

1895.

NEW ZEALAND.

JEREMIAH MCCARTHY

(PAPERS RELATING TO THE CASE OF).

Return to an Order of the House of Representatives dated Tuesday, 23rd July, 1895.

Ordered, "That there be laid before this House all the papers relating to the case of one Jeremiah McCarthy who was committed for trial on a charge of murder at the last sitting of the Supreme Court at Timaru, and discharged, 'No true bill' being found; the return to include all correspondence and enclosures forwarded to the Minister of Justice by the Rev. Father Regnault, S.M., and also the memorial presented to the Minister by the member for Waitaki at the commencement of the present session."—(Hon. Major STEWARD.)

FATHER REGNAULT and OTHERS to the Hon. the MINISTER of JUSTICE.

SIR,—

The undersigned inhabitants of Waitaki district deem it a matter of public duty to direct your especial attention to the observations made by his Honour Judge Denniston on an indictment presented to him at the late sittings of the Supreme Court in Timaru against one Jeremiah McCarthy for murder. While fully impressed with the necessity of upholding the forces of justice, and, in particular, that every effort should be made to search out the authors of atrocious crime, we are nevertheless entitled to expect that none of us shall be put to the terrible ordeal to which McCarthy was subjected on bare suspicion, or a strained and prejudiced view of one or two circumstances, which may be perfectly consistent with innocence. In this case his Honour the Judge unmistakably expressed the opinion that there was nothing whatever, legally considered, to justify the committal of McCarthy, and we submit that the persons intrusted to deal with affairs of such gravity should be reliable for sound judgment and careful regard for the rights of their fellow-subjects. We therefore trust that the matter will receive your earnest and immediate consideration.

We have, &c.,

P. REGNAULT, S.M., R.C. Clergyman,
And 123 others.The Hon. the Minister of Justice,
Wellington.

JEREMIAH MCCARTHY to the Hon. the MINISTER of JUSTICE.

SIR,—

Waihao.

I have the honour to submit for your consideration an appeal for compensation for the loss, mental anxiety, and degradation which I have had to suffer by reason of my having been wrongfully and unreasonably charged with the murder of a man who was found dead on a public road in my locality on the 12th January last. The circumstances connected with his death and the finding of the body are given in evidence at the inquest, which was held on the 15th, 16th, and 21st January last, are fully set out in the report of the inquest contained in the *Waimate Times* of the 16th, 19th, and 23rd January, copies of which I forward herewith.

At the conclusion of the inquest, although the police authorities, acting, as I maintain, on entirely mistaken and insufficient hypothesis, applied for and obtained a warrant for my arrest for murder, and on the 16th January I was arrested and lodged in the Waimate lock-up. Being brought before two Justices of the Peace on the following day, the police applied for a remand, and bail was applied for on my behalf and immediately granted.

The Magisterial inquiry which took place on the 30th January is reported in the *Waimate Times*, a copy of which I forward. It will be seen that I was committed for trial, though the Bench in doing so admitted that it was a weak *prima facie* case.

I forward a copy of the report of the address of his Honour Mr. Justice Denniston to the Grand Jury, and would like to call your attention particularly to the concluding portion of it, where he remarks, "That there was in his case a total absence of evidence directly connecting the accused or any of his family with the transaction—nothing but conjecture, no direct evidence at all—and it would be an exceedingly unsafe thing to his mind if the liberty of any man were to be put in jeopardy on such evidence. He would have to direct the petty jury that they ought not to convict; and this was just the sort of case in which it was the duty of the Grand Jury to interfere between the Crown and the accused."

I need hardly say that I had to suffer the most painful mental anxiety through being charged with such a crime, and on account of the degradation by being subjected to the proceedings consequent thereon.

What it means to me can be understood when I say that I have lived in the district for the last twenty years, during which time I have admittedly borne an unimpeachable character, and also that I have a large family, whose reputation is, of course, involved in my own. It has, however, also meant a serious pecuniary loss to me. I have necessarily had to incur heavy legal expenses. Moreover, the proceedings took place at harvest time, as my crop was being cut, and I was put to much extra expense in consequence of not being able to give my attention to the harvesting. By reason of this I also suffered a heavy loss on account of an unusually heavy storm coming on before the cutting was finished, which I could have escaped if I could have given my personal attention to the matter. By this storm the crop was damaged to the extent of at least 3 bushels to the acre being destroyed over an area of 100 acres.

I now ask that such redress as is possible, and compensation for my pecuniary loss, be made to me by the Government. I am advised that there is no legal redress available under the circumstances, but I submit that it is a case in which, in bare justice, the Government should compensate me. I say—and I do not think it can now be denied—that the action of the police authorities towards me has been the cause of my having been made to suffer a grievous wrong and injustice; that I was arrested on a charge of which I was entirely innocent, which should never have been brought against me, and was committed for trial when there was actually and unquestionably no evidence to connect me with the alleged offence.

I would at the same time call your attention to the method adopted by the police authorities in conducting the proceedings, which I consider most unfair towards me, and not calculated to promote the interests of justice. They appear to have been animated solely by a desire to sheet home a charge to me, instead of impartially searching for the truth. As instances, I would mention that a most important fact which was within their knowledge was suppressed at both the inquest and the Magisterial inquiry; and that was that, on the day that the man was found dead, an Indian hawker called at about 5 o'clock at the house of the witness Davis. He was carrying a stick on his shoulder supporting his swag—such a stick as, from the description given, might very well have been used in inflicting injuries such as were found on the deceased. It was not until after the Magisterial inquiry that this fact was ascertained by my solicitor; but the witness Davis states that he informed the police of the circumstance previous to the inquest. Why should this have been suppressed? Why was not inquiry made concerning this man? It is evident that a man of this sort was much more likely to have committed a diabolical outrage such as I was charged with than a respectable farmer whose antecedents were known to have been unimpeachable for the last twenty years. Was it fair or just that, in an inquiry to ascertain the truth, such an important fact should have been suppressed? Then, I have to complain of the manner in which Detective Livingstone tried to make a case against me by saying to my boy Jeremiah that I had admitted having struck the man, and saying to my daughter Mary that I had said that I had kicked him, and having urged them that it was no use for them to attempt to deny it, when, as a matter of fact, I had never made any such statement to him.

Detective Livingstone also stated in the witness-box that there standing on my verandah you can see the country for perhaps five miles, and that there is no plantation sufficient to hide the view on the road where the man was lying, unless the man would lie under the gorse hedge. Now, it is a fact which can be ascertained that there is a gorse hedge all along the road, and that it is so high at the place where the man was lying that any one standing on the middle of the road is unable to see my house. He also stated that the cut of the water-race is 12in. deep at the centre of the road. But, as a matter of fact, there is no cut at all in the middle of the road. If there was no water running, there would be nothing in the middle of the road to indicate a race. The bed in which the water runs is a mere gently-sloping hollow. The contention which the police were endeavouring to support was that it would be difficult for an injured man to run across; but, as the fact is, it would be just as easy to crawl across the water-race as any other part of the road.

In conclusion, the sum of my complaint is as follows: That my being arrested, imprisoned, and committed for trial are due to palpable and grievous errors of judgment on the part of the authorities responsible; that in consequence thereof I have suffered irreparable injustice and being put to heavy expenses. My legal expenses alone amount to £65 5s., and this, with the loss of time, loss of crop, and other pecuniary losses in connection with the matter, make my pecuniary losses not less than £100; and I appeal to the Government to make such compensation as is possible to an innocent man who has been wrongfully charged with the most serious crime known to the law, by reimbursing to him the amount of my pecuniary loss.

I should feel obliged if you will be so good as to inform me if it is in the power of the Government to accede to my appeal, or if it will be necessary to present an appeal to Parliament, or what other course I should have to adopt to obtain redress.

The Hon. the Minister of Justice, Wellington.

JEREMIAH MCCARTHY.

Inspector BROHAM to the COMMISSIONER of POLICE.

SIR,—

Police Office, Christchurch, 14th May, 1895.

With reference to the attached letter from Jeremiah McCarthy to the Hon. the Minister of Justice, seeking redress for having, as he states, been falsely and unjustly arrested, imprisoned, and committed for trial, owing to palpable and grievous errors of judgment on the part of the authorities responsible on a charge of murder, I have the honour to state that on the 14th January last an inquest was opened at Waimate before Major Keddell, the Coroner, on the body of one Thomas Sullivan, who was found dead on the 12th January at Waihao, about a mile and a half from McCarthy's. After taking some evidence it was adjourned, and was finally concluded on the 22nd January, when the Coroner reviewed the evidence, and from his remarks to the jury I was strongly of opinion that they would bring in a verdict of murder. This, however, they failed to do, but gave instead a verdict as follows: "That the deceased died on the 12th January

from injuries received by violence from some person or persons unknown"; and added as a rider, "a grave censure on the inhuman conduct of Jeremiah McCarthy in allowing the deceased to be in his apparent helpless condition without giving information to the police, or assisting him in some other way."

After the close of the inquest, I had an information laid against McCarthy for murder. He was arrested accordingly, was subsequently brought up before Major Keddell—the Crown Prosecutor, Mr. J. W. White, appearing for the police, Messrs. Raymond and Hamilton for the accused—and in due course was committed for trial. The main facts which induced me to have proceedings taken against McCarthy can be gathered from the newspaper reports of the case attached to the letter to the Hon. the Minister of Justice; but, as the evidence is somewhat lengthy, I shall briefly state them. A few days prior to Thursday, the 10th January, an old man, evidently weak-minded, if not quite insane, was seen by several persons wandering about at Waitaki North. John C. Henderson, one of the witnesses, saw him. He had some telegraph forms in his hand, and he asked Henderson to write a telegram for him to one Joe Dawson, saying he could not write himself. After it was written, Henderson asked him for his name, which he gave as Thomas Sullivan; and, seeing the mentally weak state he was in, Henderson said jestingly, "Late of Seacliff Lunatic Asylum?" and he said, "Yes." On Thursday, the 10th January, this man was at Waihao, a few miles from Waitaki North, and was seen by several witnesses, who stated that he appeared more or less insane. At 7.30 that evening he called at George Kilworth's, about a mile from McCarthy's, and asked for McCarthy's. Kilworth pointed the way to him, and saw him leave in that direction; and at about 8 o'clock, as all the McCarthy household swore, he crossed the fence leading to their house. A dog ran at him, and he commenced to stone it. He then went up to McCarthy's front door, and commenced to kick it, and he also swore he would murder the inmates. McCarthy, who was all this time at the stable, a little distance away, sent his son to inquire what he wanted, and the man told him to kiss his —. He went back and told his father. The man in the meantime had gone round the back of the house and commenced to kick the back door, and again threatened to take the lives of those inside. Just at this time McCarthy, as he stated himself, came to the back door and said, "What are you doing that for?" The man replied, "This is my house." McCarthy then asked the man his name, and he made no reply. He then asked him to leave the place, which the man did. McCarthy also swore that he never went nearer than 5 yards to the man, and all the family swore exactly the same thing. This was all that occurred, according to McCarthy. Now, McCarthy is an old blacksmith, a hot-tempered man, and to act in the manner described while labouring under such provocation, without saying an angry word or striking a single blow, one must suppose him to be blessed with extraordinary patience. The theory of the prosecution was that it was at this time McCarthy committed the assault which broke both bones of deceased's leg, fractured the collarbone, and inflicted the injury over the temple.

