

The Cake-Walk Homicide.

[Reported for the Baltimore Sun.]

The third day of the trial was completed in the Criminal Court yesterday of ex-policeman Patrick McDonald, for the murder, on the 31st of last July, of Daniel Brown, colored, briefly distinguished as the "cake-walk murder." The court-room was crowded as on the previous days. McDonald looked nowise different from the first day, wearing a face of deep, unbroken gravity all the time.

TESTIMONY OF A MEDICAL MAN.

The State continued its evidence, calling Dr. Charles F. Bevan, professor of anatomy in the College of Physicians and Surgeons, who testified as to the post-mortem examination.

A WITNESS WHO LEFT EARLY.

Joseph Boston, colored, testified that he saw the officer take Brown by the breast and rush him back into the room, striking him with his espantoon. Witness then left.

The witness was cross-examined by Mr. Heisler, and said he was not a witness at the inquest. There were at Brown's that night Brown and wife and Gresham and wife, five or six young girls, three men, besides himself and others. Witness went into the back room, where were Brown and wife and Gresham. The men were all in the front room. For about twenty minutes after witness went in it remained quiet. They then began to play "Building the London Bridge." This play consisted of a couple walking up and down the floor and singing verses. Six persons were engaged in this play, and they sang two at a time.

OBJECTION TO EVIDENCE.

At this point Mr. Knott said he must interpose an objection to this sort of evidence. It was no answer to the indictment to show that it was a noisy party. If an officer can arrest without warrant, entering a house, no citizen is secure against a malevolent complaint to an officer. Mr. Heisler argued for its admission.

ARRESTS WITHOUT WARRANT.

Judge Gilmor admitted the evidence, and said the question made by the objection involves the definition of the authority of the police officer in a case like this, but it also involves the inquiry whether the conduct of the officer was actuated by malice, and whether there was such a deliberate departure from the limits of his rightful authority as indicated a purpose to trample on the rights of another, or whether the officer though acting in excess of his authority, was nevertheless conscientious and honest in his conception of the duty he had to perform in the case. Dependently upon the view taken by the jury as to this essential fact of malice or wanton violation of duty, the crime of the prisoner might mount up to a higher grade than that which they might incline to find on a different idea. The court would pause, therefore, before excluding this testimony from the jury, and it is due to the prisoner that it should be left to the jury to say whether the homicide was perpetrated with malice or not. But, said Judge Gilmor, I am called upon by the question before the court to express the opinion upon the degree of authority possessed by the officer, and when that question is considered as a legal proposition that there is no visitatorial power which authorizes a police officer to enter the house or tenement of a party in which inmates who are guests there are noisy and disorderly, and where there is no crime being committed or threatened, and enter a house by force to suppress the disorder, the officer may upon view put an end to an affray or the like breach of peace, but he may not force his way into a house of a citizen and invoke the badge of his office for so doing. The cases where he can enter and make arrests are known as extraordinary—cases of imminent danger to life, or immediate probability of one of the high felonies. There are cases of great emergency to arrest which, when they are in course of happening, the officer may make sudden descent upon the offender and justify entrance without warrant.

But these are exceptions; the rule is otherwise, and the complaint must first be made, and competent authority in the form of legal warrant obtained, by whose sanction alone is he enabled to proceed.

THE ADMITTED EVIDENCE.

The witness resumed, and on cross-examination said the play was going on in the parlor, but no couple was on the floor singing when the officer rapped about one o'clock. Brown, Gresham and wife and witness were in the back room. Mrs. Gresham went to the door and was there about two minutes. She then called her husband. They conversed about two minutes; heard nothing of it except the inquiry by the officer if he was the proprietor, Gresham held hold of the knob of the door, which was opened; the policeman said, "I can hear you clear to Lehmann's Hall?" Gresham said, "You can. I don't doubt it." In the meantime Brown stepped to the door, but what they said witness don't know, they talked so long, witness got up and went to the door; heard the policeman say, "If you say much more I'll snatch you out of the door." Brown made reply, "No you won't." The policeman then snatched at Brown, who ran all the way back into the front room; the police ran close to him; Brown pushed him away, the police pulled out his espantoon immediately, striking Brown over the head. Brown staggered back into the back room, falling up against the cupboard door; the policeman stepped aside into the front room, then drawing his revolver; then Gresham put his hand upon him, saying, "That's all right, boss; don't shoot him." Witness did not hear the police make any reply, but the police ran back into the back room, the pistol in his hand; witness heard Mrs. Brown say "Oh, don't shoot him, it's my husband;" the police said "Yes, I will shoot him, the blacks—of a b—h;" witness heard the report from the pistol and saw the flash of the fire; witness was then standing on the outside step and then went round to the back door, the policeman saying, "Clear out."

Richard Coates, Mary D. Shields, Mary Moore and William Johnson, all colored, gave similar testimony. Mr. Martenet testified to the correctness of a map of the premises No. 41 Tyson street, where Brown lived, and the vicinity, and court then adjourned. Judge Gilmor was inclined to hold a night session, but was induced to reconsider his purpose. It is probable the case will occupy the entire week. It is remarked how clearly the colored witnesses testify, and how hard it is to shake or confuse them.