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SUPPLEMENT TO THE CROWN COURT REPORT.

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 case than you have in this one. From day to day you have watched carefully all the proceedings; have never been unimpaired 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 country 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 case, 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 excited 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 doubtful 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 minister 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 might be 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 prisoner 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 railway bridge there given. As the body was not found many doubted whether he was dead or not. Next followed the search in the Seadown 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 held 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 prisoner at the bar and John Osborne, who 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 began by saying that his address is intended for the general public and names 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 eloquent 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 the 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 condemn 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 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 with honorably. Mr. Palmer finds fault with the manner in which the Crown has conducted this case. It is not the duty of the Crown officer to conduct a criminal case in merely a perfunctory manner. In trying a person for a crime he should not be tried as if he were some other person were guilty. Mr. Palmer's insolent vanity and want of generosity is shown by his readiness to take all the credit for what was done successfully, and to blame some one else for any disaster which may happen. I now refer particularly to Mr. Palmer's insinuation 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 hauling 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 process 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 sneered 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 "snail house" and 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 case. It is the custom 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, come 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 Seadown 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 administered 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 creation 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 murder upon these prisoners. The evidence of Daniel White, Philip Votour, Stephen and Edward McCarthy proves conclusively that Timothy McCarthy was the person in the Seadown river on the 11th of May last. It seems to me that death by violence is no less conclusively proved by three medical gentlemen, Dr. Allison, Fleming and Ruck, and 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 body was found in 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, for 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 the direct testimony. We must ask you to convict without her testimony, but you must look outside for circumstances to corroborate her, and if you clear the present you must have 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 a bad person. She is a poor creature, and she was not surrounded by influences calculated to develop a virtuous life; she early lost her father and was early cast 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, got stupid; his money is taken from him, then he revives; Harry proposes to finish him; she goes on, gets the road and stonings, and 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 probabilities 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? Mr. Palmer says she was supposed to be a half way in this matter, either the prisoners murdered McCarthy or they did not. If they did not then Annie Parker was an accomplice in the murder, and she is not her accomplice. I do not wish to extenuate her faults in any way. She has not been properly treated or looked after, and this will explain her conduct. The doctor states 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 mounds to pass on the way, also an embankment. He was capable of taking care of himself. He did not know the way to the Seadown and did not 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. I have 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 you that the evidence of an accomplice should be fixed upon the prisoners, 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 person 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 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 safely urged upon jurors. If 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 *fact* doubt, 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 Osbornes 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 say 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 Seadown 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 bedroom hall and platform. She states that McCarthy breathed hard and died. This hard breathing takes place when a person has been dragged 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 coat, watch and the shell were all left at Osborne's. It is impossible for us to say whether Harry put the body in the Seadown river on the 11th of May Monday following the body was taken up and placed further up the stream in the channel; then two or three days later the body was 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 no inquiries had been made about McCarthy that it was dangerous to have the clothes or watch in the money or the 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 body 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 get the body that they were fearful that he would know where his money was, and they determined to kill him. When John Osborne recovered he saw the difficulty. The body must be looked after. It was first put in a shawl 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 taken up by Osborne, and 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 and that McCarthy was murdered; if the Osbornes did not kill him some other person or persons did and who he killed him, but I tell you all about it. Mr. Palmer has stated that she never mentioned that the body was in the Seadown 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 Seadown. 