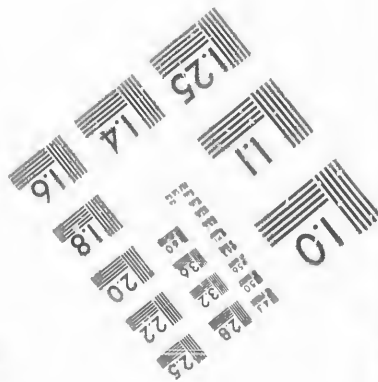
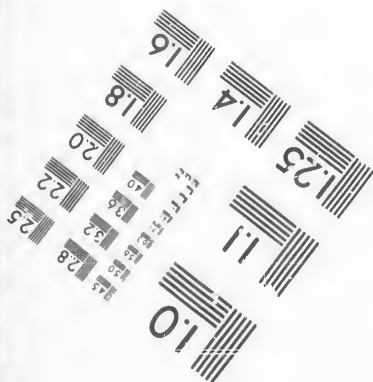
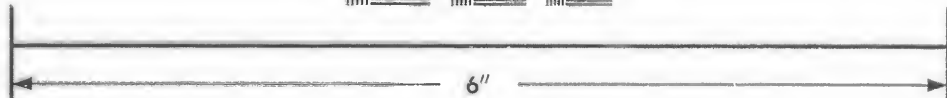
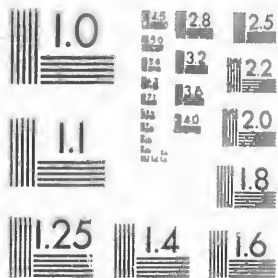


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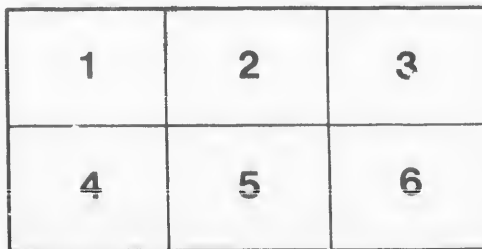
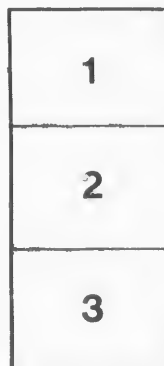
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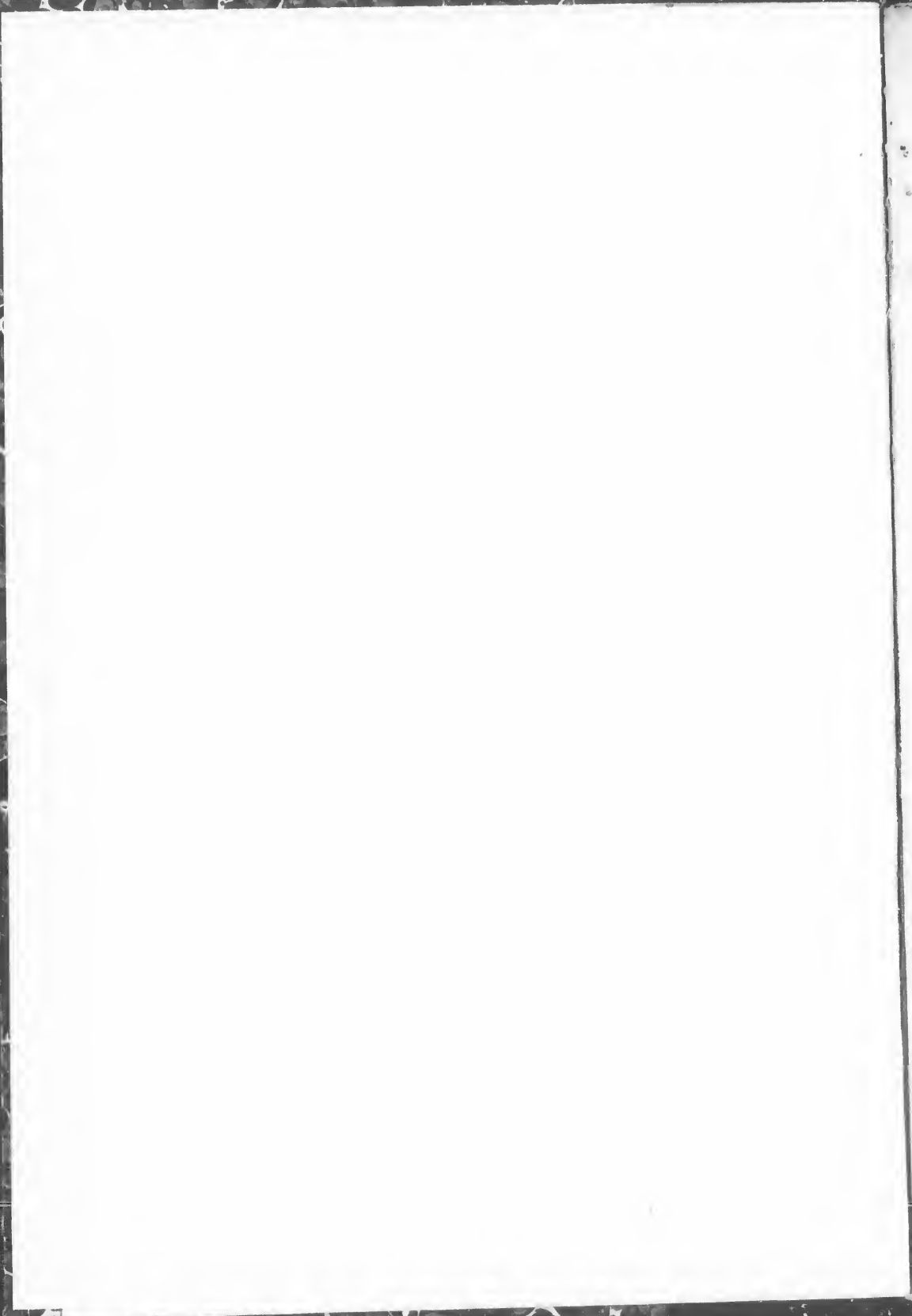
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THE TRIALS
OF
JAMES McDERMOTT,
AND
GRACE MARKS,

