WHEARY TRIAL.

To-day.

No Evidence Submitted in Prisoner's Favor

A new judge, and the entry of a murder had given birth to in the past. case on the docket of the York circuit court, were the two causes that drew a crowd to the court house on the opening of the nisi prius sittings here Tuesday morning.

Everybody had heard favorable accounts of Hon. Fred E. Barker, the latest appointment to the supreme court bench. but few in this part of the province outside of Fredericton had seen his honor, or heard him lift up his voice in a court of justice. His entrance then to the bench on Tuesday excited much interest, and it is safe to say that all favorable anticipations formed of his honor have, so far, been quite fulfilled. It was just eleven a.m. when judge Barker, escorted by sheriff

Sterling, made his way through the crowded court room to the dressing rooms to the rear, and after smoothing out his white locks, and adjusting his gown and all events, at my appointment. bands, he faced from the bench for the

first time, an audience that had gathered to observe the course of justice as it was to be administered by judge Barker. The clerk of the court, Geo. A. Hughes, the sheriff, his deputy, attorney general Blair, and the Fredericton barristers, were all gathered within the rail, and bowed pro-

foundly as his honor ascended the bench. And then the business of opening the court commenced. Crier Haining, suffering from a bad cold, was sufficiently distinct in his proclamation, however, to let everybody know that her majesty the Queen was ready and willing to give audience to all requiring justice. Clerk Hughes called the roll of the grand jury

and the following answered to their names and were sworn in : John T. Clarke W. T. Whitehead E. H. Allen Z. R. Everett John Owens John H. Fleming J. K. Lickiewa W. T. Whitehea J. F. McMurray Joseph Walker Alonzo Staples Wm. H. VanWart J. T. Jennings Hamilton Kitchen John Lennihan Kobt. McCredie S. L. Morrison Hamilton Kitchen J. G. McNally Kobt. McCredie S. L. Morrison Kobt. Howie

J. G. McNally Robt. McCredie **James Hurley** mute by the visitation of God. The jury then retired to select a foreman, on their return announcing that Z. R. Everett had been chosen for that

position, and judge Barker DELIVERED HIS CHARGE

He said there was but one case to be in the deaf and dumb language the in- potatoes and continued doing so until dinpresented for their consideration. That dictment, and explained its meaning to ner time. When witness went away with case was not only somewhat novel and him in simple words. The prisoner his wife and daughter between 12 and 1 intricate in its character, but it involved

difference.

heartiest approval at his selection, and There was nothing different in his actions water. In cross-examination witness said ly all night. Prisoner examined his finger Concludedd in the Circuit Court their entire confidence in the way in which he would discharge his duties. It from usual. Witness got off his wagon and left his team standing at corner of Joseph Wheary's premises unobserved by lamp to do so. Witness never previously was the sincere desire of those who were house in consequence of the remark (which witness. He could not distinguish the saw prisoner act in this manner. At one his honor's fellows at the bar, that he remark was not given in evidence) the color of the man he saw moving about time during the night prisoner's father might be long spared to discharge these little boy had made. He tried to get into Joseph's premises with the little boy. important functions, and it was their con- his house through the shed door, but fident hope that his honor would be able could not because it was locked. He to place his name alongside the honored then entered by the front door and went diately after the discovery of the murder, names that the bench of New Brunswick through his father's apartments and his

JUDGE BARKER

He found his wife's body lying on its in replying, said : Mr. attorney general, -As ex-officio head of the bar of this province, I assure you it is most gratifying to me that you feel at liberty to have

lying, it was impossible to open the door without moving the body. There was a made the remarks which you have made in reference to the position to which I pool of blood at the head and another at the feet, and the outside of the door for have so recently been appointed. It about a foot and a half from the ground would be needless for me to attempt to was bespattered with blood. Witness disguise the fact, that I have felt exceedthen went out into the yard and made ingly pleased indeed that my appointsigns to the prisoner to put the horses up. ment has been received so generally with Made no inquiries of him as to his wife's expressions of satisfaction, more especially death. When he saw his wife's dead in a community where political feelings body, witness formed an opinion as to sometimes run away with one's judghow she had come to her death and by ment. It has been especially gratifying whose hand. Prisoner when told, put the to me to find that the press generally, on horses up. Witness then went down to

own kitchen and through to his shed.