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 Seadown and looks out over the river and sees the hat on 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 who would tamper with the evidence, but I think the stone was put in the river. Who would do such a thing and for what reason? The time on the stone was covered with mud and when taken from the river, when this mud rubbed off, the time was plain to be seen. It was evidently been used in a building where there had been found where Annie Parker said it was put. Agnes Buchanan says this bed cord was there when Gratian lived in the house, but it is also said that it was the same. It was evidently changed after the body was taken away, as the cord produced by Mrs. Buchanan and Marcella Stoddard is now. 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 not 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 then all named. Linkletter is the better man, Allen is Annie Parker's mysterious stranger, Hayward is a drunken fool and Moore was an unwilling witness. If the money was paid White on the 13th, he could not have been in Buctonville. I am inclined to think the evidence for the defence, in reference to the wagon, were mistakes. 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 letter in Melancon's memorandum book of money paid him. Melancon 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 true man says they saw two express wagons there. The blood stains could not get on it. It was only used as White says for carrying lumber. 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 connection 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 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 distance stated by the witness was only 7 yards. After some discussion by the Chief Justice and counsel, Dr. Tuck proceeded.] I have said, I thank your Honor for correcting me, as I have no desire to mis-state one little 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 heard 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 admit Melancon'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 if it makes in favor of 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 get 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 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 plan to be paid for Osborne. He was sick, the house was not prosperous, they were in need of money and probably were ambitious. All this looks suspicious. My learned friend was 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's evidence on this point is important. It is not likely she could be mistaken. She says the most were threshing until 12 o'clock on the night of the 12th October; they did not go to bed for some time after that; they remained up and heard the wagon in the barn. 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 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 is strongly corroborated by the girl. Notice her graphic description of the death scene! She says the dying man calls his wife Ellen and his boy Hiram. If this is not true, she shows an infernal ability to do evil. Dr. Campbell, a friend of the prisoners, gives another important place of testimony; he tells you there was only one occasion when he saw the man 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? I answered, and that was 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 the night. Desire for money to meet these claims was the inducement. According to Williston he had large roll of bills when he borrowed the \$200 from him, and he could not have deposited in a bank, after he returned, the money borrowed. Heide that he received \$20 per day from the 24th of Sept. until his death. In reference to Mrs. Rotford's evidence she may have been mistaken as to what, Mrs. McCarthy told her. Both she and Connelley 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. Murore's? Annie Parker knew who murdered McCarthy and there is no mention pointing to any one but the prisoners. How could she have known anything about it? It is not proved she saw 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 house, 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 insinuation. Apart from Smith being at the Weldon House and Adams House with McCarthy, there is no evidence against him. Mrs. McCarthy and Morris O'Neill 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 insinuation, when there is not a little of evidence against her? If Mr. Palmer did not believe as he said, he should have made the insinuation. And so with O'Neill. He was not in Shediac at that night, and there was only evidence of bad feeling between McCarthy and O'Neill 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 so one believes it, and why was it even set up? Because if you believe he was murdered at all the evidence points to the Osbornes 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 the statements seem to 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 Hamilton, Mrs. McCarthy, Taglia, D. White and others that the rubber coat was buttoned up. If the coat was as they de-