AT TORONTO, UPPER CANADA, NOVEMBER 3RD AND 4TH, 1843;

FOR THE

MURDER

OF

THOMAS KINNEAR, ESQUIRE,

AND HIS HOUSEKEEPER

NANCY MONTGOMERY,

AT RICHMOND HILL, TOWNSHIP OF VAUGHAN, HOME DISTRICT, UPPER CANADA,
ON SATURDAY, 29TH JULY, 1843:

WITH THEIR CONFESSIONS SINCE THEIR TRIALS,
AND THEIR PORTRAITS.

REPORTED EXPRESSLY BY MR. GEORGE WALTON.

TORONTO:

STAR AND TRANSCRIPT OFFICE, 160, KING-STREET, TORONTO.

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VOLUNTARY CONFESSION
OF
GRACE MARKS
TO
MR. GEORGE WALTON,
IN THE GAOL,
ON THE 17TH NOVEMBER, 1843.

MY name is GRACE MARKS, and I am the daughter of John Marks, who lives in the Township of Toronto, he is a Stone-mason by Trade; we came to this country from the North of Ireland about three years ago; I have four sisters and four brothers, one sister and one brother older than I am, I was 16 years old last July. I lived servant during the three years I have been in Canada at various places: Alderman Dixon's, Mr. McManus's, Mr. Coates's, and Mr. Haraghy. In June last I went to live with Thomas Watson, Shoemaker, on Lot-Street, Nancy Montgomery used to visit there, and I was hired as a servant by her for Mr. Kinnear, at \$3 per month, and I went there the beginning of July last, and saw at the house Mr. Kinnear, Nancy Montgomery, and McDermott,—McDermott had been, I understood, about a week at the house, everything went on very quietly for a fortnight, except the housekeeper several times scolding McDermott for not doing his work properly, and she gave him a fortnight's warning, that when his month was up he was to leave, and she would pay him his wages; he often after this told me he was glad he was going, as he did not wish any longer to live with a parcel of w——s, but would have satisfaction before he went, and he told me he was positive that Kinnear and the housekeeper, Nancy, slept together; I was determined to find it out, and I was afterwards convinced that they did do so, for her bed was never slept in except when Mr. Kinnear was absent, and then I slept with her. About a week after this, McDermott told me if I would keep it a secret he would tell me what he was going to do with Kinnear and Nancy; I promised I would keep the secret, and then he said Mr. Kinnear was going to the city in a day or two, and would, no doubt, bring plenty of money with him,—he would kill Nancy before Kinnear came home, would shoot Kinnear when he came home, and would take all the money and all the valuable things he could, and would go over to the United States. Mr. Kinnear left the city on Thursday afternoon, the 27th July, about 3 o'clock, on horseback. McDermott, after Mr. Kinnear was gone,

said to me it was a good job he was gone, he would kill Nancy that night ; I persuaded him not to do so *that* night ; he had made me promise to assist him, and I agreed to do so ; he said, the way he intended to kill Nancy was, to knock her on the head with the axe, and then strangle her ;—and shoot Kinnear with the double-barrelled gun.