About midnight the same night all the family stated they heard a man either singing or crying outside the front gate, but nobody went out to see; but early in the morning one of the sons, Michael, went out and found deceased lying within 200 yards of his father's gate. He asked Michael for some "tucker," and he went in and got some from his sister, telling her at the same time it was for the man who had been at the house the night before. He further stated that she told him that she had told her father and mother of the man being there, but the father and mother denied it in the witness-box. Shortly after the boy Michael brought the deceased some food, Ernest Davis and his sister Rose, who were passing in a trap, saw the deceased lying near the gate, and Ernest Davis observed that one of the man's legs—the injured one—was gathered up under him, and that he had his hand on the knee of that leg. Ernest Davis drove over the same road about an hour afterwards, and the man was still there, and in the same position. Again, about 2 o'clock the same day, Ernest Davis was passing McCarthy's gate just as McCarthy was coming out driving a dray, and the man was still in the same position he was in in the morning. McCarthy spoke to him, and gave him some scones, bread and meat, and tea, and asked him what was the matter with him. The deceased said his leg was poisoned. The man was evidently insane, and did not know what he said. They again passed the place in an hour or two afterwards; the deceased had crawled across the road in the meantime, and was sitting on the opposite side; but the dray passed on, and McCarthy did not speak to him. The next seen of the deceased was on the following morning, Saturday, the 12th January, when McCarthy stated he saw him some distance down the road, and about three-quarters of an hour afterwards he again saw him where the body was afterwards found, a distance of 10 chains from where he first saw him that morning, with a water-course intervening. Now, as the deceased had both bones of the leg broken, besides his collarbone, it was quite impossible for him, as the doctor stated, to have got up and walked at all. He therefore could not have got over the 10 chains, and, as the place is most solitary, it cannot be supposed that any one came and carried him over the distance. If any one had come he must have been seen by McCarthy, for the country is quite open thereabouts. If the man had dragged himself over the distance—a thing I do not suppose he could have done—he must have left some marks upon his trousers in going through the water-course; but the trousers were found to be quite clean when the body was found that evening. Shortly after McCarthy saw the deceased for the second time on the Saturday morning he took the train at Waihao and went to Oamaru, and on his way to Waihao he saw the deceased at the cross-roads where the body was found. He said the deceased was then alive. He saw his eyes moving, and he thought his arms were across his chest. He further stated he passed the same place in the evening on his way back from Oamaru, but he never looked to see whether he was there or not. On the same evening John Davis, in passing the cross-road, saw the body and informed the police. Beside the body was found one of the boots—the other he was wearing—and also some bread and meat, scones, and a piece of brown paper, the very food and paper that McCarthy had given the deceased the day before. The question is, How did these things get there? It is

evident the deceased could not have carried them himself, and the sergeant swore that the body seemed as if it had been placed where it was found. There were no marks as if the deceased had died there. The theory of the prosecution was that McCarthy, when he struck the man on the Thursday evening, did not intend to kill him, nor indeed to injure him seriously; but that, when he found he had injured him, and the man could not walk, he first carted him to where the deceased was first seen on the Friday morning, thinking he would be able to move away by-and-by, but that afterwards, when he found he was dying, he shifted him down to the cross-roads, a mile and a half away from his house, to avoid suspicion. It cannot be questioned but the deceased received the injuries from which he died on the Thursday night. He was heard at midnight on that night either singing or crying outside McCarthy's gate, and that he was four hours before that, according to McCarthy's own showing, at his (McCarthy's) house. Any person who knows the neighbourhood cannot suppose that the deceased was run over or met with any accident outside McCarthy's gate. The road is quite level, on the open plain, and only leads to McCarthy's and to one more house, Davis's, about a mile further down. McCarthy knew, from his own showing, that from midnight on the Thursday night up to the time he went to Oamaru on the Saturday the deceased was lying on the open road near to his place, yet he never informed the police nor assisted him further than to give him a few scones and a little meat on the Friday afternoon; and when the deceased was found a mile away from where he was first seen on Friday morning this food was found lying beside the body. There was good reason for McCarthy not informing the police: he knew if he did that all the facts which came out at the inquest would come to light and tell against him.

He makes four charges against the police—one for suppressing the fact that on the day the deceased was found an Indian hawker called at Davis's, carrying a stick, which may have been used to inflict the injuries. Detective Livingstone states that to his knowledge the police were not informed of this prior to the inquest, and that the hawker was only thought to have gone by there a day or two after the deceased was supposed to have received the injuries. He further states that Davis said that the hawker came along the beach, and not by the road where the deceased was lying; and that the hawker himself, whom he knows, said he came by the beach and not by the road. Davis, it appears, does not state positively the day he saw the hawker. For my own part, I can only say that I never heard of this hawker until I read McCarthy's letter.

The second complaint is of the manner in which Detective Livingstone tried to make a case against him, saying to his son Jeremiah that his father admitted he struck the man, and to his daughter that he had kicked him. This Detective Livingstone positively denies. If the detective made such false statements to McCarthy's children the proper time to accuse him of this was while he was giving his evidence in the Magistrate's Court. That was the time to ask him whether he had made certain statements to the children. McCarthy's counsel would have put such questions quickly enough if he could do so.

He further states that the detective said in the witness-box that, standing on his verandah, he could see the country around for, perhaps, five miles. The detective does not deny that he made such a statement, and, for my own part, I do not think that the detective exaggerated to any extent. The country is a plain all round there, the fences are low, and a man in many places there could be seen for miles. McCarthy's counsel failed to cross-examine the detective on this point, showing he could not deny what the detective said.

The fourth charge is, that the detective stated that the cut of the water-race is 12in. deep at the centre of the road, but, as a matter of fact, there is no cut at all in the middle of the road. Detective Livingstone states that he assisted Detective O'Brien to measure the water-race referred to, and that from the level of the road to the bottom of the race would be about 12in. The real question was not so much the depth of the water-race as whether there was any water in the race. That there was water cannot be denied. If McCarthy's statement were true the deceased must have crossed the race on the Saturday morning; yet, when the body was found the same evening, there were no marks whatever on the trousers, which were quite clean, and nothing to show that he had been in the water at all. The detective was not cross-examined on this point when he gave evidence.

The Judge's charge to the Grand Jury is correctly stated by McCarthy.

I have, &c.,

The Commissioner of Police, Wellington.

T. BROHAM, Inspector.

REPORT OF INQUEST.

(*Waimate Times*, 16th January, 1895.)

An inquest on the body of a man that was found lying dead at the corner of McCarthy's Road and the road known as Doctor's Road, Waihao, on Saturday last, was begun at the Waimate Hospital yesterday, before Major Keddell, Coroner, and a jury of six—namely, Messrs. T. McDowell, S. Binney, H. M. Gilkes, W. H. Scott, R. Inkster, and J. Hazelton—of whom Mr. McDowell was chosen foreman.

The Coroner having explained the nature of the case, and the jury and witnesses having viewed the body of the deceased, which was lying at the morgue, an adjournment was made to the Court-house, as being a more convenient place in which to hold the inquiry.

The following evidence was heard:—

Jeremiah McCarthy, farmer, Waihao, deposed that he first saw deceased at his place at about 8 o'clock on the evening of Thursday, January 10. Witness was at his stable-yard when he saw deceased coming across his paddock from the direction of Kilworth's, a neighbour of witness. One of witness's children came to him and said there was a man at the house. He sent a boy down to see what he wanted. Witness could hear him answering the boy, but he could not distinguish what he said. Witness saw deceased go from the front to the back door, and witness

went down to the house with another son. When he arrived there deceased was kicking the back door, which was locked. Witness asked, "What are you doing that for?" and he replied, "That is my own house." Witness asked his name, but he would not tell him. Witness told him to leave the place. He then left and went towards the stable. Witness told him not to go there, that he might set fire to the place. He told him to go on to the road, that there were any amount of places to sleep there. He then went to the road, going by the track leading from witness's house. They called the road Dr. Frankish's Road. The road led from the Main South Road to the beach. The deceased appeared to be lame both when coming and going away. Witness thought he kicked the door with the right foot, but he would not be positive. Witness did not see the deceased again that night. Witness heard his dogs barking about the middle of the night, being awakened out of his sleep by the noise. Witness got up and went to his front door. He heard a man either singing or crying from the road. The sounds appeared to be coming from half a mile away. Witness heard the crying or singing for about a quarter of an hour. It then ceased, and witness went back to bed. Witness did not see deceased again till the afternoon of next day, between 1 and 2 o'clock. Deceased was sitting on the north side of the road about half a mile from witness's house. He had only his shirt and trousers on. Witness spoke to him and asked what was the matter with him. He said, "I had a leg poisoned about three weeks back." Witness was going up the road with his children to thin turnips. They had tea and other food with them. Witness asked if he would have a drink of tea. He said "Yes," and he drank it. He had a pannikin from which he drank the tea, drinking all the bottleful they had. They were about two hours away. When they came back he was sitting on the south side of road. He then had all his clothes on except that he had one boot off. Witness asked him how he was getting on, and he said he was getting on fine. Witness saw no more of him until the following morning, then about 8 o'clock on Saturday morning. Witness was going round the paddock on the road, when witness found the deceased. He was sitting on the north side of the road and nearer the railway-line than he was the night before. Witness asked him how he was getting on, and when he was going to shift out of that. He said he would soon shift if the Fenians were coming for him. Witness passed on. About three-quarters of an hour afterwards witness was passing the same place on his way to Oamaru and saw him again. He was on the same road, but near the railway, at the cross-roads. The deceased was lying down. This was the last time witness saw him. He did not speak to him. He was awake and looked at him. As witness went to the Waihao Railway-station he met Thomas McDonough, and he told him there was a man on the road, and that he was very weak. Witness thought that he would pass him on his way home. Witness never saw the deceased again. Witness had no trouble in getting deceased to go away from the house on the Thursday night. Deceased looked to witness to be either out of his mind or drunk.

To Sergeant Gilbert: Witness did not know McDonough was camping near the Waihao. The distance from where witness saw McDonough, and where the man was lying, was about a couple of miles. McDonough did not say anything to make him think that he would pass the man; it was merely his own thoughts. Witness came back by the last train from Dunedin, and passed the place about half-past 6. Witness's wife and children were with him. He did not look to see if the man was there, as he forgot all about him. Mrs. McCarthy was driving. Witness never mentioned about the man to Mrs. McCarthy. Witness heard the deceased swearing; trying to get in, but when witness and his boy went down he stopped swearing. He did not kick the door hard. Witness threatened to send for the police, but he went away. No one of witness's family touched the man in any way or pushed him. Witness did not think it necessary to communicate with the police.

John Davies, labourer, Waitaki North, deposed that on Saturday last, 12th instant, he was driving up the Beach Road to the Main South Road. It was about half-past 5 in the evening. He intended to go to the Waitaki North Railway-station. As he came to the cross-roads he saw something lying in the grass on the north side of the road near the fence. Witness then did not take particular notice, but drove on to Glenavy Store. Witness returned about half-past 7 by the same road. On passing the same spot he again saw this object lying on the side of the road. He saw it was a man. Witness hailed him, and, getting no reply, he got down and went to him. At first he thought he was asleep, but on going close to him he saw that he was dead. Witness came straight on to Waimate and reported the matter to the sergeant. The deceased was lying on his back, fully stretched out, his hands uplifted, and the elbows bent. There was a towel and pannikin near him. His eyes and mouth were open. The deceased was a stranger to him. He had all his clothing on except one boot. He could not say with certainty which boot it was, but he thought it was his right one. His clothes were all unbuttoned. He was lying about 20 chains from the railway-line. Witness returned with the sergeant a little after 11 the same night.

To Sergeant Gilbert: Witness saw it was a man when going to Waitaki the first time. Witness's boy told him on the previous day that there was a man up the road with a poisoned leg. Witness turned the deceased over on his face, and he was in that position when he went back with the police. He looked just the same as when he first saw him.

To the foreman: There was no appearance on the ground of a struggle having taken place.

William Gilbert, sergeant of police, deposed that between 10 and 11 on Saturday night last he accompanied last witness to the Waihao, to a road known as the Doctor's Road. Witness there saw the body of deceased lying flat on his belly on the side of the road. There was no hat, and only one boot and sock. The other boot was lying by his side. The boot was off the left foot. Davis was with him. The man was dead and stiff, and appeared to have been dead some hours. The mouth was closed, but the teeth could be seen quite plain. Witness saw the body with the aid of a lantern. His trousers were unbuttoned, and his waist-belt was lying by his side. There was also a towel, pannikin, and a table-knife. There was some bread and cooked mutton.

The place where he was lying was grass, and did not appear to have been disturbed in any way. Witness went to McCarthy's the same night, and in answer to his inquiries McCarthy told witness similar to what he had said in the Court that day. McCarthy helped to lift the body into an express, and he took it to the hospital morgue. Witness saw no marks on the body except a slight scratch on the nose, which had evidently been done some days. The left leg was much swollen, nearly filling the leg of the trousers. Witness examined the spot by daylight, and there were no marks of a struggle having occurred where the body was found. Witness did not know the man, and up to the present time he had been unable to find out. The clothing consists of a pair of white mole trousers. They were clean at the time. He had on an old dark coat. Inside he wore a white shirt, which was nearly new; the outside one was a check shirt, and was also good. There was no swag, and no marks of any kind whereby to identify him. He was an aged man—perhaps between fifty and sixty.

John C. Henderson, groom, Glencoe Hotel, Waitaki North, deposed that he recognised the deceased. He saw him on Wednesday last at the Waitaki North Railway-station. It would be about midday. The deceased came over to the Glencoe Hotel. He had some telegraph forms in his hand. He asked witness to write out a receipt. Witness said, "You mean a telegram?" and he said "Yes." Witness asked where he wanted it telegraphed to, and he replied to Oamaru. Witness asked him what he wanted to say in telegraphing, and he said "I want to say that I want £10." Witness said "What address?" He did not appear to understand him, and seemed as if he were silly or something like it. Witness again asked, "Who do you want to send the telegram to?" and he said, "Joe Downs." Witness asked if he lived in the town, and he said, "No; he lives five miles out." Witness said he would have to pay for the delivery of the telegram if he wanted the money at once, and he said, "Send it to the post-office—Joe Downs, Post-office." Witness asked him to sign it, and he said he could not write, and asked witness to sign his name for him—he would put a cross. Witness wrote the telegram now produced. That was deceased's mark which was on it. When witness was signing his name, he (witness) said "Thomas Sullivan, late of Seacliff," in a jesting way, and he said, "Yes." After writing the telegram, witness read it to him, particularly emphasising the words "late of Seacliff," and he said, "That is right." Witness gave the telegram to him before he left. He went towards the railway goods-shed.