scribe, the blood could not get there if he was murdered. Farmer Atkinson says that the coat was not interfered with, therefore the owner and English must have found the body as it floated in the river. The weight of evidence is against Farmer Atkinson. If the coat was not on the body, the blood could not have got there. My learned friend has remarked on the coat that the God of Nature made testimony for the defense and that he had never been disturbed after falling into the river. He has also said a great deal about Providence. There was probably no probability intended, but he would not have expected to have heard such talk in a bar-room. If the body of McCarthy lay all winter which Mr. Palmer claims it did, the head would be frozen in the ice and would have moved with the ice this spring.

After taking the doctor's testimony and the circumstances into consideration, the only conclusion we can arrive at is that Timothy McCarthy came to his death by violence, and not by accident; and now, having presented the Crown view of the case, I will go over the evidence as rapidly as possible. Dr. Tuck then took up the evidence and commented upon it. When he came to that of Caldwell, about the hatchet, he said: "I have no doubt of the truth of Caldwell's statement. Before Caldwell testified I put this hatchet into Annie Parker's hands and asked her: 'Did you kill McCarthy with this hatchet?' She said: 'The blade is like it, but the handle seems shorter.' If she was lying, why did she not at once say, 'Yes, that is the hatchet.' When Caldwell gave his testimony, what was my surprise to find him saying that he had broken the handle, cut it off and drove it in again. Nothing in this case is more more ferociously than this piece of evidence. Now we come to Mrs. McCarthy's evidence. Did the Osborne not like innocent women when she called looking for her husband. She was met with railing, swearing and sharp talk. Her feelings were harrowed by Eliza telling her that her husband had gone away because he could not live with her. Was it not natural that Mrs. McCarthy would want to know something of her husband? Should the people not have given her all the assistance they could? The fact is, they did not like her around. The consciousness of guilt was upon them. Now, with regard to Agnes Buchanan. There is not a single fact which leads to criminate the prisoners but she has disproved. She proves too much. You can come to no other conclusion than that the whole story was concocted between the Osbornes and herself. If true it charges Mrs. McCarthy with a crime as bad as that charged against the Osbornes and at the time Buchanan says she met Annie Parker at Cooks Brook she had never met Mrs. McCarthy. What was Agnes Buchanan doing there, when she was walking twenty-five cents would have taken her by train; what was Annie Parker doing there? The fact is she never saw Annie Parker at Cooks Brook. I have now presented the evidence to you as fairly as I can—a few more words from me and you will listen to the charge of the learned Chief Justice. The duties on this case have been assigned for all concerned. I have done my duty to the best of my ability in now rests with you to perform yourself; you can say conscientiously that the duties are innocent say so. But if after having considered all the testimony, you think otherwise, do not allow any sympathetic feelings to bias your judgment. I know you will remember that a mother, daughter and son—an immature boy—are the persons charged with this crime, and that many others will suffer if you are found guilty. If you think them guilty say so, but if you have a reasonable doubt acquit them. I thank you for your kind attention.

THE JUDGE'S CHARGE.

His Honor began his charge to the jury at five o'clock. His Honor said:—
Gentlemen of the Jury—I can also congratulate you that this long and important trial is about to be concluded. It has taken a longer time than any other which has been tried in this Province, but as it is a case of great importance, I think it has been well spent in receiving the evidence. The lives of the prisoners are at stake and they have employed able counsel to defend them, and that duty has been ably performed by Mr. Palmer and Mr. Holstead. It was the duty of Dr. Tuck and his associate, Mr. Hamilton, not to conduct the case merely as advocates, but to produce all the evidence bearing on it and fairly present the case to you, and this they have done with ability. At this is not the first time that the Crown officers have had to investigate this remarkable and mysterious case; they have doubtless efficiently performed their part. You must expect an argument from me; my duty is to present to you the evidence and point out, as it may be, in the favor of the Crown or of the prisoners. It is not my duty to express an opinion as to the credibility of the witnesses; it is for me to say what evidence is received and what to reject, but it is for you to judge of the evidence before you. I shall refrain from passing any opinion as to any of the evidence presented. It is my duty to point out where the evidence may seem to conflict and where there may be corroboration. With regard to the credibility of witnesses you must judge of that by the manner in which they gave their testimony. If you find a witness frank and trying to hide nothing he is deserving of belief, but if on the other hand you find a witness coming on the stand and giving an improbable account, not in any way consistent or natural, do not receive it unless supported in some other way. The character of the principal witnesses in this case has been attacked and found to be not good and this has been admitted by the Crown, but it does not follow that all the facts told in this case are untrue. You must in judging of this matter take all the facts into consideration, and you must bear in mind the fact that the evidence of some of the witnesses, and it is for you to consider whether you think her worthy of credit.

After these general observations I will now consider what are the facts of the case. On the 12th of October, McCarthy leaves Moncton, goes to Point du Chene by train, discovers his wife has come on the same train, and immediately goes back by train to Moncton and returns to Shediac the same afternoon, and puts up his horse at the Walden House. He is fully identified by Dr. Lester, Milligan, Chip, Smith and others; and on that night he comes to his death. Did he come to his death by violence as stated by Annie Parker, or by accident? He is at the Osborne house that evening, disputes with Eliza about the color of the buttons on a policeman, shows a will of anger and goes out and says that he is coming back again. According to Annie Parker, the Osbornes, mother and daughter, connect a rope to drive McCarthy on his return and get his money. She gets up to meet a lover, and instead of that McCarthy comes in. They go into the bar-room; he is drunk and killed, and his body driven away and put in the Scodons. The theory of the Crown is that on the following Sunday the body was taken up from the river and deposited in the river further up stream, and that two or three weeks after it was again taken up and drowned with the rubber coat and overcoat, and again placed in the river. On the part of the defense it is put forward that he came to Shediac to go to the Island, but when he came out of the Walden House he did so with the intention of going to the Point to take the steamer for the Island; that, after visiting the Adams House with Chip, Smith, he parted with him at the bar, and, intending to go to the Point, but made a mistake and went the