both sides of politics, have found them-Mrs. Carlisle's. He returned with Mrs. selves free to express some satisfaction, at Carlisle, John Howard and Mrs. Riley. When the court opened Wednesday in sight. Did not see him again till after

brought into court, by deputy sheriff these neighbors. Witness then described found considerable post mortem rigidity. Hawthorn, and placed in the dock. He the wounds on the body. He then sent There was a clean cut wound in the back for him, and washed it when necessary smiled as he took his seat, apparently not realizing his position, and his manner, as for Dr. Coburn. When prisoner first put in an appearance in the house after dark three inches. The wound extended at the police court, is evidently one of in- witness was in a room in his father's through the spinal column. There was a

clerk informed his honor that the pris- Witness took the fork away from him, whether the prisoner stood mute of Witness knew of no difference of any following jury was empanelled : Thos. they always appeared to be on good terms. H. Colter, foreman; Geo. A. Miles, Thos. Witness recognized the axe which Zo-Niles, John Moore, N. A. LaForest, Isaac about his father's premises.

Cross-examined by Mr. VanWart wit-Peabody, Mr. Henry, Alex. Calder, E. ness testified there was no road back of Ludlow, Asa H. VanWart. his house. The prisoner's father, Joseph Wheary, and A. F. Woodbridge, of the deaf and | The woodpile was beyond the end of

jury without leaving the room reported between his shed and his father's, the that they had found the prisoner stood two running parallel to each other. JOSEPH L. WHEARY.

On motion of the attorney general and Joseph L. Wheary, the prisoner's father by consent of the prisoner's counsel, said that after Hedley went away to the Alfred F. Woodbridge was sworn in as grist mill on the morning of the 27th Sepinterpreter, and under the direction of tember, Tyler went to work for Thos. Colthe judge he interpreted to the prisoner ter. Prisoner was sent to work digging

leaders of the people on both sides of countenance he looked "kind of queer," over several hogsheads of grain. The midnight. His father followed him out politics, had joined in expressing their different from what he generally did. blade of the axe was wet with blood and nearly every time, and watched him closesigned to him to take his boots off and go

## WM. KINGHORN.

stool and raised it in a threatening attitude. Witness corroborated city marshall Roberts' evidence as to the signs made by described what he saw, and had nothing the prisoner when being taken away. new in addition to what had already ap-In cross-examination witness said he peared

GUILFORD DUNPHY.

SARAH L. WHEARY,

she did not notice any stains like blood

back across the floor of the shed. It DR. COBURN, OF KESWICK.

was not usual to have this door bolted in described the position and condition of the day time. As the body was then habits of the prisoner and what appeared the body as seen by him. There were five distinct marks on the edges of one prisoner's ordinary conduct. deep cut across the back and side of the neck that severed the spinal column. The body had been moved before he saw it, for there were two distinct pools of blood which had flowed from the neck wound and which had no connection between them. The deep wound could easily have been inflicted with the axe in court. There were some abrasions on deceased's face. Deceased was advanced across his neck, pointed to the ceiling. about eight months in pregnancy.

## DR. GEO. E. COULTHARD

deposed that on the 28th September last he went to Joseph Whearv's house at When he returned the prisoner was not Keswick in company with Clerk of Peace tember. Previously to the 27th of Sept. Rainsford and constable Roberts. He exmorning, the prisoner Wheary was dark. Witness went into the house with amined dead body of Bertha Wheary, and spots on the clothing. She was in the ouse. Prisoner came into this room bruise on the left shoulder cap about half The prisoner was asked by the clerk of through the kitcnen with a digging fork the size of the palm of the hand. There the court if he were guilty or not guilty. in his hand, and seemed ugly, whirling was also a bruise on the inner side of the Upon his making no answer to this the the fork in his hand and stamping about. right knee cap. There were also some faint bruises on the inside of both thighs oner stood mute. On motion of the at- being afraid that he might hit some one about five inches from the body, most distorney general, and of the opinion of the with it. Prisoner resisted witness' ef- tinct on the right thigh. The skin was judge, a jury was empanelled to try fort to take the fork away from him. broken on the left shoulder. There were small contused wounds on both eyelids malice or by the visitation of God. The kind between his wife and the prisoner ; and some swelling on both sides of the face. The wounds on the eyelids could be made in different ways. They looked R. Speedy, Dennis Connolly, Hubbard pher Dunphy found as one that was used like scratches. The large wound in the neck, he would say, was done with a very sharp weapon. He thought it could have been inflicted by the axe in court. He thought the blow was dealt from behind. There was } of an inch difference dumb institution, were examined and the his fathers's shed and there was a space between the length of the wound and the width of the blade of the axe. The axe lacked an 1 of being four inches wide. On one of the wounds on the right thigh