To the foreman: He was not walking lame when witness saw him.

Cecilia Seaman, wife of Josiah Seaman, platelayer, Waihao, deposed that she saw deceased on Thursday afternoon, between 2 and 3 o'clock, going to the goods-shed tank to get a drink of water. Witness did not notice whether he was walking lame, but he was walking slowly. He had a small parcel in his hand, which appeared to be a towel with something tied up in it, which witness took to be food. He then went on to the platform. Witness asked her son what he was doing, and he said he thought he was having something to eat. He afterwards left the platform, and went over to one of Mr. Allan McLean's haystacks. Then she noticed that he was walking very lame, as if he had very sore feet. He came back with a bundle of hay in his hand. He had no stick. He laid the hay down by the railway-shed, and went over to Mr. Scott's, the schoolmaster, but he did not appear to go in. Witness afterwards saw him get over a fence and go to Mr. Burke's place. Witness never saw him alive again. The hay is still where he put it.

To Sergeant Gilbert: Mr. Crowe has Mr. Burke's place, and the house is empty.

To the foreman: McCarthy's place is about two and a half miles away from the station.

Michael Crowe, labourer, Waihao, deposed that he saw the deceased on Thursday evening about half-past 4. He was in an empty house belonging to father of witness. The house was not far from the station. He was lying on the floor, and had all his clothes off except his shirt and drawers. His head was resting on an old mattress. Witness did not speak to him then, but left him there. Witness was passing there about half an hour afterwards, when the deceased came out on to the road. He inquired for Sullivan's place. Witness replied that he knew no one of the name of Sullivan about there. He then asked for McCarthy's station. Witness told him he did not know McCarthy had any station, and he said, "He has two farms." Witness said he would show him where Mr. McCarthy lived, and he replied, "All right," and went away. He did not say any more. He thought the man was not right in his senses.

To Sergeant Gilbert: He knew the Doctor's Road. His father's land was near there; but he was not past the spot on Saturday, Friday, or Thursday. He saw the place on Sunday. He did not hear the men in his father's employ speak of the man.

George Kilworth, shepherd, Waitaki North, deposed that he saw the deceased for the first time on Thursday evening about half-past 7. He was coming along by a gorse fence, crying very loud to himself. He came straight to the house. The back door was open, and he walked right into the middle of the house. Witness was reading a paper at the time, and just got up and stopped him. He said, "What's up; is this McCarthy's?" Witness told him "No; this wasn't McCarthy's." He said "It's McCarthy's I want; where's McCarthy's?" He went to the end of the house with witness, and he pointed out McCarthy's to him. He then left there and went in the direction of McCarthy's house. He was a bit weak on the legs, but he did not walk lame for all that. About a chain from the house there is a water-race about 2ft. wide and 8in. deep. He tried to step over, but apparently stepped short, and slipped into the water. The fall did not seem to hurt him. He saw him cross the paddock, about 21 chains. That was the last witness saw of him.

To the sergeant: The distance to McCarthy's place from witness's was about half a mile, across the paddock. Had there been any noise or quarrelling at McCarthy's that night he would have heard it. The night was very still. Witness saw something strange in the man, and thought he was under the influence of drink. The distance to Crowe's house from that of witness was quite four miles. He would have to go over several fences on his way to the house of witness.

To the foreman: He went to bed about half-past 9 on Thursday night.

To the Bench: He could hear McCarthy's children talking quite plain from his place on a still evening.

Herbert Clifford Barclay, medical practitioner, Waimate, deposed that he had made a *post mortem* examination of the deceased. The body was that of a very well nourished man, 5ft. 8½in. in height. It was cold. He saw the body about 11 o'clock on Sunday morning. *Post mortem* rigidity was well marked, and the lower jaw was tightly clenched against the upper. There was a patch of greenish discoloration forming in the right groin, while small purple patches were to be seen here and there over the chest and abdomen. There was an abrasion on the left side of the nose which had scabbed over. Over the left temple and eyebrow there was a green and purple lividity, with a clot of blood lying in the deeper tissues. The left leg was discoloured from its middle to the middle of the thigh. The calf of that leg was 2in. larger in circumference than that of the right. The swollen part was quite black, and had nine blisters on it of the size of a shilling. They contained blood-stained serum, which coagulated on the addition of nitric acid. The tissues immediately beneath the blisters were injected with blood. On the back of the calf there was a linear scratch 2½in. long. It had been nearly healed, and there was slight lividity in the neighbourhood. On moving the limb there were signs of fracture just below the knee-joint. Below the swelling on the lower third of the leg there were three abrasions across the front. Wool from the deceased's drawers was sticking in these abrasions. They appeared to run parallel across the leg in the direction of the right knee. The three abrasions together measured about 1in. The left foot was slightly swollen towards the ankle. The lividity at this part was not uniform in colour, and faded into the surrounding skin. The lividity on the thigh which joins the lividity on the leg was confined to the superficial layer of the skin. It was not elevated. There was no flow of blood from the incision made into it, and it had a fairly well defined margin. The lividity in the neighbourhood of the fracture was found to extend into the deeper tissues, and clotted blood was present between the muscular layers. Much brownish-coloured serum together with oil escaped from the incision. The muscles appeared a little softened. Over the inside of the knee the appearances of the incision were similar. At the right of the fracture, above the knee, these appearances faded into the ordinary lividity which is seen after death. Over the upper right half of the chest the tissues were discoloured and were greenish in appearance. In this discoloration there were two parallel lines ½in. apart, and running from the nipple in a slightly curved direction towards the shoulder, 2½in. in length. There was an evident fracture of the right collar-bone. On reflecting the scalp an area of clotted blood, about the size of a five-shilling piece, was found, corresponding to the lividity on the left temple. The skull formation was mobile. The veins running on the surface of the brain were congested, and there was serous exudation beneath the inner tissues. Under the left hemisphere of the brain there was a slight hollow the size of a pea, which appeared to contain altered blood. It did not appear to be recent. Under the previous discoloration in front of the chest blood was found coagulated in the muscles. The diaphragm reached the height of the fifth rib. There was hydrostatic congestion at the basis of both lungs, otherwise they were healthy. The heart was in a normal condition. Its left ventricle was full of clotted blood, partly white and yellow, the remainder blood. The large blood-vessel leaving the heart had a firm patch of degeneration at the exit from the heart. The right ventricle and auricle contained blood which had coagulated, but which was present in a smaller amount than in the left side. The left auricle was full of clotted blood. The heart appeared rather enlarged. The valves were normal. The pericardium was healthy. On opening the abdomen he found the intestine in the neighbourhood of the gall-bladder deeply stained with bile. The gall-bladder was full of bile. The liver was slightly fatty, but otherwise healthy. The spleen was normal. Both kidneys were paler than normal, but the capsules easily peeled off. The kidneys appeared to be slightly fatty. The stomach and intestines were healthy. The stomach contained only a little yellowish fluid. The upper half of the small intestine contained a moderate amount of yellow fluid. The lower half of the intestine was empty, as was also the large bowel, except for a few lumps of fetid matter. The bladder contained 3oz. of urine, which was acid, of the specific gravity of 10·18, and contained albumen. On cutting down into the fracture of the leg extravasated blood was found in considerable amount. The tibia had a piece 3½in. long broken out of it. The fracture extended longitudinally round the bone for 5in., and it ran into the knee-joint. At the upper part of the bone there were several smaller fragments. The fibula was not broken. At the posterior aspect of the break there was a considerable amount of clotted blood at the tissues. The marrow was softened, and the soft tissues of the bone congested. He found the right collar-bone fractured obliquely to the extent of 2½in. The tissues round the break were unhealthy looking. There was a blood-clot in the centre of the bone along the line of fracture. The tissues around were lighter in colour than normal, but there was no trace of pus. With respect to the collar-bone, he was of opinion that very considerable violence must have been used to cause the fracture, which is of a character rarely seen on this part, and is the result of direct violence. The fracture may have taken place two or three days before death, or only ten or twelve hours. He had heard the evidence of the previous witnesses, and he was of opinion that it was almost impossible for a man to go over the ground and fences as he did if the injuries described then existed. He thought that violence, exhibited by the bruises and fractures acting on a man of his age and impaired constitution, was the cause of death. As an opinion merely, he thought the examination of the parts suggested that the injuries occurred between twelve and twenty-four hours before death. The fracture of the leg must have been caused by a severe blow with some heavy substance, and not by a mere struggle in putting a man out of the house.

To Sergeant Gilbert: He thought it highly probable that the man's intellect was deranged. He saw nothing to suggest blood-poisoning. He thought that if a dray or spring-cart had passed over him they might have caused such injuries. He did not suggest that he was run over by a dray, but he could not say that it was not so. He appeared to be a man of about fifty-five or sixty years of age. The fractures were all produced before death.

To the foreman : There was no open wound. He thought it was quite possible for the injuries to have been committed when the suit of clothes produced was worn by deceased, though there was no blood on them except that from the wound on the leg. It would be quite impossible for a man in his state to inflict the wounds on himself.

At this stage, about half-past 5, the Coroner intimated that he intended to adjourn the inquiry. Other evidence he could then call was merely corroborative, and he thought that before they arrived at any conclusion every effort should at least be made to establish the identity of the deceased. It was a serious case. The evidence clearly showed that the man had met his death by violence, and time should be given to the police to institute further inquiries. He would adjourn the inquiry to Monday next.

The inquest was then adjourned.

(*Waimate Times*, 23rd January.)

The adjourned inquiry into the cause of the death of the man, supposed to be a Thomas Sullivan, found dead on a road at the Waihao on the 12th instant was continued at the Courthouse on Monday last, before Major Keddell, Coroner, and the same jury. On this occasion Inspector Broham conducted the proceedings on behalf of the police. The Courthouse was crowded all day long, the inquiry lasting from 11 o'clock to half-past 6, when the proceedings were again adjourned to yesterday morning at 10 o'clock.

Annie Smart, wife of Solomon Smart, storekeeper, Waitaki North, deposed that she remembered Sunday morning, 6th January, when an old man called shortly after 10 o'clock. He had a small bundle with him. He asked for a small loaf of bread ; but they were out of bread that morning, and he asked for threepennyworth of biscuits. He asked if witness would boil some meat. She said she would fry him some. He brought two or three pieces of ham in one hand and a ham-bone in the other. She said the ham was already cooked. He said, "Oh, is it?" He then asked for some tea and sugar. She made him some tea, and sent it out in a jug to him. Witness lent him a table-knife. She thought he was a strange-looking man, and she sent one of the children after him for the knife and jug, which they brought back. He took a pannikin away with him. It was a pannikin without a handle. She saw him afterwards eating his breakfast by their pump. He was eating bread, and she thought it strange, as he had asked for some. He was about twenty minutes at the place altogether. She saw him walk, but did not notice anything unusual in his walking. She thought the man strange in his manner, and that was why she sent for the knife. He was rather tall and thin, and had grey whiskers round his face. She thought that he wore white trousers, but she was not sure. She thought the photograph produced resembled his face. He had an oilskin coat with him.

James Falconer, hotelkeeper, Waitaki South, remembered an old man coming to his house on the evening of the 8th or 9th instant, Tuesday or Wednesday. He asked for a shakedown for the night. Witness said, "Yes, take your swag there." He said, "I've got no swag." He (witness) asked where it was, and he replied, "I've lost it." Witness thought he looked queer, and said, "You have been drinking." He answered, "No, I haven't." Witness said, "Come up to the stable, and I will give you a couple of horse-covers, and that will do you for the night"; which he did, and told him to put them back in the same place in the morning. Witness did not see any more of him. At 9 o'clock next morning the covers were all right. He did not know the man's name, but his face was quite familiar to witness. The photograph produced was like him right enough. He had nothing with him. He was walking slow at the time, and witness did not take any particular notice of how he walked. He appeared to be between fifty and sixty. He did not say where he had come from or where he was going.

John Henderson, hotelkeeper, Waitaki North, deposed that on Sunday, the 6th, an old man was at his hotel about 10 in the morning. He was coming out of the kitchen as he (witness) went in. He went to buy some meat, and he believed Mrs. Henderson gave him a cold ham-bone. He saw him on Waitaki Railway-bridge on the 9th. He was going south. He had a small bundle in his right hand, either a towel or a handkerchief. Witness did not speak, but passed on. He was satisfied the photograph produced was that of the same man. He seemed to walk tenderly on his feet, as if footsore, but was not lame. The man seemed quiet, but he did notice anything particular about him.

