris O'Neil are also spoken of by my learned friend. Is it not enough that she should be deprived of her husband, and her children of a protector, without being charged with his murder by way of inuendo, when there is not a tittle of evidence against her? If Mr. Palmer did not believe as he said, he should not have made the insinuation. And so with O'Neill. He was not in Shediac at all that night, and there was only evidence of bad feeling between McCarthy and O'Neil about a piece of land. Bad though Annie Parker is, and although she has given false evidence in some particulars about herself, she knew of the murder. Could she manufacture a story and impose on the country?

The hypothesis of Mr. Palmer is broken down and no one believes it, and why was it even set up? Because if you believe he was murdered at all the evidence points to the Osborne house and no other. My learned friend has had months to think over this matter and he is too acute not to have seen this. He points to over fifty places in which he claims to have broken down the Crown case; then why make any defence at all? The different statements made by the prisoners do not agree; some of their statements must be false or the witnesses must be false. Do you believe Hayward would swear false, yet if Mr. Palmer is correct he did. As to the blood getting on the shirt, we have the evidence of Hanington, Ed. McCarthy, Inglis, D. White and others that the rubber coat was buttoned up. If the coat was as they de-