I slept with Nancy Montgomery that night, and on Friday morning after breakfast, she told me to tell McDermott that his time was up that afternoon. she had the money to pay him his wages, I told him so, and he said, tell Nancy I shall go on Saturday morning ; which I did. He said damn her, is that what she is at, I'll kill her before the morning, and he said, Grace, you'll help me as you promised, won't you, I said yes, I would. During the evening James Walsh came in, and brought his flute with him, Nancy said, we might as well have some fun, as Mr. Kinnear was away. Nancy said to McDermott, you have often bragged about your dancing, come let us have a dance, he was very sulky all the evening, and said he would not dance. About ten o'clock we went to bed, I slept with Nancy that night ; before we went to bed McDermott said to me that he was determined to kill her that night, with the axe, when in bed. I entreated him not to do so that night, as he might hit me instead of her. He said, damn her ; I'll kill her, then, the first thing in the morning. I got up early on the Saturday morning, and when I went into the kitchen McDermott was cleaning the shoes, the fire was lighted, he asked me where was Nancy, I said she was dressing, and I said, are you going to kill her this morning. He said he would. I said, McDermott, for God's sake don't kill her in the room, you'll make the floor all bloody. Well, says he, I'll not do it there, but I'll knock her down with the axe the moment she comes out. I went into the garden to gather some shives, and when I returned, McDermott was cleaning the knives in the back kitchen, and Nancy came in, she told me to get the breakfast ready, and she soon after called me to go to the pump for some water. McDermott and her were at this time in the back kitchen. I went to the pump, and on turning round, I saw McDermott dragging Nancy along the yard leading from the back kitchen to the front kitchen ; this was about seven o'clock. I said to McDermott, I did not think you was going to do it that minute, he said it was better to get it done with, he said, Grace you promised to help me, come and open the trap-door and I'll throw her down the cellar. I refused to do so being frightened, he presently came to me and said he had thrown her down the cellar and he said he wanted a handkerchief, I asked him, what for, he said never mind, she is not dead yet, I gave him a piece of white cloth, and followed him to the trap-door, he went down the stairs, I saw the body lying at the foot of the stairs, he said you can't come down here, went down himself and shut the trap-door after him—he came up in a few minutes, I asked him if she was dead, he said yes, and he had put her behind the barrels ; he said to me, Grace, now I know you'll tell, and if

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you do, your life is not worth a straw. I said, I could not help you to kill a woman, but as I have promised you, I will assist you to kill Kinnear.

McDermott then had some breakfast; I could not eat any thing, I felt so shocked; he then said, now Mr. Kinnear will soon be home, and as there is no powder in the house, I'll go over to Harvey's, who lives opposite, and get some; he soon came back, he took one bullet from his pocket, and cut another from a piece of lead he found in the house. Mr. Kinnear came home about 11 o'clock in his one horse waggon. McDermott took charge of the horse and waggon as usual, and I took the parcels out. I asked Mr. Kinnear if he would have any thing to eat, he said he would, was there any fresh meat in the house, had Jefferson, the butcher, been there. I told him no; he said that was curious; he then said he would have some tea and toast and eggs, which I provided for him. Mr. Kinnear went into the dining-room, sat down on the sofa, and began reading a book he had brought with him; when I went into the kitchen, McDermott was there, he said, I think I'll go and kill him now. I said, good gracious McDermott, it is too soon, wait 'til it is dark; he said, he was afraid to delay it, as if the new man was to come, he would have no chance to kill him. When Mr. Kinnear first arrived home, he asked me, where is Nancy? I told him, she was gone to town in the stage; he said that was strange, he had passed the stage on the road and did not see her in it; he did not mention Nancy's name afterwards to me. After Mr. Kinnear had his dinner, he went to bed with his clothes on, I think, and towards evening he got up and went into the yard, and about the premises. When Mr. Kinnear was in bed, McDermott said, I'll go in now and kill him, if you'll assist me. I said, of course, McDermott, I will, as I have promised you. He then said, I'll wait till night. When Mr. Kinnear was in the yard, McDermott always kept near to me; I said to him, why McDermott if you follow me about so Mr. Kinnear will think something; he said, how can he imagine any thing except you'll tell him; I said, I should not tell him any thing. Mr. Kinnear had his tea about 7 o'clock. I went into his room to take the things away, and coming into the front kitchen with them, McDermott said, I am going to kill him now, how am I to get him out, you go and tell him I want him. I said, I wont go and call him; I then took the tea things into the back kitchen, (the back kitchen is in the yard adjoining the end of the house,) as I was putting the tea tray down, I heard the report of a gun. I ran into the kitchen and saw Mr. Kinnear lying dead on the floor, and McDermott standing over him; the double-barrelled gun was on the floor: when I saw this, I attempted to run out; he said, damn you, come back and open the trap door; I said, I won't, he said you shall; after having promised to assist me; knowing that I had promised, I then opened the trap-door, and McDermott threw the body down. I was so frightened that I ran out of the front door into the lawn, went round into the back kitchen, and as I was standing at the door, McDermott came out of the front kitchen door into the yard and fired at me;