Rose Davis, daughter of John Davis, Waihao, deposed that she lived about a mile from McCarthy's farm. She remembered the 11th of the present month. Her brother Ernest drove her that morning to the Waitaki Store at Glenavy. She saw a man lying on the side of the road just as they passed McCarthy's gate. He was on the north side of the road. Her attention was first called to him by the horse shying in the direction where they were coming from. He was lying on his side, with his hands towards the road. She did not notice how his hands or legs were. He was looking towards us, but he did not speak. He did not appear to look sick. They did not stop ; she only looked at him as they passed. There was a pannikin, bottle, and a piece of brown paper near his head. That was about 9 o'clock. They returned and passed the same spot at about 11 o'clock. The man was lying in the same place. She did not take more notice of him than before. He was lying in the same position, with his face towards the road. The man was looking at them as they passed, but they did not speak. Seeing the bottle lying beside him, they thought he was intoxicated. Witness did not hear him call out when they passed. She was with her father the following afternoon. He was driving a trap to Waitaki North along the same road. He passed McCarthy's gate. She saw the place where they saw the man the previous morning, but he was not there then. About half a mile further, at the corner of the cross-roads, they saw some object lying on the side of the road known as Frankish's Road. She thought it was a man, but they took no notice, and passed on. They returned down the same road about half-past 7. She saw a man lying down in the same place they had noticed going up. She thought it was the same man as they had seen near McCarthy's gate the day before. Her father called out to him, but, not getting

an answer, he got out of the trap and went to him. A water-race ran across the road between McCarthy's gate and the cross-roads. She was sure he was the same man she saw on Friday morning.

Ernest Davis, brother of last witness, remembered driving his sister to Waitaki store last Friday week. It was about 9 o'clock in the morning. They saw a man lying near McCarthy's gate on the north of the road. The horse shied at the man. His face was towards the road. He noticed that his left leg was doubled up under him. His right hand had hold of the trousers of the left leg at the knee. His hat was on. He did not speak. He had a bottle and a pannikin against his chest. When coming back about 11 the man was in the same position, and the bottle and pannikin also. He did not seem to be tipsy when they came back. He looked lively. He looked to be laughing a bit. He passed by McCarthy's gate again the same day about 1 or 2 o'clock. He was walking—minding the cow. As he got to the gate, Mr. McCarthy drove out with a dray in which were a number of children. He (witness) walked behind the dray. They came to where the man was on the side of the road. He had not spoken to McCarthy about the man before. McCarthy stopped and got down. The man was lying in the same position. The leg was still doubled up and the right hand over the knee. McCarthy went over to the man and gave him something to eat—some scones, bread and meat, and tea. McCarthy had the tea in a bottle, and poured it into a pannikin. Both spoke, McCarthy speaking first. McCarthy asked what was the matter. The man said his leg was poisoned. Then McCarthy said, "Is it poisoned?" and the man said "Yes." McCarthy asked witness if he could cure the leg, and he said "No." McCarthy told the man to cover the meat over, but he just touched the paper. It was brown paper. McCarthy felt the man's left leg before he went away. The man first asked McCarthy if he (witness) could cure his leg, before McCarthy asked witness. He thought the man was silly; he looked so. He did not eat any food while he was there. He did not stay there more than a quarter of an hour. After they left McCarthy said the man must be out of his mind. McCarthy talked to the man as if he were a stranger. McCarthy drove about half a mile with the children. He went with them and also came back. In passing the man again he was on the south side of road. They did not stop, but passed on. McCarthy was on the dray, but witness was walking behind. The man looked at them as they passed, but said nothing. He did not notice the position of the legs. He had all his clothes on. He had them all on in the morning, too. He had one boot off. He noticed it off when coming back with McCarthy. He had both boots off on three previous occasions he saw him. He was not sure that he had them both off when he first went to Waitaki. Witness was with McCarthy all the time he was thinning turnips. McCarthy said, "Poor man; he can't walk," just after they left him the first time. Witness did not think the man was asleep when he passed him the last time. McCarthy gave the bread and meat in a piece of brown paper.

To foreman: He noticed no marks on the man's head when he was with McCarthy. His hat was on.

Re-examined: He did not notice whether the man brought the food across the road with him.

Johanna McCarthy, daughter of Jeremiah McCarthy, farmer, Waihao, deposed that she remembered Thursday evening, the 10th of present month. An old man came to her father's residence that night about 8 o'clock. He came from the direction of Mr. Kilworth's. She was outside the house when he came. He came through a fence. She went inside when she saw him coming. Her mother and brothers and sisters were inside at the time. The eldest of them was fourteen, a girl, named Mary. The next was twelve, named Kate; the next, Ellen, aged eight. The man came to the front door, and turned the handle to come in, but the door was locked. They locked the door when they saw him coming over the fence. He fell over the fence. The fence was about twice the distance of the length of the Court away. He kicked the door, and said he would murder them. They went in by the back door, but he went to the front. He kept kicking at the door until her brother Michael came. He only said he would murder them once. He did not say so loudly, neither did he seem angry. He did not kick the door hard. Her brother asked him what he wanted, but witness could not say what reply he gave. The man went to the back door, but she locked it when she saw him go round. He kicked the back door for about five minutes, and swore. He said, "Open the b—— door," and kept repeating it. He said other words which she had forgotten. After that her father came down from the stable-yard. She was looking out at the kitchen window. Her father asked him what he wanted. The man was looking through the window then. Her father said, "What do you want doing that for?" He just kicked the door as her father came. Her father asked what his name was, and the man said nothing. When her father asked him what he was doing that for, he said, "This is my own house." Her father told him to leave the place. The man at once went towards the stable. She was surprised at that, as he went away so quietly. She thought he would not have gone. When her father saw the man going in the direction of the stable he told him not to go there, as he might set fire to it; there were plenty of other places on the other side of the road. The man then went towards the road. She saw him go half-way towards the gate. He would be about a quarter of an hour at the house before her father came. He never used abusive language to her father, nor threaten him; neither did the man strike him. She was quite sure of that. Her father spoke in a gentle tone of voice. She heard the man during the night. She and the others who were sitting up went to bed at 10 o'clock. She was awakened about midnight by the barking of the dogs. She heard a man either singing or crying, the noise coming from the direction of the road. She did not know who the man was. The noise was kept up for a quarter of an hour. Her father, mother, and herself got up. The others were asleep. Her mother called to her and they went to the front door. Her father was with them. She was sure her father was not up before; if he had been, she would have heard him. She would have known because she never slept at all. The last statement was true. She would have known if he were out. He could not have gone out without her hearing him go. Her bedroom was next to his. She did not listen for any sounds that night. She met

him in the passage near her room door. She went with them to the front door. Her father had only his shirt on. They heard the cries. Her father said he wondered what it was, and her mother remarked she could not think what it could be. She herself said nothing. It never occurred to them that it was the same man. They remained there about a quarter of an hour, when the crying ceased. Neither of them went outside the house. Nothing was said about the man. They then went back to bed. They thought it was a man's voice, but they were not sure. Nothing else occurred during the remainder of the night. She saw the man on the Friday, between 1 and 2 o'clock. She was going to pull some turnips. Her father, brothers, and sisters were with her. They went in a dray. She saw the man near their front gate. He was sitting up on the side of the road. Her father pulled up. Her father had no expectation of finding the man there. Her father got down from the dray. The man just sat as he was. Her father asked what was the matter. The man spoke first, and said "Good day." The reason her father asked what was the matter was because he was sitting where the dray-wheel would have gone, and some of his clothes were off. In answer to her father's question the man replied that he had got his leg poisoned about three weeks back. He said he was going to the chemist's with it. Her father had some tea in the dray, and asked him if he would have some, and he said "Yes." He gave him some out of a bottle, pouring it into a pannikin the man had. Her father also gave him some scones in a piece of brown paper. She saw the man eat the scones and drink the tea. Her father never examined or touched the leg. Her father must have been there about ten minutes. The man appeared to be well, and right in his mind. Young Davis was standing there all the time. The man asked young Davis whether he could cure his leg. The man got up and went nearer the fence. He only went on his knees. There was no sign of pain on his face. He was sitting up when they went on. He had no difficulty in getting on to his knees. He used both his hands to do so. They again passed the place two hours after. The man was on the other side of the road then. They did not stop, but passed on. Her father did not speak to him then. He had all his clothes on then except one boot. His hat was on. She again saw the man at the cross-roads on Saturday morning at a quarter to 9. She was driving her father to the Waihao Railway-station. They never stopped, and her father passed no remark about him. Her little brother Michael took the man food about 8 o'clock on Friday morning. The man asked him for food. Her brother was looking after sheep and saw him on the road. He took him tea in a bottle. She did not know when her brother asked for food that it was for the same man that had been at her father's house the night before. When she saw the man at 1 o'clock she thought it was the same. Her brother did not tell anybody that he was the same man. She gave her brother the food. Her father had spoken about it to all of them since the occurrence. When he heard of his death, he said he wondered what had happened to him. He said he was sorry he had not reported the matter to the police; that he would have, if he had known he would have died. She drove back after taking her father to the station, but came back the other road. She was sure no dray was driven out of her father's place on Thursday night. Her father was in the kitchen until 10 o'clock. She did not sleep all night—she was frightened for the man. There was no one at home to drive a dray after nightfall. Her brother Jeremiah went to bed at 10 o'clock. He was seventeen years of age. She could not say whether he heard the noise; he never said. He drove the dray next morning to Oamaru. He did not go that road, but drove by the paddocks the near way.

Michael McCarthy, eleven years old, brother of the previous witness, deposed that he remembered an old man coming to his father's place on the 9th instant about 8 o'clock. He saw him come from Mr. Kilworth's place. He was at the stable-yard with his father and brother at the time. The man went to the front door, knocked at it, and then began to kick it. His father sent witness down to see what he wanted, and he swore at him. He did not know whether his father heard. He told his father, and he came down to the back door where the man had gone, and was kicking the door. His father asked him what he was doing that for, and he answered, "This is my own house." His father asked him to go away, and he went. When he (witness) was coming down to the house he heard the man say, "Open the b—— door or I'll murder you." That was at the front door. He was going towards the stable, and his father told him not to go there as he might set fire to the place. The man then went towards the front gate, near which he was lying on Friday. On that morning he was sitting on the side of the road by the fence next the oat paddock. He asked witness for some tucker. Witness asked his sister for it, and she gave him some bread, and tea in a bottle. He never said why he was on the side of the road. He thanked him two or three times for the tucker when he gave it to him. When he asked his sister for the tucker he said it was for the man who had been at the house the night before. His sister told him that she told his father and mother that it was the same man. He heard his father and mother speak about the man after that. His father asked witness if he was there. That was all he knew about it. He heard the dogs bark in the night, but he heard no other noise. No dray went out on the Thursday night. Before the man came towards the front door he stoned the dogs. Witness saw the man drink the tea, but he did not eat the bread. It was a mere accident that he saw him on the road. He had his clothes on at that time. He was making no noise. He had never seen the man before. His father was not angry at the man, and spoke quietly to him. His father had nothing in his hand. His brother had gone to Oamaru before he (witness) saw the man on the Friday morning.

Jeremiah McCarthy, aged seventeen, brother of previous witness, deposed to the old man coming from Kilworth's on the night referred to, the evidence of what took place with the man at the door being corroborative of that of previous witnesses. He (witness) never heard the noise in the night. His father told him before he (witness) went to Oamaru in the morning that the man had been crying. He went to Oamaru through the paddocks with the dray. He went to bed at half-past 9 the night the crying was heard. He never took any vehicle out of the gate that evening.

Catherine McCarthy, wife of Jeremiah McCarthy, deposed to remembering Thursday night, the evidence of witness regarding the arrival of the man at the house and his leaving it being the same as that given by previous witnesses. The witness's evidence as to her husband, daughter, and herself hearing the man crying was also similar to that given by her daughter; the only difference being that she could not say when the noise ceased, and that she did not say anything to her husband while they were standing at the door. She could not say when her husband went to bed that night. He was never out of the house that evening. She could not be sure whether her daughter was asleep that night when she called her, but she thought she was; she got up at once. About 5 o'clock on Saturday afternoon, 12th January, she saw a man lying at the cross-roads. He had his hands up to his head. She drove to the railway-station, picked up her husband and returned, passing the same place again. She did not look to see whether the man was there. She had not told her husband that she had seen the man there. She did not know that her son Michael gave food to the man who was on the road near the gate. Her husband told her that he had seen a man there on the road on the Friday, and that he gave him some tea. She did not think the man she saw lying at the cross-roads on Saturday was the same as had been at their place on Thursday night. She had never spoken about the case.