he made an incision and some dark blood oozed out. There were no marks of violence on the genital organs. He removed a child from the womb weighing 61 pounds and within a few weeks of birth. The wound on the neck was a recent wound; the bruises on the left shoulder wound; the bruises on the left shoulder were recent; the bruises on the thighs were recent; the bruise on the right were recent; the bruise on the right As THE HERALD goes to press, judge Barknee cap he was doubtful about. The wound on the neck and the bruises on the shoulder and thighs, he would say were about the same age. The severing of the vertebral column would cause instant death. He would think the prisoner had muscular power enough to deal the blow that would be necessary to make such a wound as the one in the deceased woman's neck. In cross-examination, Dr. Coulthard said he thought the bruises specified were made the same day as the cut in the neck. He would not expect swelling in the face from a blow on the back of the neck. Witness knew prisoner and would take with la grippe him to be an intelligent man. Outside of his being a deaf mute, the prisoner's intelligence was fully up to the standard of He came in with a digging fork in his men of his race.

honor made a very happy reply. Then the OUR NEWcouncillors were served with luncheon The council resumed business at 2.30

o'clock. Couns, Kinghorn, Pinder and Scott were appointed a special committee to consider the compensation to be allowed the police magistrate of Fredericton for holding exto bed. Prisoner thereupon grabbed a

A resolution was adopted instructing the secretary treasurer to ask the comm of the lunatic asylum to furnish names and addresses and under what class each of the forty-three lunatics is put, for which it is claimed York county is liable.

had previously to the night of the 27th of A long discussion grew out of the parish Sept. had no opportunity of studying the indebtedness. Coun. McNally wanted these parishes charged interest on withdrawals, to him to be strange might have been the and proposed a resolution to that effect. The result was an order for the assessment of ten per cent. on the indebtedness of each

parish of Keswick, testified, he was in Joseph The council finished its business Thurs Wheary's house on the night of the 27th day afternoon. The business transacted was September, and described the prisoner's wholly of a routine nature, including the conduct that night. With regard to signs appointment of parish officers, fixing the made by prisoner when being taken away parish assessments and the enactment of by the officers, witness thought prisoner, some by laws prohibiting the running at after raising his hands and passing them large of cattle in certain districts. The following standing committees were appointed Audit-Couns Esterbrooks. Mowatt.

Printing-Couns Spencer Inch. Graham

prisoner's mother, identified the clothes Administration of justice - Couns Kingin court as the clothes which the prisoner horn, Cliff, McNally. had on the afternoon of the 27th of Sep-Public buildings-Couns Kinghorn, Fisher Murray



## Hamburg...

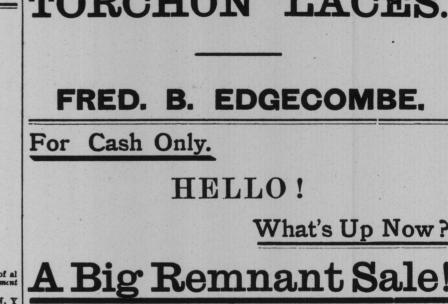
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the most serious crime known to the law, that of murder, and the particular crime no doubt whatever, he said, that a murder tion for the grand jury was whether there Wheary household on the day of the murder had

OBSERVED ANY OTHER PERSON

than the prisoner and the deceased woman's two young children about the premises; the prisoner having been seen

to go out into the yard and return to the jury was selected to try the main issue, house with a water pail during the afternoon, and afterwards walking in the yard John Moore, with one of the deceased's children in his with one of the deceased's children in his arms and leading the other by the hand; John Christie, the discovery of the axe in the woodshed, apparently concealed and with spots of

human blood also upon the prisoner's shirt, were all mentioned as circumstances which, taken together, would warrant the grand jury in finding a true bill. He for the prosecution in a short address. mentioned the fact of the prisoner's deaf- After detailing the circumstances of the ness and dumbness, not, he said, because it was a matter for their consideration, but simply to show that the forms and court were quite ample, not only to protect the unfortunate prisoner thus situated, but also to secure the due administration of justice in such a case.

Referring to the illness of the chief were free altogether from any obstructions Dumb asylum because, as he said, the justice he said it would be inappropriate that would prevent the neighbors from larger boys imposed upon him. Prisoner and shook his head. for him to close without expressing his seeing any one moving about the premises deep regret thereat, voicing the hope, in on either side, and the crown would be witness decided not to send him. He which he was sure all present heartily able to show that not one of the neighors, wrote letters home from the Deaf and shared, that Sir John would speedily be although nearly all of them had the oprestored to health and strength. Comportunity of seeing what was going on, menting upon the removal of judge King had seen any one approach the house. and judge Fraser from the supreme

that, while we all regretted their loss scious that he had done some wrong upon the neighbors houses, if the neighbors upon it also. Witness then gave measurefrom this sphere of usefulness, we must the return of the husband of the deceased feel gratified at their elevation to more woman, and had run away for a time. honorable positions, feeling that they will The crown would show also that an axe brother of deceased, Bertha Wheary richly adorn the offices to which they had had been discovered under circumstances when sworn, deposed he lived on the so deservedly been chosen.