the ball did not hit me, but lodged in the jam of the door; I fainted, and when I recovered, McDermott was close to me, I said, what made you do that; he said, he did not mean to do me any harm, he supposed there was nothing in the gun; this was about 8 o'clock; and the boy, James Walsh, came into the yard, McDermott had just then gone across the yard without his coat on, having the gun in his hand: he went into the poultry yard; he said if any one came and asked about the firing he would tell them he had been shooting birds; I went out to speak to Walsh, and McDermott seeing me talking to him, came up to us; the boy said, where is Nancy? I said, she is gone to Wright's on his horse; McDermott told him Mr. Kinnear was not home; the boy asked him what he had been doing with the gun; he said, shooting some birds, and after talking a short time, the boy said, he would go home, and McDermott went part of the way across the lawn with him: and McDermott told me, when he came back, if the boy had gone into the house, he would have made away with him. He then told me how he had killed Mr. Kinnear, that when I refused to call him out, and when I was taking the tea-things away to the back kitchen, he went to the door of the dining room and told Mr. Kinnear his new saddle was scratched and would he come and look at it in the harness-room. Mr. Kinnear rose from the sofa with a book in his hand, which he had been reading, and followed McDermott towards the harness-room, (the harness-room is a small room at one corner of the kitchen), McDermott got into the harness-room, took up the gun which he had loaded during the day, came out and fired at Mr. Kinnear as he was crossing the kitchen: he told me he put the muzzle of the gun very near his breast. We then commenced packing up all the valuable things we could find; we both went down into the cellar; Mr. Kinnear was lying on his back in the wine-cellar; I held the candle; McDermott took the keys and some money from his pockets; nothing was said about Nancy; I did not see her, but I knew she was in the cellar, and about 11 o'clock, McDermott harnessed the horse; we put the boxes in the wagon and then started off for Toronto; he said he would go to the States and he would marry me. I consented to go; we arrived at Toronto, at the City Hotel, about 5 o'clock; awoke the people; had breakfast there; I unlocked Nancy's box and put some of her things on, and we left by the boat at 8 o'clock, and arrived at Lewiston, about 3 o'clock; went to the tavern; in the evening we had supper at the public table, and I went to bed in one room and McDermott in another; before I went to bed, I told McDermott I would stop at Lewiston, and would not go any further; he said he would make me go with him, and about 5 o'clock in the morning, Mr. Kingsmill, the High Bailiff, came and arrested us, and brought us back to Toronto.

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*We certify that the above Confession was read over to Grace Marks
in the Gaol of the Home District, about Eight o'Clock, on the night of
Saturday the 18th of November, just previous to her removal to the Peniten-
tiary, and she acknowledged she had given it voluntary, and that it was true.*

(Signed)

JOHN KIDD, Gaoler,
JOHN THOS. TAYLOR.

TRIAL OF JAMES McDERMOTT.

At an early hour on Friday morning, the 3rd November, the Court House was occupied by an immense crowd, anxious to witness the proceedings in this case of extreme atrocity, and such as never before stained the records of the Justiciary Courts of this Colony.

Between 11 and 12 o'clock the Prisoners were brought into Court. James McDermott is a slim made man, apparently about one or two-and-twenty years of age, about the middle height, with rather a swarthy complexion, and a sullen, downcast, and forbidding countenance; he did not seem in the least degree dismayed during the whole proceedings. The female Prisoner is rather good-looking than otherwise, she appears totally uneducated, and her countenance is devoid of expression.

Upon being arraigned, they both pleaded "NOT GUILTY." The Counsel for the Prisoners, KENNETH MCKENZIE, Esq., made some remarks on the different Counts in the Indictment, and demanded that they should be tried separately, which was granted.

James McDermott was then put upon his Trial, and the following Jury empannelled:—

Robert H. Smith.
John J. Botsford,
Alexander McKinley,
Anson Baker,
William Simpson,
Joseph Miller,

Thomas Raper,
Jeremiah Graham,
Judah Lundy,
Jesse Doane,
Levi Parsons,
Judah Doane.

In the course of the reading of the Indictment, some alarm was created by a report that the floor of the Court Room was giving way. An immediate rush was made for the door. The alarm was soon, however, ascertained to be groundless; and, fortunately, no serious injury was sustained as might have been expected among so dense a crowd. During the whole of this confusion, McDermott was perfectly unmoved and collected.

MR. BLAKE, acting Queen's Counsel, opened the case, setting forth the evidence he had to produce. He first called *James Newton*—Witness was acquainted with the deceased; the last time he saw him alive was on Saturday, the 29th July last about 11 o'clock in the forenoon, within two mile of his own house, on his way from town; went to his house next morning; could see no one; thought deceased was in bed; walked round the house, and in the garden; went to the kitchen door; could see none of the servants; went round to the front door, and knocked; no one answered. He then went to Mr. Walsh's, about a quarter of a mile distant, and inquired if any of his family had seen the