Jeremiah McCarthy (recalled) said he remembered going to the back door, which the deceased was kicking at the time. He was never nearer to him than four or five yards. The witness reiterated the statements he had made in the Courthouse at the previous sitting. He never heard on Friday morning that Michael had given deceased any food that morning. He had not spoken to Michael about it. His daughter never said anything about giving Michael food for him. The boy Davis told him on Friday morning there was a man sitting on the road. He saw him on the north side of the road. He was not in the way of the dray; he was off the road a bit. He gave the deceased some meat and tea, but he did not remember giving him scones. Coming back he asked him how he was getting on, and he said "Fine." He did not think that he stopped the dray, but spoke without stopping. Next morning deceased was about two chains higher up than the water-race. Three-quarters of an hour afterwards he saw him at the cross-roads, about five or six chains further up. He did not see the deceased walking after Thursday. He did not see the deceased on his knees. About 9 o'clock on Saturday morning, when he saw deceased lying at the cross-roads, he thought he was on his side. His eyes were open. He thought his arms were across his chest. His eyes were moving about, and he was alive. He let the dogs loose, as he thought the man might come back again. When he saw the things—bottle, towel, &c.—near the man he was not astonished, as he had never given the matter a thought. If he had his leg broken and his collar-bone broken it would be strange if he went so far afterwards.

The inquiry was then adjourned to yesterday morning, at 10 o'clock, when the following further evidence was heard:—

Detective Livingstone deposed that on the 15th of the present month he went to McCarthy's house. While he was there McCarthy came home from Waimate. He pointed out the marks which he said had been made by the kicks of the deceased. He described how the deceased went round the house. A few yards from McCarthy's back door he noticed a quantity of firewood, an axe, and a blacksmith's hammer. At witness's request McCarthy pointed out the place deceased had been lying on the Friday previous. That was on the north side of the road. He pointed out the two places he saw him on Saturday. On Friday last, in company with Detective O'Brien, he measured the distances between these places. The distance from near McCarthy's where he was shown deceased lay on Friday morning to the cross-roads where the body was found on Saturday evening was 40 chains 9 feet. The distance from where he was first seen on Saturday morning to where deceased was found is 10 chains. The distance from McCarthy's house to the gateway was 17 chains 19 feet. The distance from the gateway to where the man was lying on Friday was about 2 chains. Witness did not take measurement of this last distance. Constable Field and witness drove McCarthy back to his gate after having pointed out these places to them. He complained of a bad leg from sciatica. He said to them, "I want to know what I am to do in case a man comes round and kicks up a row like this man has done." He replied, "Order him to leave your place, and, if he doesn't go, send for the police." He said, "It's a great trouble getting the police out here such a distance. I would not like to give a man a chance."

Dr. Barclay (recalled) deposed that he gave evidence last Tuesday. He wished to make a correction in respect to his evidence in regard to the deceased's left leg as to the fracture of the smaller bone. He stated that "the fibula was not broken." He was misled by quoting from his notes, and, finding the discrepancy, he examined the left leg of deceased the next morning. He dissected the bone out, and found a fracture right across it. The fracture of the tibia was just below the other injury. The two bones being broken indicated that the injury sustained by the deceased was more severe. He heard the evidence of the boy Davis. The attitude of deceased as described was consistent with the injury he received. He also heard the evidence given by Johanna McCarthy about deceased sitting in the dray-track, and getting out of the way by getting on his knees and supporting himself on his hands so as to get clear of the dray. The deceased could not have knelt on both knees with such injuries, and could not have propelled himself by using the right arm. The man could not have propelled himself half a mile all alone when suffering from those injuries. He did not believe it was possible for the deceased to have moved himself unaided in three-quarters of an hour the distance spoken of by McCarthy—since ascertained to be 10 chains—from the spot where he was first seen on Saturday morning to the cross-roads. The only movement of this kind a person so injured could be capable of would be a painful dragging of himself a few yards at most, and to have carried the food and other belongings which it has been stated were found beside the deceased at these different places was quite impossible. The trousers produced showed no signs of his having dragged himself along the ground, though they showed that he had lain on his left side. There was no indication that deceased had dragged himself through

any water-course as the one described. The quantity of food the deceased must have taken from the time of the injury to the time of his death must have been very small. There was a total absence of anything to indicate that a vehicle had gone over deceased. He measured the distance between the two injuries, and found it to be 42in. If one wheel had done both injuries there must have been marks across the body. He was of opinion that the man had died some time on Saturday.

To the foreman: He thought both bones had been broken at the same time, though it was not improbable that one may have been broken before the other. It was improbable that the man was alive when Mrs. McCarthy saw him at 5 o'clock.

To Inspector Broham: It was quite possible deceased may have been stiff at half-past 7 when found by Davis, two and a half hours after being seen by Mrs. McCarthy. The probability in this instance was because the man was exhausted, and the consequence was that rapid rigidity set in.

To the foreman: It was possible the injuries may have been received as far back as Thursday.

To the Coroner: The circumstances under which rapid rigidity set in was generally following great exhaustion at time of death.

This was all the evidence.

The Coroner then reviewed the evidence, pointing out to the jury the more salient features of the case, his summing up—which strongly indicated that he considered the witness McCarthy to be concerned in deceased's death—occupying nearly three-quarters of an hour. The jury retired at twenty minutes past 12 to consider their verdict. On resuming at half-past 1, the foreman read the verdict, as follows: "That the deceased died on the 12th January from injuries received by violence from some person or persons unknown." The inquiry was then adjourned for an hour. On resuming, the jury added a rider to the verdict, "of grave censure on the inhuman conduct of Jeremiah McCarthy in allowing the deceased to lie in his apparent helpless condition without giving information to the police, or assisting him in some other way."

The proceedings then terminated.

THE MAGISTERIAL INQUIRY.

(*Waimate Times*, 2nd February, 1895.)

At the Police Court on Wednesday the remanded case against Jeremiah McCarthy, charged with the wilful murder of the man found dead at Waihao on the 12th January, was commenced before Major Keddell, S.M. The court was again crowded, many persons standing throughout the two days during which the case lasted.

Mr. White appeared on behalf of the Crown, and Mr. Raymond, with Mr. Hamilton, for the accused.

Mr. White, in opening the case, said that all the evidence they could put before the Court would be purely circumstantial, but such as would clearly enable the prosecution to establish a *prima facie* case against the accused. Mr. White then briefly reviewed the main facts of the case as brought out at the inquest, in so far as they went to establish the charge against the accused.

The following evidence was then heard:—

John Henderson, groom, Glencoe Hotel, Waitaki North, sworn, said: I gave evidence in a case of a man named Thomas Sullivan. He gave the name to me when he called at the Glencoe Hotel on Wednesday, the 9th instant. He came about midday. He had some telegram forms in his hands, and asked for Jack Andrews. I thought he meant me. I asked him what he wanted, and he said "a receipt." I said, "You mean a telegraph form." He said, "Yes; I want £10"; and I asked who he wanted to telegraph to, and he said, "Joe Downs, Oamaru." I asked if he lived in town, and he said, "No; five miles out of town." I said, "You will have to pay for the telegram," and I understood he would do so when he got the money. After I had written the telegram I asked him to sign his name. He said he could not write, and added, "You sign my name and I will put a cross to it." I asked him what name, and he said "Tom Sullivan." I suggested the words "Late of Seacliff," and he said, "Yes." I suggested the words because I thought the man silly. He took the telegram away in his hand. He did not walk lame. The man appeared to be in good health. He had a ruddy complexion.

Cecilia Seaman, wife of Josiah Seaman, Waihao, sworn, said: I gave evidence at the inquest held on the 15th instant, on the body of a man whose name is unknown. I saw the man alive on Thursday afternoon previous. I saw his body at the hospital. He went to the tank at the goods-shed and took a drink of water. He then went on to the railway platform. I saw the man go across to Allan McLean's stacks and get a bunch of hay. He brought it over and laid it down by the side of the shed. He then went to Mr. Scott's at the schoolhouse. The last I saw of him was his going over a wire fence to Mr. Burke's place, now leased by Mr. Crowe. I noticed that he walked as if his feet were sore. I did not see him alive after that.

Michael Crowe, labourer, Waihao, sworn, said: I gave evidence at the inquest held on the 15th, on the body of a man lying in the morgue. First saw the man at 4.30 on Thursday afternoon. Saw him in an empty house leased by my father from John Burke. Deceased was lying on the floor. The man had nothing on but his shirt and drawers. He was awake. I passed half an hour after and deceased had come out on to the road then. He asked for Sullivan's place. I told him I knew no one of the name of Sullivan about there. He asked for McCarthy's station. I said I did not know of any such station. He said he has two farms. I said I would point out McCarthy's place, which I did. He went a chain down the road and then went across the paddock to McCarthy's. I noticed nothing unusual in the man's walk. He appeared in good health. He was fully dressed when he came out on the road from the house.

George Kilworth, shepherd, Waitaki, sworn, said: I also gave evidence at the inquest. I saw the man at 7.30 on Thursday, the 10th instant. He came to witness's place along by a large gorse fence. He was talking to himself, and had a towel in his hand. He came straight to the back door and walked into the house. When he came to the middle of the room I put my hands up to stop him. I said he ought to have knocked before he came into a man's place like that. He said, "Isn't this McCarthy's place?" I said, "No." He said, "Where is McCarthy's?" I said I would show him, and we went outside and I pointed it out to him. He went in that direction. About a chain from the house he came to a water-race, about 2ft. wide, and in stepping over stepped short and fell down. At the other side he got up again and went towards McCarthy's. I saw him go about half-way there. He did not appear to be hurt by the fall. He walked fairly well after that. He was not walking lame then. I took the man to have been on the beer for some time. He looked a wiry man.

To Mr. Raymond: The distance between witness's house and McCarthy's place was about half a mile. It was a still night. When outside my house I can hear McCarthy's children talking. Had there been loud talking or a noise at McCarthy's that night I could have heard it quite plain had I been outside. I went to bed about half-past 9. I went inside and read the paper after showing the man the way to McCarthy's. I was outside just to see what like the weather was twice that evening before going to bed.

Mary McCarthy, daughter of Jeremiah McCarthy, sworn, said: I was at father's house on the night of Thursday, the 10th instant. I remember a man coming to the house about 8 o'clock. He came to the front door and tried to open it, and he could not, and kicked the door. I was inside. He then went to the back door and turned the handle, and when he could not get in he kicked that too. When the man was at the front door my brother Michael came down and asked him what he wanted. I do not know what the man said, but he said something. My brother left then and went to my father. My father and brother Jeremiah then came. The man was then kicking at the back door. I do not know how long he kicked. He said if they did not open the back door he would murder them. My father and brother had not come down when the man said this. He did not say it very loudly. The door was shut. Father asked what he was doing that for, and he said, "It's my own house." Father asked his name, but he would not tell him. Father asked him to leave the place, and he went away. Neither my father nor the man appeared to be angry. The man did not appear to be angry when he was kicking. I saw the faces of the men through the porch window. My mother and two sisters, Annie and Kate, were in the room with me when the man was kicking at the door. They were in the porch. The porch door is the back door. I saw the man go away. He went towards the stable, and father told him not to go there as he might set fire to the place: there were plenty of places along the roads. The man was walking lame coming and going. The man was not very long at the door before father came. I sleep in the front room facing the road, the direction the man came. My sister Annie slept in the same room. I was awake all night, being frightened of the man. My sister Annie was awake all night also. I cannot remember whether father or any others of the family told me whether they were awake that night. I heard the dogs barking, but I cannot say the time. I went to bed about 10. I heard no other noise but the dogs barking. I heard father and mother get up, and sister Annie. Her name is Johanna, but we call her Annie. My mother called Annie, and she was away about a quarter of an hour. They were not disturbed more during the night. Annie locked the door when they saw the man coming towards the house. I do not know why the doors were locked. I saw the man between 1 and 2 o'clock on Friday afternoon. Father and three sisters were with them, and young Davis. The man was sitting on the side of the road, in the direction he went the night before. He was down a hollow not very near my father's gate. The man spoke to father. He said, "Good day." The man spoke first. Father said "Good day" to him. Father asked if there was anything the matter with him. Carts do cross the hollow. The man would not likely be run over where she saw him. They were going in a dray to pull turnips when they passed the man. I have no idea how far the paddock is away from my father's house. There is a plantation of trees between the turnip paddock and their gate. The man said, when father asked what was the matter with him, that he had had his leg poisoned three weeks ago, and that he was going to the chemist's with it.

(At this stage the Court adjourned for an hour for lunch.)

Mary McCarthy's examination continued: My father asked him whether he would have some tea, and he said "Yes." Father then gave him some tea. I do not know whether anything else was given him to eat. He drank the tea. I did not notice whether there was anything the matter with the man then. (A plan of the house was produced, but witness said she did not understand it.)