TRUE BILL AGAINST WHEARY.

axe had marks of The grand jury then retired, to consider the indictment against Edward Wheary, jr., for the murder of his sister- and their appearance indicated that there Joseph Wheary's premises were in his

confidence in his ability and integrity, and be open to him. Just now it was for the wished him and family health, happiness crown to proceed to the proof of the comand prosperity for many years to come. Judge Barker made a suitable reply, ex- if the defence should offer any testimony years of his life. He then dismissed the law was that a man was sane until he was grand jury.

Geo. F. Gregory, on behalf of the Fred- if they wished, to rebut that presumption. ericton bar, read a complimentary address to the judge, congratulating him on his appointment, and expressing the be-

ed not guilty. o'clock in the afternoon, he wrote instruct In conformity with the practice usually | ions upon the slate, as to what work the followed in such cases, a jury was then prisoner should do before night, telling charged was the murder of Bertha Wheary empanelled to try whether or not the him to feed the pigs, milk the cows and by her brother in-law, the prisoner, on prisoner possessed sufficient intelligence bring in all the potatoes he had dug. the 27th of September last. There was to understand the proceedings and the Witness saw Bertha Wheary in the door nature of the trial, and to make a defence. of her own apartments just as he left to go has been committed, and the only ques- By consent of counsel the same jury was to Macnaquac, the shed door being open. resworn. Prisoner's father and mother There was nothing unusual in the prisonwas sufficient evidence to place the and Mr. Woodbridge were examined, and er's conduct during the forenoon of that prisoner on his trial as the person who the jury were addressed by Mr.VanWart, day. Witness and his wife came back committed the act. The fact that not one the prisoner's counsel, who had under- from Macnaquac together, the daughter of the several neighbors who had oppor- taken to establish the prisoner's incapac- coming soon afterwards, just before dusk. tunity of seeing in a general way whether ity; and of the attorney general in reply. Hedley was in the house when witness reor not any other persons were about the His honor then charged the jury, who re- turned. Prisoner was not, and witness tired and after a brief absence returned made no search for him. The work that

that they found the prisoner to have witness had instructed him to do was not sufficient intelligence to be put upon his done. Witness was in the kitchen when trial. The court then adjourned for din- prisoner returned to the house after dark.

After much challenging the following hands. He got angry as soon as an effort was made to take the fork away from him Wheary's guilt or innocence:

John Burnett Geo. Strange, Geo. Ebbett, Alex. Thompson, A. N. LaForest, N. A. Edgecombe. Jas. Machum Wm. Inch. Fred. Ebbett,

THE PROSECUTION OPENED. When the court opened Wednesday

afternoon, attorney general Blair opened murder was committed, was situated on Had given him money at times. Prisoner pointed to himself. an elevated position and the premises did not want to go back to Deaf and

pleaded so hard not to be sent back that Dumb asylum while there.

In the re-examination witness said it would be almost impossible for any one blood. He found a card of matches under-The crown would be able to show also to approach his house from any direction neath also. There was a barrel stave in court of this province, his honor said that the prisoner had appeared to be con- without being seen from one or other of the wood box that had some clotted blood were looking towards the house.

> HENRY WHEARY. that clearly proved that it had been con- next farm to Joseph Wheary's, on the cealed and not that alone, but that the northern side, and was engaged during the afternoon of the murder hauling

buckwheat from his field to the barn HUMAN BLOOD UPON IT.

in-law, Bertha Wheary, at Mouth Kes- had been an effort made to wash them off. view all the afternoon, and it would be wick in September last, and late in the In addition to this the crown would show impossible for anyone to approach afternoon reported to his honor that they that spots of human blood were found Joseph's house unobserved by him. He had found a "true bill" against the upon the shirt worn by the prisoner on saw the prisoner digging potatoes during the day of the murder. Speaking of the the early part of the afternoon, and later Immediately after making the present- question of the sanity of the prisoner, the saw him go from Hedley's house to the ment, Foreman Everett, on behalf of the attorney general said he was not aware shed. He saw him also go to the woodgrand jury, read an address of welcome to whether the counsel for the defence in pile and pick up something which he judge Barker, which congratulated him tended to offer any testimony upon the took into the house. He saw him again on his elevation to the bench, expressed ground of insanity, but thas matter would come out of the house into the yard with deceased's two children, carrying one in his arms and leading the other by the mission of the crime by the prisoner, and hand. Witness saw deceased, Bertha Wheary, several times during the day, pressing his pleasure at meeting the grand to prove insanity in the prisoner, then the but not after he saw prisoner moving jury of the county, where he had studied crown would endeayor to get at the truth about the yard with the children. In his profession and passed seven pleasant of the matter. The presumption of the cross-examination witness said he spent the whole afternoon hauling buckwheat and was either in the field or in the proved insane, and it was for the defence, barn. While in the barn he could