deceased; he said no; witness returned to the premises and went into the stable, to see if his horse and waggon were there; there were neither of them there; he went to the front door of the house and passed through the front passage into the kitchen; saw some drops of blood on the floor near the passage; (here a plan was produced descriptive of the premises,) saw a trap door in the hall, which was carpeted; the sight of the blood caused witness to go into deceased's bed-room; the bed had not been slept in; saw a book on the bed—the book was shut; went into two or three other rooms. Witness went first to deceased's house on Sunday morning, in consequence of having arranged to meet deceased there the previous night; could he return in time from Thornhill, which was not the case; went over again to Walsh's; did not see him then, but met him on his return to his own house; expressed his surprise at not being able to find any one at Mr. Kinnear's; both returned to deceased's, and again searched the house and stable, but to no purpose; left Walsh to keep watch, while witness went to Silas Wright's to try to find Nancy Montgomery, the housekeeper, who was in the habit of visiting there; then went over to Mr. Boyd's, to inform him of the mysterious disappearance of Mr. Kinnear; returned in company with Mr. Boyd, and again renewed the search; descended through the trap door into the cellar, and there discovered the body of Mr. Kinnear; examined the body and found a wound in the left breast; had all his dress on except his boots; the trousers were those worn by the deceased when he saw him on the previous day. Several articles were here shown witness, who identified deceased's gold snuff-box, telescope, pocket-compass, tape-line, penknife, two pieces of coin, and several articles of clothing; has been intimately acquainted with deceased for several years, and knows that he usually kept his clothes on shelves, witness also identified a quantity of plate, silver spoons, forks, candlesticks, &c., bearing the Kinnear crest. When deceased was met by witness, he had no trunk in the waggon; knows the horse and waggon which was found in the prisoner's possession to have belonged to the deceased; also the dress the prisoner had on, but could not swear positively to any part of it except the shoes. I know the prisoner, James McDermott, as also Grace Marks, to have been servants of the late Mr. Kinnear, and I saw them at his house previous to his going to the city on Thursday.

Cross-examined—Has known deceased since 1837; was in the habit of frequently visiting him; was not present at the examination of the body of Nancy Montgomery; described the dress worn by deceased when he met him on the Saturday; deceased had two horses, one a colt; deceased was in the habit of visiting at witness's house; did not go up to deceased's house on the Saturday evening, on account of being at the Athletic Games at Thornhill, and not returning in time; was in the habit of visiting deceased on Sundays; did not see any blood when he first entered the kitchen; the gun was found in the pantry, behind the door; did not examine it; the distance between the deceased's and Mr. Walsh's house is about a quarter of a mile; deceased's house stands about twenty rods from Yonge-Street; did not miss any of the articles of furniture in the parlour when he first went in; some only of the drawers were locked; the keys were found in a bunch; looked into the library, and saw a small writing desk there, some books, two swords, and three pistols; saw the same pistols when the Coroner went into the

harness-room; often saw pistols in deceased's possession; told Walsh he thought the blood was poultry blood. Nancy Montgomery often visited Mr. Wright's; was delivered of a child there, deceased had told witness he thought she was with child when he hired her; the feet of the deceased were a few inches apart when found; saw some blood on the breast but none on the floor; deceased was not in good health, but not melancholy; told witness he thought he was dying, and for that reason did not marry; knew that Mr. Bingham had furnished some hay, and that deceased and he had disagreed; knows Pat Ward; he went away two months before the murder; he and Nancy were very intimate; she wanted him back; she quarrelled with every one to get Ward back; saw Ward about the house two Sundays before the murder; knew that Nancy got clothing from deceased, and sold it to the servants.

Francis Boyd, Esq.—Remembered Mr. Newton calling upon him on Sunday afternoon; went with him to Mr. Kinnear's: found the rooms all *upside down*; discovered some blood on the kitchen floor near the hall; examined very particularly the carpet on the trap door; did not discover any blood there; went down into the cellar with Mr. Newton, and there discovered the body of Mr. Kinnear in a dark part of the cellar; lying on the back, with the left hand over the forehead, the feet about nine inches apart, the eyes partly open; had no shoes on; had on a light coat; there was no appearance of having struggled; was present at the examination of the body by the surgeon; the ball had perforated the heart, and lodged in the back; there was very little blood on the clothes; was present at the examination of the prisoner; the impression on witness's mind was, that the deceased had been shot in the kitchen, and dragged by the shoulders down the stairs through the trap door in the hall to where he lay; was acquainted with deceased. A waistcoat was here shown the witness—deceased usually wore such.

Cross-examined—When witness first went over to Mr. Kinnear's, he went in at the front door, and passed into the kitchen; the blood appeared to witness to have spirted; did not observe any track of blood between the kitchen and the trap door; there was no kind of running from the nostrils, but there was some blood on deceased's shirt.

Re-examined—Has known the deceased about seven years; was not on visiting terms; was in the house on the Thursday before his death; was present when Nancy Montgomery was found in the cellar, outside the dairy, concealed beneath a tub.

David Bridgeford—Said he was one of the Coroners for the Home District, and was sent for by Mr. Boyd, on Sunday, to hold an Inquest on the body of Mr. Kinnear; has known him for some years, and has often been at his house; has no particular knowledge of his servants; has seen the woman called Nancy Montgomery at the deceased's house; she was his housekeeper; does not know the prisoner at the Bar. When he arrived at the house, he was told that the body of Mr. Kinnear was in the cellar; he went down and found the body of Mr. Kinnear in the wine cellar; there was no mark of powder on his clothes; saw the ball on the shoulder-blade, protruding out through the shoulder-blade; saw the body opened; the ball passed through the heart; saw a little blood on the cellar floor; considerable blood spattered on the wall, but none on the steps; the ball had opened the skin of the back, and the blood oozed through his clothes; he