Johanna McCarthy, sister of previous witness, sworn, said: I was at home on 10th of present month. An old man came to the house that night, about 8 o'clock. He came from the direction of Mr. Kilworth's. I was outside at the back of the house. When I saw him coming I went inside. He came through a fence. I locked the front door. My mother and sisters Mary and Kate were in the house. Ellen was in bed. After the door was locked the man fell on the verandah, and then turned the handle. He kicked the door, and said he would murder us, or something similar to that. He was about five minutes at the front door. He kicked all the time. I did not see his face. He was swearing. He was not making a great noise. He was not kicking the door loudly. My brother Michael spoke to him, but I could not say what the man replied. I gave evidence at the inquest. I told the truth then. I can remember just as well now as I did at the inquest what occurred. The man went to the back door and kicked it for about five minutes. He was swearing. He said, "Open the — door." He said it more than once, but I do not remember how many times. My brothers Jeremiah and Michael came when he was kicking the door. I did not see any one looking in at the kitchen window. My father asked, "What are you doing that for?" The man said, "This is my own house." Father asked him what his name was,

but he would not tell him. Father asked him to leave the place. He went towards the stable. Father told him not to go there, as he might set fire to the place; that there were plenty places on the other side of the road. Before father came down the man had been there about ten minutes. I locked the door because I saw the man fall over the fence. The man looked strange. In the middle of the night I heard the dogs barking, and I went to the front door. So did father and mother. Mary slept in the same room that night. She was awake when I left. I do not think she was asleep. I was awake all night. When I went to the door I heard a man singing or crying. The reason I was awake all night was because I was frightened of the man. My sister Mary was alarmed; but I do not know that any other member of the family was. I went to bed about 10. So did sister Mary. When they heard the dogs barking father said he wondered what it was. When the man went from the house he was walking lame. It was a wire fence he fell over. I saw him the next day between 1 and 2 o'clock lying on the road, about eight or nine chains from father's gate. He was lying on the north side of the road. Father, sisters, and young Davies were with them. They were in a dray. The man spoke first, and said, "Good day." Father asked if there was anything the matter with him, and he said he got his leg poisoned about three weeks back. He said he was going to the chemist's with it. I gave the man tea and scones. He drank the tea and was eating the scones when they passed on. They were about ten minutes there. The man looked well and healthy. He answered my father in a sensible enough manner. I looked back and saw him moving into the fence. When I saw him first he was lying near an old wheel-track. I saw a hollow there. It was near there I saw him. I saw no sign of trouble or pain on his face. In coming back about two hours afterwards I saw the man on the other side of the road. He was a little farther down. When I saw him moving he was on his hands and knees. Father may have spoken to him when coming back, but I do not remember what he said—I was speaking to my sisters. I saw him next morning about a quarter to 9. I was driving father to Waihao Railway-station. I was about a couple of yards from the man when I passed. He was lying down at McNaughton's corner, at the cross-roads. He was lying on the side of the road, but not quite near the fence. He was looking at them. My mother drove my father back that evening. They had conversation after, and they heard of his death. Father said he wondered what had happened to him, and had he known he would have died he would have reported the matter to the police. My brother Michael gave the man food on Friday morning. He was sitting down when I first saw him. He used his hands to get upon his knees by putting them on the ground. There was no dray driven out of my father's place on Thursday or Friday night. They did not do anything to the windows or blinds when they saw the man coming on Thursday night. There are blinds to the windows. They were drawn down on Thursday after the man came. They are drawn down every night.

To Mr. Raymond: I did not hear father use abusive language to the man whilst I was there, or strike him. He only had his trousers and shirt on when I passed the first time on Friday. His coat, hat, and boots were off. Later on, when we again passed, he had his clothes on and one boot. He did not use abusive language to father at the house.

Michael McCarthy, son of Jeremiah McCarthy, sworn, said: I remember a man coming to my father's house on the 9th of January. He came from the direction of Mr. Kilworth's. I was at the stable with my brother Jeremiah when he came. There are three dogs, one loose and two tied up. He stoned the loose one. He was about half a chain away when he stoned it. Jeremiah and my father could see what I saw. There was no noise, but the dog was barking. He kept stoning the dog one or two minutes. The dog ran away towards the dog-house, which was on the other side of the house from the stable. The man went to the front door, but I could not hear him. Father sent me down to see what he wanted, and when I asked him he swore at me, saying, "Ask my —." He kicked at the door, and I went and told my father. When father came down he was kicking the door. He was not saying anything. I never heard the man say anything. Father asked what he was doing that for, and the man said, "This is my own house." My father told him to go away out of the place, and he went towards the stable. No threats were ever used when the man was kicking at the door. I was a witness at the inquest. My father told him not to go to the stable, as he might set fire to the place. He then went towards the gate. I saw him between 8 and 9 o'clock next morning in the hollow not far from the gate. The man was sitting outside an oaten paddock. There was nobody with me. I was looking to see if the sheep were out on the road. I gave the man bread and tea. I went to the house and got it from my sister Johanna. I never heard my father say anything about the man before he was dead. Father spoke about him after his death, and said, "Poor man." He said that on Monday. He said more apparently about the man to my mother and sister, but I did not hear him. My father did not ask any questions about the man before the man's death on Friday or on Saturday or Sunday. Father asked me on Monday if I had given the man any tucker. No one knew from me but Johanna that I took food to the man. I went to bed about 9 or 10 o'clock the night the man came. I did not go to sleep that night, because of the man being about the place. Jeremiah slept with me. He went to sleep. I was afraid the man would come back again, and did not sleep. I heard the dogs barking on Thursday night, but did not hear any other noise. I do not know what time the dogs barked. The kitchen was between his bedroom and father's. They could not hear noises readily in one room that were made in another. There was a room and a passage between his room and father's. There were blinds on the windows. They were pulled down every night. They were pulled down on Thursday, but I do not know by whom. They could not see the stable from the porch. The man had all his clothes and boots on on the Friday morning. He was not making a noise. I took tea to the man in a bottle. I got it from him again when coming back. He had no other bottle. I did not see one. Anybody passing along the road could have seen the man.

Jeremiah McCarthy, junior, sworn, said: I remember an old man coming to my father's house

from the direction of Kilworth's on 10th January. He came over a fence and fell as he was getting over. He threw stones at the dog. I did not hear the man say anything. He fell when stepping on to the verandah. It appeared as if he tripped when getting up. Father sent Michael to see what he wanted, and when he came back he said he was kicking the door. Father said nothing, but went down, and I with him. The man went to the back door, which he was kicking when we went down. The man was swearing pretty regular. He kicked for a few minutes. When about five yards off father asked what he was doing, and the man said, "This is my house." Father asked his name, and he made no reply. Father asked him to leave, and he left. The man was pretty violent when he was kicking the door, but he knocked off when father asked him. My father was not angry. He went towards the stable, but father told him not to go there, as he might set fire to the place; that there were empty houses on the other side of the road. I went to bed a little after half-past 9. I slept that night, and heard no noise. I could not say whether Michael was awake. I went to Oamaru the next morning. I left about a quarter to 8. I came back on Sunday at 2 o'clock. There was no cart or vehicle taken out of our place on Thursday. Before leaving for Oamaru, father and mother and Johanna told me that the man was crying out in the middle of the night. I never heard father say anything about the man. My age is seventeen; Johanna is older; Mary is fifteen, Kate is twelve, and Michael eleven.

Rose Davis, daughter of John Davis, Waihao, sworn, said: I live about a mile from accused's farm. On the 11th of January my brother drove me to the Waitaki store at about 9 o'clock in the morning. I saw a man lying in the direction from which we were coming. He was lying on his left side. I did not notice the position of his arm and legs. He was alive. We did not speak to each other. He did not move. I noticed a pannikin, a bottle, and a piece of brown paper. They were lying near his head. On returning at 11 the man was still there, and in the same position. We did not speak to him. I thought the man was intoxicated. I was with my father the following afternoon going to the Waitaki. That was about half-past 5. We saw an object which I took to be a man lying at the cross-roads. I was not near enough to see his position. It was about half a mile farther from McCarthy's where I saw him the second time. I was not along the road again from the time I saw the man on Friday afternoon to the time I saw him on Saturday. On returning I saw the man lying at the same place. That was about 7 on the Saturday evening. Father called out, and not getting any answer he went down to him. I believe it was the same man; the clothes were the same, but I did not go close to him. There is a water-race on the road between the place where I first saw him and the place where the body was found. The race is about 2ft. wide.

(The Court adjourned at 5.20 till 10 a.m. on Thursday morning. On resuming,)

Ernest Davis, brother of Rose Davis, sworn, said: I remember driving my sister to the Waitaki store on January 11th. It was about 9 o'clock. I saw a man lying on the road. He was lying on his left side, and holding the knee part of his trousers with his right hand. It was his left knee. His left knee was bent under his right leg. He had on light trousers and dark coat. He had a hat, but it was off him. I saw a pannikin, bottle, and towel against his chest. I did not speak to him. He was looking at us. I just saw the man as we were driving. We were going quickly. I saw the man again at 11. The man was in the same position. I saw his face. I passed McCarthy's gate that day about 2 o'clock and saw the same man lying about 20 chains away from the gate. I was then minding my cow up the Doctor's Road. I saw McCarthy in the afternoon coming out of his gate, and I walked behind his dray to the turnip paddock. I saw a man on the road. McCarthy got out of the dray and gave the man some tucker. There were bread, meat, and scones in brown paper. There was some tea which McCarthy poured into a pannikin. McCarthy spoke first and asked him what was the matter, and he said, "My leg is poisoned." McCarthy felt the left leg, remarking, "Is your leg poisoned?" McCarthy told the man to cover the meat over, and he said "Yes," and touched the paper. He did not eat any meat, but drank some tea. I stayed there about a quarter of an hour. McCarthy said to me, "The poor man can't walk." The man asked McCarthy to ask me if I could cure his leg. The man looked silly. When in the field McCarthy said the man must be out of his mind. I saw the man on my way back. He was on the other side of the road, almost opposite where he was at first. They did not stop and speak going back. The man was lying on his back. He was dressed like he was when I first saw him. He had one boot and sock off and one on. In the morning he had both boots on. That was at 9 o'clock on Friday morning. I forget how the boots were at 11 o'clock.

To the Bench: The man did not sit up at any time when McCarthy was speaking to him. He did not get up at all. He did not get on his knees. I was with McCarthy all the time. If the man had sat up or attempted to get on his knees I must have seen him.

John Davis, labourer, Waitaki North, sworn, said: I was driving up the Beach Road to the Main South Road at about half-past 5 on the evening of Saturday, the 12th instant. I was going to the Waitaki Store. When I got to the cross-roads I saw something which I took to be a man. The object was lying on the north side of the road known as the Doctor's Road. It was within two or three feet of the fence. I passed without stopping. Returning about half-past 7 I saw the man still lying, and sang out. Getting no answer, I went over to him. He was lying on his back, dead. His hands were raised each side of his head. I turned the man over on his belly. His hat was lying at his feet. He had a boot and sock off. There was a towel and pannikin also lying near. I saw food on a piece of brown paper. There was bread, scone, and a mutton-bone on the paper. They were lying just on the right side of him. His clothes were all unbuttoned. The place where the body was lying was about 17 chains from the railway crossing. The body was stiff. I did not feel his flesh, and could not say it was cold, but I judged it was. There were no wheel-tracks near.

To Mr. Raymond: Had known accused about eight years. Had known him to be a good friend and neighbour during that time, and a peaceable man.

Constable Field, sworn, said : I found the body at a place called Doctor's Road. Sergeant Gilbert and the last witness were with him. The head of the man was lying about 2ft. from the fence, and the feet towards the road. There was fairly long grass at the spot. Found no marks of traffic, and the grass was not much tramped on. The body was lying face downwards. It was dressed in white-mole trousers, brown-tweed coat, and light-felt hat, which was lying close to him. He was wearing right boot and sock; the left foot was bare. Found boot and sock close to the body. The body was quite stiff. The body appeared cold. That was about 1 on Sunday morning. The mouth was closed, but showed the teeth. I saw towel, pannikin, table-knife, and food near the body. Some food was on paper close to the body. There was also some about 2ft. away, nearer the road. Thought the food on the paper had been placed there carefully. I went to McCarthy's and made inquiries, and got him to go where the body of the man was. McCarthy said the man came to his place on Thursday night, was at the back and front door, and had told him to go away, and he went towards the gate. He (McCarthy) did not see him again till next day, when he saw him lying on the side of the road. I asked McCarthy to help us to put the body in the cart, which he did. We took the body to the hospital morgue. I went to the spot where the body was found with Sergeant Gilbert and examined the spot. The ground did not appear to be disturbed where the body had been lying. I went with Detective Livingstone to McCarthy's, and he pointed out where the man kicked the door. I went to where the man had been seen by McCarthy, and the ground looked as if some one had been lying about for a good time. I went to the hollow mentioned, but saw no sign of a man having been lying there. The road is neither formed nor shingled.