wrong way and walked out to the Scodons railway bridge and fell over. Does the evidence convince you that he came to his death by violence or accident? The doctors say that the body presented no appearance of drowning, and I say that I see no reason why he should not take the evidence of the doctors in this case. They are educated and skilled in matters of this kind. In using the word "drowned" I use it in the technical sense in which it was used by Dr. Allison, and not in reference to a person who had been stunned and fallen into the water and died. There was a state of things in the body of McCarthy, which, according to the doctors, go to show that he was not drowned. (His Honor here read from the evidence of Dr. Allison, Fleming and Scott.) Supposing you are satisfied that McCarthy did not come to his death by accident; next did he come to his death by violence? The doctors seem to come to the conclusion that he might have come to his death by such a blow as is described by Annie Parker, although Dr. Scott differs somewhat.

(His Honor was reading from the evidence of the doctors when the Court adjourned.)

During this afternoon a large number of persons were present in Court than at any time since Annie Parker gave her evidence. The ladies who have been quite attentive throughout turned out in large numbers and the side of Dorchester and Charlottetown were on the platform.

DORCHESTER, Aug. 21.

His Honor occupied the forenoon in reading the medical testimony.

A very large number was present this morning. The ladies as usual turned out in full force.

On the right of the Chief Justice sat Annie Parker, dressed in a dark suit with a dark hat trimmed with a light ribbon and a bunch of flowers. On his left sat Mrs. McCarthy and her four children.

Dr. Tuck's address yesterday was a very able effort and produced a great effect. It was very highly spoken of by all who listened to it, and is the general topic of conversation to-day.

His Honor having finished the medical testimony before dinner, continued his charge after dinner as follows:—In considering this matter you will have to determine whether McCarthy came to his death by violence or accident. If by violence, was it as Annie Parker states it was by accident, was it according to the theory of Mr. Palmer? If you take the evidence of the doctors as correct you will have no difficulty in coming to the conclusion that he did not come to his death by accident. You are not bound to take the evidence of the doctors, but it is the best. According to Mr. Palmer's theory you must believe that after coming out of the Walden House, he made a mistake, and went in the direction of the Scodons instead of the Point, he intended, and walked out to and fell over the railway bridge. Do you think he could make this mistake and fall over the bridge? The doctors told you that if he struck his head against the rail that there would be a more apparent mark on his head than there was; they also think the mark over his eye a post-mortem mark. If he fell in the river and struck the bottom, the doctors think the mark on the body could be made. There would be no more water in the river on that night than there is now. It is the duty of the jury to decide on account of the wind and storm. Is the evidence of Annie Parker worthy of credit or not? A great deal has been said on both sides as to her credibility. I shall leave her evidence to your hands, and you will have to look at the probabilities and impossibilities of it. Do you think it reasonable that she should have manufactured this whole story? She describes the death scene, and what strikes me forcibly is her statement that McCarthy after being dragged called the names of his wife and children. She could scarcely, it strikes me, have made up the whole story. True, she has told different stories in her statements to the Sheriff; she refuses to tell more. Is her explanation of the different statements sufficient to make you believe her? A man named Henry Pollock swears that she is his child. He denies that he is a Scotchman or a Baptist as she swore he was. She is contradictory to several persons whom she said she had lived. Mr. Delaney contradicted her as to the time she lived at Moffatt's; she swears she lived there two years; he says she only lived there for two months and was discharged for stealing. Mr. Brown, who had charge of Gordon's Hotel, at Campbellton, contradicted her as to the powder she saw he never used and that instead of living there nine or ten months she only stayed there a matter of days. Mr. McLaughlin, police magistrate of Bathurst, tells that she came to him to swear her child, and called herself Parker, and when he asked her if she was not the girl who was living at Mrs. Clifford's, called Potter, she said she was. You see she is contradictory in some things by a number of disinterested persons. She seems to think that there are some matters which do not properly belong to the case, and that it is not necessary for her to tell the truth about these; you see she is a wife and has rather confused notions as to matters of this kind. It may be that she thinks there is no reason for her to swear to things which do not belong in the case; she is it is her duty to tell the truth about matters properly relating to the case. I don't say this is so; it may be that you will think that she is false in this, she is entirely unworthy girl who was living at Mrs. Clifford's, called Potter, but if you find other evidence which corroborates her it may be you will think that she has substantially told the truth in this matter. As she is the most important witness, I shall read over her evidence and make some comments as I go along. (His Honor then proceeded to read her evidence.) When he came to that relating to the murder he said:—It is for you to say whether you think it is probable that the Osbornes would plan to drug and kill McCarthy in the presence of a young girl whom they knew little about and who might go away at any time and inform on them.