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seemed to have died instantaneously. Witness examined the house, and took an inventory of the property. On the second day, found a shirt behind the door, which was bloody, marked "H. C."; found a book on the bed, that had been lain on. (The book was here presented by witness, covered with blood.) Found the body of Nancy Montgomery, the housekeeper, doubled up under a tub, in the cellar. Every thing in the house was turned upside down, and the house pilfered. The housekeeper's body was in a state of decomposition; Mr. Kinnear's body was not decomposed. The ball exactly fits the gun produced; the pistols were found in the harness-room—they were rusty and dusty, and had not been used; examined the gun, it had been used recently. When Nancy's body was opened, found that she was pregnant. The partition forming the dairy divided the two bodies, and they were about two feet apart. Mr. Kinnear had a tartan vest on. The mouth of the pistol is larger than that of the gun. The ball entered Mr. Kinnear's breast a little above the left pap, and passed through the body, as before mentioned.

John Wilkie—Saw Mr. Kinnear's wound, the blood on his breast, and a little blood on the floor. He has no doubt it was a ball wound. Saw the ball through the skin; saw a pair of legs sticking out from under a tub in the cellar; and, on the tub being removed, found the body of Nancy Montgomery concealed under it. The body was in a putrid state. The book was found in one of the bed-rooms, with blood on it. The house was topsy-turvy; plate and wearing apparel gone, and every thing in disorder.

Jonathan Jefferson, Butcher—Called at Mr. Kinnear's on Saturday morning, to leave meat, as usual. Mr. Kinnear or the housekeeper used always to give witness orders. On this occasion, Grace Marks came to him, at the kitchen door. She never used to give orders. She told him she did not want any meat for this week. Witness asked for Mr. Kinnear. She told him he was in town. Asked, also, for the housekeeper. Said she did not know where she was; but, no matter, they wanted no meat. They always took meat on Saturday, heretofore.

James Walsh—He lived with his father in a cottage on Mr. Kinnear's farm, and was in the habit of going to Mr. Kinnear's house; he used to go of errands for him; was at Mr. Kinnear's on Friday, from three o'clock, till half-past ten at night, playing his fife, at the request of the housekeeper. Mr. Kinnear, he understood, was gone to the city. Nancy and he wanted the prisoner and Grace Marks to dance; heard some noise, and the prisoner went out to see what it was; this was at about half-past eight o'clock; prisoner said he was unwell, and would not fun as usual; at about half-past ten, Nancy took a candle to go to bed; prisoner signed to witness to go out with him, and walked nearly home with witness, and seemed anxious for him to go home; witness went back to Mr. Kinnear's on Saturday evening at eight o'clock, went in by the gate leading into the yard, saw McDermott running across the yard to the poultry-house, with something white in his hand, it looked like a cloth or rag, but is not sure; he came back to the well where witness had just come, he asked him if Mr. Kinnear had come home, he said not; saw prisoner had a gun in his hand, double-barrelled, it is the same produced; prisoner said Nancy gave it him, and that he got the powder from Harvey's woman; witness asked about the noise of a chain rattling in the stable, with which Mr. Kinnear's horse was

usually tied, prisoner said it was the colt not pleased at the horse being away; witness knew that the colt was never tied with the chain, and thought it strange; prisoner said he had just fired at some birds, but only blinded them; he put his finger into one of the barrels and took it out dirty; witness took the gun in his hand, he snapped it, and the cap fell into his hands: prisoner said witness had broke the gun, he thought so, but found that it was not so; this was Mr. Kinnear's gun, and he had never seen prisoner with it before; witness asked the prisoner if he was going to leave Mr. Kinnear, he replied yes, if they paid him, but he was to late to go by the coach; the gun produced is the same as prisoner had; saw prisoner when undergoing examination before the magistrates, he had Mr. Kinnear's shoes on, and the hat he wore belonged to Nancy Montgomery; witness identified several articles produced, and found with the prisoner as the property of Mr. Kinnear.

This witness was cross-examined at great length, but nothing was elicited to shake his general testimony.

Hannah Upton—Lives with Harvey, opposite Mr. Kinnear's—prisoner came to borrow powder, at ten o'clock on Saturday morning, the 29th July; he asked for John, said that Mr. Kinnear sent him over to know if he could let him have a little powder to kill some birds—he took about two pipes full of powder with him; witness told him he must see John before he could get it, but he insisted on it, and took it himself.

Anthony McIntyre—Is hostler at the City Hotel, Toronto—a man and woman came in a light waggon before six o'clock on Sunday morning; thinks prisoner was the man; witness took out and fed the horse; they got breakfast and left for the Steamboat before eight o'clock; they had a large chest in the waggon; cannot say as to a leather trunk; thinks it was the prisoner; he had a hat like that produced, and a light dress on going away.