Sergeant Gilbert, sworn, said : I went to where the body was found on the night of the 12th. It was lying at the corner of the cross-roads. It was on the face, on the north side of the road. The head was near the fence. I turned it over. He was dead and stiff. The hands and face were quite cold. I put my hand in under the clothing on the chest, and there appeared to be some heat; but it was a warm night, and may have been only fancy. The man was fully clothed, except his hat and one boot being off. The mouth was closed, but I could see his teeth quite well. There was a belt, pannikin, towel, and some food on a piece of brown paper. The clothes produced were those worn by the deceased. I went to McCarthy's house and made inquiries before removing the body. He told me a man came there on previous Thursday, and made a statement similar to one made at the Coroner's inquiry. I asked him to come down and help them to put the body in the express, and see if it was the same man, and he said it was. We examined the ground, and found the grass utmost undisturbed. It looked as if the man had gone there and died. It was a fine moonlight night, and we examined everything minutely with a lamp. The articles looked as if they had been put there, but there was nothing particularly noticeable. They were all lying within a few feet of each other. I noticed the left leg very much swollen, and was going to draw up the trousers, but some one said he had a poisoned leg, and I did not touch it. McCarthy told me on the way down that the man said he had a poisoned leg. Four of them put the body in the express, and three helped to take it out. I went to the spot next day, and there was no disturbance or mark on the ground. I only saw the spot where the man lay. The trousers of the man were dry at the time.

Detective Livingstone, sworn, said : I went to accused's house in company with Constable Field. While there the accused returned from Waimate. He showed us round the house and pointed out where a man had kicked the back door. There were marks on the door as if from nails on the toe of a man's boot. I noticed a short distance from the door a lot of firewood, an axe, and a blacksmith's hammer. Accused was explaining how he used the bad language, and he remarked, "I know I did wrong by allowing the man to lie on the road." McCarthy pointed out the place where the man lay on Friday morning. The grass appeared to have been trodden down about 6ft. square. Some of the grass appeared to have been pulled up. That was about 8 or 9 chains from McCarthy's gate. From McCarthy's to where the man lay on the Friday is 26 chains 9 feet. The distance to where he crossed the road from where he lay was 25ft. The distance from where he lay on Friday to where he first saw him on Saturday morning over the water-race was 30 chains. To where he was found from that was 10 chains, and from there to the railway-crossing was 17 chains 4 feet. Measured the distance about the 18th with Detective O'Brien. I drove McCarthy to his own gate, and he said, "What am I to do in a case where a man does as this man has done?" and I told him to go for the police. He said, "It is a long distance for the police, and I do not like to give a man in charge." The house of accused stands on a piece of level country, and from it you can see three or five miles. There is no plantation sufficient to obstruct the view. You can see a man on this road quite plain, except he should sit down under a gorse hedge. From where the man was lying on Friday to the water-race was about 27 chains. The race was from 2ft. to 30in. wide. It was about 12in. deep. There was about 2in. of water in the race. The road was not much used. Only accused and Davis lived in it. The photograph of deceased produced was taken by my orders four days after death, by Mr. Smith, photographer. The head male attendant and myself were present when the photograph was taken.

Dr. Barclay, sworn, said : I saw a body in the Hospital morgue on Sunday, the 13th, at 11 o'clock. I made external examination at this time. The body was cold, that of a fairly well nourished man, 5ft. 8½in. in height, and about fifty-five or sixty years of age. The rigidity following death was well marked in the lower jaw, the left elbow, wrist, and foot, and the right hip, knee, ankle, and wrist, while in both shoulder-joints the rigidity was only very slightly present, being least marked in the right. I made a *post mortem* examination at 4 o'clock the same afternoon. A patch of greenish colour was formed in the right groin, while small purple patches were to be seen here and there on the abdomen and side of the chest. The usual *post mortem* discoloration was marked in the loins. There was an abrasion on the left side of the nose which had scabbed over. Over the left temple and eyebrow there was a patch of purple and greenish discoloration. The

left leg was swollen near the knee-joint and below it. It was blackish and purple, which extended from the calf to near the middle of the thigh. The calf was 2in. greater than that of right leg. The swollen part was livid, and had nine blisters about the size of a shilling, besides many smaller ones. The blisters contained blood-stained serum, which became partly solid on the addition of nitric acid. The tissues immediately under the blisters were injected with blood. On the back of the calf there was a linear scratch 2½in. long. It had nearly healed. The parts near were slightly livid. The left leg appeared a little out of straight line, and on moving it I found a fracture of both bones just below the knee-joint. Below the swelling on the lower side of the limb there were three abrasions across its front. Wool from the drawers was sticking in these wounds, which were slightly irregular in shape, but appeared to run parallel across the leg in the direction of the right knee. The breadth of these three scratches was about 1in. The left foot was slightly swollen. The livid discoloration in this part was not uniform, and it faded into the surrounding skin. The discoloured patches on the inner side of the thigh, which are continuous with the lividity in the neighbourhood of the fracture, was confined to the surface-layer of skin. It was not elevated, and there was no flow of blood from the incision made into it. It had a fairly well defined margin. There was a slight change of colour in the skin around the margins of lividity. It looked very slightly yellow. On making an incision through the swollen parts on to the fracture I found clotted blood and serum in the tissues and around the fractured bone. Oily fluid escaped from the centre of the larger bone. The muscles appeared softened. The clotted blood was in layers between the muscles all round the fracture. On the inside of the knee the lividity was of the same character as near the seat of fracture. Above the knee-joint this lividity merged into the ordinary lividity that is found after death. Over the right upper half of the chest in front there was a slight previous discoloration, with two slightly curved parallel lines of deeper discoloration ½in. apart, running from above the nipple towards the shoulder-joint for a distance of 2½in. There was an evident fracture of the right collar-bone.

(The Court here adjourned for an hour for lunch.)

Dr. Barclay, continuing, said that, on reflecting the scalp I found an area of clotted blood about the size of a five-shilling piece underneath the scalp, corresponding to the discoloration on the left temple. The formation of the skull was normal. The veins running on the surface of the brain were congested, and there were slight serous exudations under the membrane that forms the immediate covering of the brain. On the left hemisphere there was a small depression, about the size of a pea. Its contents had the appearance of altered blood, and it was not recent. This was the probable site of a slight apoplexy. The cavities of the brain were normal in amount. Under the greenish discoloration described over the front of the chest layers of clotted blood were found in the muscles. The diaphragm reached about the height of the fifth rib. The right lung had a mottled-grey appearance, and was not adherent to the chest wall. The same applies to the left lung. The bases of both lungs showed the usual congestion found after death. The lungs as a whole and in parts floated in water. There was no fluid in the chest cavity. The heart was normal in its position, while the large blood-vessel showed signs of fatty degeneration at the junction of the heart. This is almost invariably found in elderly people. The low cavities of the heart contained clotted blood, that in the ventricle partly white, the remainder black. There was clotted blood in the right cavities of the heart as well. The intestines in the neighbourhood of the gall-bladder were remarkably stained with bile, the gall-bladder being full. The liver was fatty, but otherwise normal. Spleen was normal. Kidney tissues were rather pale, and appeared fatty. Their capsules were easily peeled off. The kidneys and heart were slightly enlarged. The stomach contained a small quantity of bile-stained mucous. There was no appearance of food. There were minute patches of bleeding into its walls. The upper part of the small intestine contained some yellowish fluid. The lower half was empty. The large intestine was empty, except for a few hard fetal masses. The urinary bladder contained about 3oz. of urine. Its specific gravity was 10·18, and there was albumen in it. The pancreas was normal. In cutting down from the leg clotted blood was found at the end of the bones as well as in the tissues. The larger bone of the leg had a piece 3½in. long broken out. The fracture extended into the knee-joint and down the length of the bone for 5in. The smaller bone was broken just below the knee-joint. At the posterior surface of the bone as well as on the inner side there was clotted blood in the tissues. The marrow was quite softened. There was no sign of new bone forming. On cutting down to the fracture of the collar-bone the tissues appeared degenerated. A piece of the bone was detached from the rest of the bone. The fracture was oblique, and 2½in. in length. There was a blood clot at the centre of the bone at the broken ends. The injuries to the collar-bone must have been produced by severe direct violence. The injury could not have been self-inflicted. It must have been done in life. There was nothing in the fracture to indicate how long it was done, but it must have been at least twelve hours. The injury to the leg was done in life, at least six or eight hours before death, and might have been two days. I could not say when the injury to the temple was inflicted. There was nothing to indicate that these injuries were inflicted at different times. The injury to the temple might have been done by a fall, but not the other injuries. I saw no indications of blood-poisoning; it is probable I would have seen them had there been any. There was no broken skin over the fracture. There was no sign of blood-poisoning in the scratch on the back of the leg. I saw no suggestion of blood-poisoning on the body. Had blood-poisoning been going on for three weeks there would probably have been signs. The swelling of the leg supervened on the fracture. A rapidly-running vehicle might possibly—but very improbably—have caused the injuries. A light-loaded gig that would bound or spring would probably cause the injuries. A loaded vehicle would do so. These are the only circumstances under which these injuries may have been inflicted—a rapidly-travelling vehicle heavily loaded, and probably with strong springs. There is a possibility of a vehicle such as he had described striking the leg and, bounding over the body, strike the collar-bone. It is not possible that a man suffering from these injuries could have gone a distance of half a mile. Neither is it possible that he could have crossed a water-race 2ft. wide and 1ft. deep. He could only crawl

a few yards at most, and would take some time. He could not have carried things such as described in the evidence—it would have been impossible. Had he crawled to the spot there would have been marks through the grass. There are marks on his trousers which indicated that he had been lying on his left side. Had he gone through the water-race, one side at least must have been wetted. He could not have gone 10 chains in three-quarters of an hour on Saturday morning. I believe the injuries hastened his death. He was suffering from disease of the kidneys, and had been living on very little food for some time previous. There was not sufficient disease of the kidney to account for death. I wish to explain that the injuries might have been caused by a vehicle as described; but I do not state that the surroundings of the injuries indicated such to have been the case.

To Mr. Raymond: I do not think it likely that the man could have put on his boot, as the fracture to the right collar-bone would have prevented him. Lying down he could not have done it, but sitting up he might. He would have had to bring the good leg over the fracture, which would have been very painful.

Mr. White said he had no desire to call any more witnesses, but he would put in the statements of Jeremiah McCarthy heard at the inquest on the 15th and 21st January.

This was the case for the Crown.

Mr. Raymond, for the defence, said that all the prosecution had done was to show that the deceased had been killed by some one, but there was absolutely no evidence to connect McCarthy with the death of the deceased. He thought the evidence heard at the Coroner's inquest would have been supplemented by the police, but in some points it was really less strong than at the first inquiry. His great difficulty was to find what he had to address himself to. There were really no points against the accused to answer. The police had simply built up a theory, in support of which they had entirely failed to bring any evidence whatever. They had not even established a case of wilful murder, but only one of manslaughter, with which there was nothing to connect McCarthy. There was practically no evidence outside of the McCarthy family, and if they had had anything to hide they could have kept the whole affair to themselves. Looking at the whole evidence, there was not one peculiar circumstance in favour of the Crown. There was no evidence that the man was *in extremis*, and no ordinary man would have done more than McCarthy had done. Taking the facts as brought out in the evidence—on which Mr. Raymond made running comment as he addressed the Court—he held that there was not the slightest ground for the charge, and that it was a farce to send the man for trial. He did not believe the case would pass the Grand Jury; certainly no common jury would convict. He thought his client should be saved the pain, expense, and stain on his character that would follow if he were sent for trial.

His Worship said that he considered a *prima facie* case had been made out against the accused, though a weak one, and he would commit accused for trial. The Supreme Court sat at Timaru on Tuesday, and there would consequently be little delay, while the discharge, if accused was found innocent, would be a complete one. He would point out that where there was a strong moral presumption that a person had committed a crime such as that with which the accused was charged, there was ample justification by law for sending that person for trial.

The accused reserved his defence, and was formally committed for trial at the next sitting of the Supreme Court at Timaru. Bail was allowed as before—namely, two sureties of £250, and accused in £500.

The Court then rose, at 4.30.

SUPREME COURT TRIAL.—CHARGE OF HIS HONOUR MR. JUSTICE DENNISTON.

(*Timaru Herald*, 6th February, 1895.)