In reference to the hatchet, His Honor said this is an important point, for it is the instrument with which Annie Parker says the murder was committed. The fact of a hatchet being there would be corroborative of her statement. It is for you to decide between the evidence of Burns and George Osborn on the one side and that of Caldwell and Eliberton the other. I may say the same with regard to the rope; Annie Parker says Harry cut a piece of rope off a bed cord in an unoccupied room; a piece of rope is found in the river; Marshall Steadman and Agnes Buchanan each cut off a piece of rope from the same place, but it does not correspond with that found as it has two strands while the other has three. The girl states that the rope was not in the bedstead but in the floor of an unoccupied room. It is for you to decide which to believe.

Court adjourned at 6 o'clock.

DORCHESTER, Aug. 22.

This forenoon His Honor read that portion of Annie Parker's story which relates to the stone, the wagon, the trucks in the field; also the evidence which contradicts or corroborates her story in these particulars. In reference to Mrs. Atkinson's hearing a wagon that night His Honor said there was no doubt but that she told the truth but she might have been mistaken. If a wagon went down as described by Annie Parker the girl

could go to the door and see none. Is it probable that the prisoner, Harry Osborn, could take the body, drive away as described, take down the fence, drive out far enough into the river to put the body into the channel? You must consider that he was a stranger to the locality and unacquainted with the distance of the channel from the shore. I offer no opinion on these points. You will consider whether it is at all likely or not. I look upon these points as most important, and if I were a juror would present very great difficulties. According to Dr. Tuck to make matters consistent with Annie Parker's story the body must have been taken up and the coat put on, the money, watch and other things put in the pockets, and the clothes were not on when put in and on when found. It is contended by Mr. Palmer that unacquainted with the river as Harry was he could not do this without fear of drowning himself or his horse; that if the body had been left in shallow water it would be seen and would putrefy; beside that it would be seen by persons travelling along the river looking after logs. (Here His Honor read the evidence of D. B. White as to the measurements he made.) Supposing the body was taken out to the last measurement before the channel, and was there left attached by the rope to the stone, when the body got buoyant it would show. Dr. Tuck, to get rid of this, assumes that on the Sunday night following the murder the body was taken up and put in the river further up stream.

There is no evidence of this except the stone, and if the body was placed in the channel, how did the stone get in the shallow water where it was found? There is no evidence whatever for the Crown's theory in this respect unless you fully believe Annie Parker's story. The theory of Dr. Tuck to make Annie Parker's story consistent is that McCarthy's body was again taken up some two or three weeks later, his coat put on him, the watch, money, etc., put in the pockets and then the body replaced in the river. I can see no evidence to warrant a jury in finding that this was the case, excepting the seeing of the man and boy with the horse and wagon as stated by Warman and White. A person's admission is good evidence, but I will say that it is a dangerous

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