George Kingsmill, High Bailiff of the City of Toronto, said that on the arrival of the express with tidings of the murder he proceeded to Niagara, from thence to Lewiston, arrived there about 5 o'clock on Monday morning, was shown where a man and woman answering the description he gave lodged; discovered Grace dressing, and the prisoner asleep in an adjoining room, searched the pockets of a coat lying in a chair by the bedside, and found the keys, snuff-box, and other articles produced in court; gave Grace in charge to one of the crew of the steamer, and then awoke McDermott, telling him if he had paid the duty on the horse and waggon, he could have proceeded and saved himself this difficulty, the prisoner replied that he had not the money to do so, but he would sell the horse, pay, and proceed. The High Bailiff was in plain clothes—just at this moment the party who had Grace in charge, called from the foot of the stairs for some directions; the moment the prisoner heard Kingsmill's name mentioned, although not a word had been said about the suspicion of murder being attached to him, immediately became very much agitated and said *I know all about it, is there any reward offered for Nancy? if you find her you will know the whole secret, you may thank her for it all.* The prisoner said all the property then in his possession, horse, waggon, portmanteau full of clothes, carpet bag, with the plate, gold snuff box, and other articles

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identified fully as belonging to Mr. Kinnear, were his; saw the prisoner in the gaol, when he asked witness for some of the shirts that were in the portmanteau, he said there were two in it, marked "H. C." that he had purchased *three* with that mark.

Alderman Dixon testified that he sealed the portmanteau and carpet bag brought with the prisoner from Leewiston, after his exmination in the City Hall, and found the same seals on them when brought now into court, saw the prisoner stripped and found a shirt on him marked "*Thomas Kinnear*."

Mr. Alderman Gurnett—Put in the prisoner's statement, which was in substance that he knew nothing of Mr. Kinnear's death, and that as Mr. Kinnear owed him, he had taken away the things to pay himself.

All these witnesses underwent a searching and scorching cross-examination, but nothing was elicited that in the least would cause a suspicion of the truth of their direct testimony.

KENNETH MCKENZIE Esq., Kingston, the prisoner's counsel, addressed the jury in a powerful and eloquent speech and although he evidently had no foundation to ground the slightest defence, he made the most of the lack of the only circumstance to prove his guilt without a shadow of doubt, the proof by eye witness of the actual commission of the murder.

MR. BLAKE won'd not unnecessarily occupy the time of the jury—trusted he had proved all he had proposed at the opening of the case, and left it in their hands, with the hope that they would be guided by strict and impartial justice in the verdict they should pronounce.

This fearful and dreadful trial, having now definitely closed, his Lordship the Chief Justice, then addressed the Jury—pointed out to them, in the most clear and distinct manner, the different facts of the case—drew their attention back to the evidence given, that bore directly on it; and then, to impress it more fully on their minds, read the whole very voluminous evidence, that they might retire with the fullest impressions of the facts they were to decide upon. The Jury being absent about ten minutes, returned with a verdict of **GUILTY!**

His Lordship addressed the prisoner, pointed out the heinousness of the crime he had been found guilty of by an impartial jury, after a patient and deliberate hearing, and pronounced the awful sentence of death, to take effect on the 21st Instant.

It was now half-past one o'clock on Saturday morning, and during this long and exciting day the prisoner, although standing in the dock the whole time, never evinced the slightest emotion, either of fear or anxiety, hope or despair, so much apathy we could not have believed it possible for a human being to display.

THE TRIAL OF GRACE MARKS.

THE Trial of Grace Marks, for the murder of Mr. Kinnear, took place the following day. The evidence was substantially the same as in the former case. *James Newton* bore testimony to the prisoner's good behaviour, and that he never heard Mr. Kinnear complain of her. The defence set up was that *McDermott* threatened to take her life, if she disclosed any thing of what had taken place; that she was in terror of her own life; that *McDermott* had actually fired at her, but missed, and the ball lodged in the jam of the back kitchen door. *Mr. Boyd* swore to the ball having been found there, and that it had the appearance of having been recently lodged in the wood. This examination was made, in consequence of the fact having been stated by the prisoner in her examination. *Mr. Bridgeford* also heard Grace Marks say that *McDermott* had fired at her. Both barrels of the gun had been fired; the ball was found in the door. *John Wilkie* understood the prisoner to be a decent respectable girl. He took the ball out of the door; thinks it must have been fired about four paces off. *James Walsh* identified some clothing which the prisoner wore, as having belonged to Nancy Montgomery. He stated, in addition to his former testimony, that when he saw the gun in *McDermott's* hand, on the Saturday evening alluded, Grace Marks said Mr. K. had not come home, and that Nancy was over at *Wright's*. He asked her how she had gone; she said, if he wanted to know so badly, that a man came, and they took the horse and rode over together. Witness was struck by this contradiction—as how could they take *Mr. Kinnear's* horse, when he had not come home. She was better dressed than usual, and seemed in good spirits. After speaking to him she walked over and joined *McDermott*. Witness did not go into the house, but went home and left them together.

Some other witnesses were examined, and the Jury having been addressed by *Mr. Blake*, for the Crown, and by *Mr. Mackenzie*, for the prisoner, the Chief Justice summed up the evidence. The Jury having retired, soon returned with a verdict of GUILTY, but recommended the unhappy prisoner to mercy. Sentence of death was pronounced against the prisoner Grace Marks, to be executed at the same time as *McDermott*. The prisoner, on hearing her sentence fainted, but soon recovered. The Chief Justice held out no hope for her pardon, but would forward, to the proper authorities the recommendation of mercy by the jury.