The other case of murder was a peculiar one. There was no dispute as to the facts; there was no suggestion that the witnesses were not speaking the truth. The question was, What inferences it was legally right for the jury to draw from the facts. On Thursday, 10th January (it was important to remember the dates), deceased was in the neighbourhood of accused's farm. At half-past 7 o'clock in the evening he walked, without knocking, into the house of a farmer named Kilworth. He walked into the house without any right, and in what might be called an impudent manner, and, when the owner complained, deceased asked for the house of McCarthy. There was no reason to suppose that he knew McCarthy or wanted him. He seemed to have used names at random. Kilworth pointed out to him McCarthy's house, half a mile away. It seemed clear that at this time deceased, though a little lame (possibly footsore), was able to get over a fence and cross a water-race. He seemed to be sound in his limbs. Passing over for a moment the evidence of accused and his family, deceased was next seen on Friday morning, the 11th, at 9 o'clock, by a girl named Rose Davies, and her brother, who were driving along the road. Deceased was then lying on the side of the road, some way from the house of the accused. He had a towel, a pannikin, and a piece of brown paper beside him. Some time later they returned along the same road, and saw deceased in the same place. About 2 o'clock the same day, McCarthy came out of his place with a dray, and the boy Davies went along with him, and saw deceased in the same place. Accused at this time gave deceased some scones, tea, and bread and meat. This was the first time at which there was any evidence—outside his own family—of accused having seen or spoken to deceased at all. This was at 2 o'clock on Friday. McCarthy and deceased had a conversation in the presence of the boy Davies. (His Honour read from the depositions the evidence of the boy Davies. The conversation referred to was: McCarthy spoke to the man, and asked, "What's the matter?" The man said his leg was poisoned. McCarthy felt his left leg just below the knee, and said, "Is your leg poisoned?" McCarthy told the man to cover the meat over. The man did not eat any food while witness was there, but he drank some tea. After they left the deceased, McCarthy

said, "The poor man can't walk"; and when they were in the field McCarthy said, "The man must be out of his mind.") It was important to notice that this conversation took place in the presence of Davies, and it was important to notice that the deceased made no statement about injuries inflicted by accused. Two hours after that conversation the boy Davies, going that way again, said the man had crossed the road. There was no further evidence until the following day, when Davies, the father of the boy and girl, with his daughter were driving along the road at 5.30 p.m. on Saturday, and saw an object lying on the roadside, some chains away from where Davies had seen the deceased the day before, and so much further from accused's house. They did nothing to the object then, but on driving back two hours later they saw the same object, and going to it they found it was deceased, lying dead. At midnight the same day the police went out and brought the body to Waimate. On medical examination it was found that deceased had been considerably injured—there was an injury on the temple, one of the collar-bones was broken, and the left leg was badly broken below the knee. The doctor said the injuries must have been inflicted during life, and could not have been self-inflicted, and that the fractures could not be the result of a fall, but were the result of direct violence. The doctor added that the man was so ill or diseased that he would probably have died shortly, but that he believed the injuries he described hastened the death of deceased. He also said it was impossible for the man to have gone the distance from where he was seen by the boy Davies and the place where he was found dead. The accused was examined at the inquest and made a statement. His Honour read accused's statement, and then proceeded to say that it was important to notice that there was not a particle of evidence directly connecting the accused with the deceased's injuries, except that deceased went to accused's house on Thursday night, and that the accused fed him, as shown by Davies, at 2 p.m. on Friday. But for this there would be nothing but conjecture to connect the accused with the matter. He need not say that a man's liberty is not to be jeopardized on conjecture. The theory of the Crown must be that the man must have made a row on Thursday night at accused's house; that accused struck him blows which afterwards proved fatal; and that accused, ignorant perhaps of the extent of the injuries, fed him, and afterwards, finding him dead, removed him to the place where he was found. That must be the theory of the prosecution. He would not now pause to consider whether this theory meant murder or manslaughter. The first question was, Is there evidence to justify a jury in saying that the proved facts were such as to lead to no other inference than that which the Crown suggested? This was a plausible and, indeed, a probable theory. The facts did seem to point that way. It was not enough for a theory to be plausible or probable. It had to be more than a theory. It had to exclude all other reasonable explanations. The accused had given a point-blank denial. The Grand Jury were entitled to ignore that denial, and all the evidence of accused and his family. The accused was not even called upon to deny the act; it was for the Crown to prove that he did it. There were many ways in which the man might have been injured—by some accident or by some other person. There was nothing to connect accused with the injuries, except the facts that the deceased was seen going towards his house, and that he fed him: Were these facts sufficient to make a *prima facie* case? The feeding of the deceased was done in the presence of a witness, and he entered into conversation with deceased in presence of the witness. It might be supposed that deceased would have said something to connect the accused with his injuries if he had caused them. The accused seemed to have invited that risk in going before him with a witness. But the man said nothing. The accused in his own statement seemed to suggest some roughness, but that might be consistent with a mere ejection. They had nothing to do with subsequent neglect of the man while he was on the road. There was no legal duty upon any person to do anything for any man he meets on the road, whatever may be his moral duty. His Honour briefly referred to the evidence given by accused's family, and concluded that this did not help the theory of the police. Another question was this: Supposing a *prima facie* to be made out, what was there to bring the injuries home to the accused individual? There was at the house, besides accused, a young man of eighteen, accused's son, at least as likely to lose his temper and commit acts of violence, and the evidence was not inconsistent with the guilt of either of them more than the other. However unsatisfactory the result may be, no one could be convicted on such evidence. Exclude the family and there was no evidence at all of what took place after the man was seen going to the house of accused. The evidence at the best only pointed to some violence by a member of the family. Circumstantial evidence must be a number of circumstances all pointing in one direction, the weight of the total result being such as to exclude any other explanation. Here there were only one or two circumstances, of which it was impossible to make a rope of evidence to drag a man to his trial. If the same evidence and no more were laid before a petty jury, he would have to direct them that they could not convict upon it. It was remarked at the committal that it would be better for the accused that he should go to trial. But these proceedings were not instituted for the sake of the accused; and a man's character was better guarded by refusal to commit, as acquittal in this Court might merely mean that the charge was not proved. Besides, acquittal was a bar to further proceedings, and if there was a difficult matter it would be better left open to further investigation. There was in this case a total absence of evidence directly connecting the accused or any of his family with the transaction—nothing but conjecture—no direct evidence at all; and it would be an exceedingly unsafe thing, to his mind, if the liberty of any man were to be put in jeopardy on such evidence. He would have to direct the petty jury that they ought not to convict; and this was just the sort of case in which it was the duty of the Grand Jury to interpose between the Crown and the accused.

The Grand Jury returned "No true bill."

NEWSPAPER COMMENTS ON THE CASE.

(Timaru Herald, 25th January, 1895.)

We have no objection whatever to raise to McCarthy having been admitted to bail, and we refer to the matter simply because it points to the conclusion that the police have (or had at that time) no real evidence that prisoner was instrumental to the death of the man whose body was found by the wayside. If the police had had a *prima facie* case they would have strongly objected to the acceptance of bail, and if after their protest the Justices had still shown an inclination to take bail, the police would certainly have disclosed enough to make it evident that there was a genuine *prima facie* case, and would have called the attention of the Bench to what Mr. Justice Johnston says about the refusal of bail on charges of murder. But as far as we can gather no objection was raised. Again, it is impossible to believe that if the Bench had thought there was a *prima facie* case against McCarthy they would have released him. The fact is that the police, being completely puzzled by the mystery surrounding the death of the man, set up the theory that on the occasion when he called at McCarthy's house (a day or two before the death) McCarthy, in getting rid of the man, used the violence of which the latter subsequently died. We have very carefully studied the full evidence given at the Coroner's inquest, and it certainly does not disclose a case against McCarthy. He may be guilty, but, if so, the record of his crime is not to be found on the depositions.

(Timaru Herald, 7th February, 1895.)

We referred yesterday to the extraordinary action of the Grand Jury in throwing out the bill against the second mate of the barque "Franz," thus going right in the face of the law as laid down by Mr. Justice Denniston. To-day we shall say a few words about the McCarthy case, in dealing with which the Grand Jury appear to have profited by his Honour's remarks. It will be remembered that some days ago we expressed the opinion that McCarthy ought not to have been arrested, for the very sufficient reason that there was literally no evidence against him. His Honour said nothing about the arrest, but he was very outspoken as to the absence of evidence, and in default of evidence McCarthy should not have been deprived of his liberty for an hour. We do not mention this case again merely for the purpose of showing that our judgment was correct. If that were all, we should be content with what has already appeared in our columns. But we regard the question at issue as a most important one. The liberty of the subject is not a thing to be lightly interfered with, and when it is so treated it is the duty of the Press to call immediate attention to the fact, and protest against the wrong. There is, of course, not the smallest ground for believing that the authorities acted otherwise than in perfect good faith. A man had received injuries which, if they did not directly cause his death, at all events must be taken to have hastened it. It appears to be a fair inference that if those injuries were inflicted by some person, he was legally guilty of murder. On proof of the fact that he had dealt the blows, it would be for him to show justification, if he could; but that would have to be before a Court of justice, and meanwhile it would be lawful and necessary to deprive him of his liberty. In this case there was, to start with, the fact of the man's death, hastened, let us say, by the fractures and other injuries which he had received. Thus there was a foundation for energetic action on the part of the authorities. But at the very outset they were met by a grave difficulty, and one which has not been surmounted to the present moment. It is not clear that the injuries were inflicted by intentional human agency, or, indeed, by human agency at all. Very many intelligent people believe that they were caused by a vehicle of some sort having run over the man in the dark, the driver going on without being aware that an accident had happened. It has also been suggested that a stray horse may have run over and kicked the man. These are mere theories, but they were spoken of immediately on the finding of the body, and it can be said of either of them that it would account for the injuries. The authorities, however, very soon came to the conclusion that a murderous assault had been committed. They may have been right, and, as they entertained that view, it was their duty to seek for the assailant. They did so, and speedily arrested McCarthy. We need not weary our readers by recapitulating the evidence which was given at the inquest, and before the Magistrate. The Coroner's jury declined to connect McCarthy with the affair, and returned a verdict against some person or persons unknown. The Magistrate sent the case for trial, but remarked that it was a very weak one, and found an excuse for his action in the fact that the Supreme Court was going to sit almost immediately, and that, on the supposition of the prisoner's innocence, it would be to his advantage to be cleared by a jury. This brings us up to the point at which Mr. Justice Denniston commented on the case at the opening of the sittings. Let us see what his Honour said, so that we may have the advantage of the opinion of a trained lawyer, and whose special business it is to weigh evidence, and whose impartiality is beyond all question. After sketching the case as it was presented in the depositions, his Honour said, "It was important to notice that there was not a particle of evidence directly connecting the accused with the deceased's injuries, except that deceased went to accused's house on Thursday night, and that the accused fed him, as shown by Davies, at 2 p.m. on Friday. But for this there would have been nothing but conjecture to connect the accused with the matter. He need not say that a man's liberty is not to be jeopardized on conjecture." His Honour then proceeded to state what he assumed was the theory of the Crown. He stated it quite correctly. It was, that there had been a row at McCarthy's house with deceased, and that McCarthy there and then inflicted the injuries, and subsequently removed deceased to the place where his body was found. His Honour admitted the possible truth of the theory, and even went so far as to say that it was probable or plausible. But he pointed out that there were other reasonable theories; that "there were many ways in which the man might have been injured—by accident, or by some other person than the prisoner." The conclusion arrived at was that there were only one or two suspicious circumstances in the evidence, "of which it was impossible to make a rope to drag a man to his trial." He said that on such

evidence he would have to direct the common jury that they could not convict. Just at the conclusion of his address his Honour was, if possible, yet more emphatic. He said, "There was in this case a total absence of evidence directly connecting the accused or any of his family with the transaction—nothing but conjecture—no direct evidence at all; and it would be an exceedingly unsafe thing, to his mind, if the liberty of any man were to be put in jeopardy on such evidence." Nor did his Honour omit pointed reference to the committal of the prisoner in the lower Court. He said, "It was remarked at the committal that it would be better for the accused that he should go to trial. But these proceedings were not instituted for the sake of the accused; and a man's character was better guarded by refusal to commit, as acquittal in this Court might merely mean that the charge was not proved." If that is not an intimation that there should not have been a committal, we have lost the faculty of understanding plain language. Thus, then, the matter presented itself to the mind of the learned Judge: that McCarthy ought not to have been committed; that the Grand Jury ought not to find a true bill; and that if the case went for trial the Court would direct an acquittal. The authorities, when they arrested McCarthy, knew even less than is now known; and we may therefore supplement his Honour's dictum by saying that not only should there have been no committal, but that McCarthy should not have been charged with the crime, and consequently not have lost his liberty for a moment. He is a man of good reputation and of fair standing, and it was due both to him and the community of which he is a member that the special features of his case should be clearly stated and criticized.

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