clearly see Joseph Wheary's premises. THE EVIDENCE. Witness swore positively that no one out Hedley Wheary, husband of the de-Hedley Wheary, husband of the de-ceased Bertha Wheary, was the first side the family approached Joseph John L. Marsh, police magistrate of Wheary's house during the forenoon. Fredericton, identified the prisoner's clothlief that great success would mark his witness called. He deposed he was living Witness was not on friendly terms with ing. He testified to the cutting out of cater on the bench. In a double house at Keswick with his thanking the bar of the capital very cor-dially for their expression of esteem and mithees canted. The deposed ne was fiving thanking the bar of the capital very cor-dially for their expression of esteem and methees canted. The deposed ne was fiving thanking the bar of the capital very cor-dially for their expression of esteem and methees canted. The deposed ne was fiving thanking the bar of the capital very cor-dially for their expression of esteem and methees canted. The deposed ne was fiving thanking the bar of the capital very cor-dially for their expression of esteem and methees canted. The deposed ne was fiving the family consisted of his apartment his father, mother, brother apartment his father, mother, brother

JAMES ROBERTS

that office

Carr

was next sworn. He testified to his being When prisoner returned, witness wrote on slate: "What have you been doing?" immoned to Keswick early on the morn-Prisoner took the slate, did not read the ing of the 28th September last, and going writing and laid the slate on the table. up to Joseph Wheary's house in company with sergeant Phillips. He described the He made no answer. Then witness asked by signs if he knew anything about the circumstances of the prisoner's arrest. murder, but the prisoner made no answer. The prisoner was lying on the floor of the In cross-examination, witness said he front room with his clothing all on. When did not think prisoner had sufficient witness approached the prisoner with mental capacity to take care of himself. sergeant Phillips, he sprung to his feet He would not be competent to earn a and offered some resistance to arrest. murder, he intimated that the crown living for himself by working in the They hand-cuffed him. He appeared to would be able to show, not only that the woods or by stream driving or any other be frightened and cried a good deal. prisoner had the opportunity to commit employment. Witness did not think the Prisoner when hand-cuffed, pointed toceremonies and the machinery of the the murder unseen, but to show also that prisoner realized what danger was, wards the door of the room in which the opportunity was not open to any body Could not say if he knew the value of body lay, then raised his hands, and McMillan, Scott, G S Inch, Thompson, Es else. The Wheary house, in which the money, never tested him upon that point. passed them across his neck and then

As the interpreter communicated this evidence to the prisoner the latter smiled

Witness next detailed his search on the 28th Sept. for the axe. Witness saw a loose piece of board that had some clotted an address to the present lieutenant governor. He thought we ought all to feel blood upon it, and underneath the board proud of the elevation of that gentleman. on the ground there was some clotted

ments from several points in neighbor's premises to Joseph Wheary's house. From premises to Joseph Wheary's house. From any point in Henry Wheary's field and were all in a good state of repair. The refrom Henry Wheary's barn there was a port was adopted. clear view of Joseph Wheary's premises. Witness then detailed circumstances of the the board to some of the accounts of consearch of prisoner made by himself and ser- stables, and the friction that sometimes geant Phillips in the county jail on the 17th October last. They stripped prisoner of a vest, shirt, overalls and drawers. Witness observed a spot of blood upon the front of the vest near one of the pockets, and then on the back near the top and another on the shoulder. On the wristhand of the right sleeve of the shirt

there was another blood spot. Just under the waistband of the back of the drawers by the asylum commissioners to notify the there was another blood spot. There were no spots of blood on the overalls. In cross-examination witness said he thought it possible for a person to approach at the provincial lunatic asylum, at the Joseph Wheary's house without being seen from Henry Wheary's buckwheat field, if the person approaching should keep the house carefully between him and the person in the buckwheat field. From the signs prisoner made when handcuffed, witness considered he meant that he cut the woman's throat. Did not think he the table for the present.

meant to say his prayers.

JOHN L. MARSH.

per day.