It will be observed that the indictments were for the murder of *Mr. Kinnear* only; those for the murder of *Nancy Montgomery*, the housekeeper, not having been gone on with—they of course, being now unnecessary.

VOLUNTARY CONFESSIO N OF JAMES McDERMOTT,
TO MR. GEORGE WALTON,
IN THE GAOL OF THE HOME DISTRICT,

AT FOUR O'CLOCK ON MONDAY, THE TWENTIETH OF NOVEMBER, 1843.

I am twenty years and four months old, and was born in Ireland, and am a Catholic. I have been six years in Canada, and was, previous to 1840, waiter on board the steamers plying between Quebec and Montreal. I enlisted into the 1st Provincial Regiment of the Province of Lower Canada, in the year 1840. Colonel Dyer was the Colonel; the Regiment was disbanded in 1842; and I then enlisted as a private in the Glengarry Light Infantry Company, and we were stationed at Coteau de Lac; the Company consisted of seventy-five men. I did not serve as a private in the Regiment, but was servant with the Captain Alexander Macdonald; the Company was disbanded 1st May this year. I had been in the Company just twelve months; after being discharged, I came up to Toronto seeking employ; I lived in the City for some time at various places, upon the money I had saved during the time I was in the Regiment, and I then determined to go into the country; I thought I would go in the direction of Newmarket; I set out about the latter end of June, and on my way I was informed Mr. Kinnear wanted a servant; I went to the house and saw the housekeeper, Nancy Montgomery; she hired me subject to the approval of Mr. Kinnear, when he should return home; Mr. Kinnear, when he came home, approved of what the housekeeper had done as to hiring me. Grace Marks was hired as a servant a week afterwards.

She and the Housekeeper used often to quarrel, and she told me she was determined if I would assist her, she would poison both the Housekeeper and Mr. Kinnear by mixing poison with the porridge, I told her I would not consent to any thing of the kind. The Housekeeper Nancy, after I had been at the house a short time was overbearing towards me, and I told Mr. Kinnear I was ready and willing to do any work, and did not like that Nancy should scold me so often, he said she was the mistress of the house. I then told him I would not stop with them longer than the month. Grace Marks told me a few days before Mr. Kinnear went to town, that the Housekeeper had given her warning to leave and she told me, now McDermott, I am not going to leave in this way; let us poison Mr. Kinnear and Nancy, I know how to do it; I'll put some poison in the porridge, by that means we can get rid of them; we can then plunder the house, pack the silver plate and other valuables in some boxes, and go over to the States. I said no Grace, I will not do so. When Mr. Kinnear went to the city on Thursday, she commenced packing up some of the things, and told me I was a coward for not assisting her; she said she had been warned to leave, and she supposed she should not get her wages, and she was determined to pay herself after Mr. Kinnear was gone to the city; she said now

was the time to kill the housekeeper, and Mr. Kinnear when he returns home, and I'll assist you, and you are a coward if you don't do it. I frequently refused to do as she wished, and she said I should never have an hour's luck if I did not do as she wished me. I will not say how Mr. Kinnear and Nancy Montgomery were killed, but I should not have done it, if I had not been urged to do so by Grace Marks. After Nancy Montgomery was put in the cellar, Grace several times went down there, and she afterwards told me she had taken her purse from her pocket, and she asked me if she should take her ear-rings off; I persuaded her not to do so. The gold snuff-box, and other things belonging to Mr. Kinnear she gave me when we were at Lewiston. Grace Marks is wrong in stating she had no hand in the murder; she was the means from beginning to end.

TUESDAY, 21st November, 1843.

At an early hour this morning, an immense number of persons assembled around the Gaol, in the City of Toronto, to witness the execution of *James McDermott*: it being expected that the execution would take place at eight o'clock, but the Sheriff had arranged it should not take place until twelve o'clock. At ten o'clock in the morning, the prisoner said his confession of yesterday was true, and he wished further to state, that when the housekeeper was thrown down the cellar, after being knocked down, *Grace Marks* followed him into the cellar, and brought a piece of white cloth with her; he held the housekeeper's hands, she being then insensible, and *Grace Marks* tied the cloth tight round her neck and strangled her: he had nothing more to say. A few minutes before twelve o'clock, he was brought out into the hall of the Gaol, being pinioned. Mr. Hay, the Catholic clergyman, prayed with him for a few moments; he appeared perfectly calm and penitent. The Sheriff asked him if he wished to say any thing, he replied, he had nothing further to say, and with a firm step walked on to the scaffold, accompanied by Mr. Hay, and another Catholic clergyman: he knelt down, and in two minutes was launched into eternity. The assemblage of people was immense; the utmost order and decorum prevailed, and at one o'clock the body was cut down and taken into the Gaol. It is understood a cast of the head is to be taken, and the body dissected.

The Hon. Kinnear & G. Marks. Montgomery.

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