

PRESTON CASE

Cross-examination of Prisoner by the Solicitor General

EVIDENCE OF DOCTORS TAKEN

Defence Seeking to Show That Drs. Roberts and Scammell Did Not Operate Soon Enough—Mr. Skinner to Address Jury.

Solicitor-General Jones finished for the prosecution in this Preston manslaughter trial Friday.

The taking of evidence (much of which has already been heard) occupied most of the time.

Howard Camp was recalled in the afternoon, but was in the witness box scarcely ten minutes. He again swore that he had paid \$25 to Dr. Preston, and as new testimony said he had not received any of the money back from the physician.

Dr. Roberts was under examination during nearly the whole of the forenoon session, but nothing of especial importance was adduced.

The nurses, Miss Muir and Miss Maxwell, were again examined, also Burpee Brown and Dr. Scammell.

The counsel for the defence, Hon. C. N. Skinner, in examining the latter, drew from him many answers having a bearing particularly upon the scene of surgery.

The chief justice, while explaining that he did not wish to be regarded as dictatorial, reminded Mr. Skinner that he was wandering from the point.

"What you want to look at," observed his honor, "is Camp's evidence."

Just before adjournment at noon, the question of receiving as dying declarations the statements made by the late Miss Clark, occupied the attention of the court.

The chief justice was hardly inclined to consider the evidence as declarations made under the impression that death was near.

The defendant was just the same—pleaded and attentive.

The court room couldn't have well accommodated a larger assembly.

The testimony.

Burpee Brown, the first witness examined at the morning session, practically repeated what he had sworn to at the preliminary examination. This was also true of much of the evidence given by Dr. Roberts, the next witness. He told in detail of his visits to deceased and his means of treating her.

What the auditors had been looking forward to since the commencement of the trial, the question of admissibility of the dying declaration, was taken up.

"In a word," said Judge Tuck to the witness, "what was said to induce Edith Clark to make what is known as a declaration?"

"There was no inducement, sir."

Subsequently Dr. Roberts explained that on Monday morning following the operation he and Dr. Scammell had stated to the patient that in the event of her death they would wish to protect themselves.

"Yes, that's what I wanted," said the chief justice.

The witness further pointed out that, in his opinion, death would surely have resulted if the operation had not been performed.

Here he was stood aside, and the solicitor-general requested that the declaration be admitted as evidence.

"There is not sufficient evidence," said Mr. Skinner, "to make it, within the law, a dying declaration."

Judge Tuck remarked that he believed what had been submitted could hardly be looked upon as a dying declaration. The girl had been under pressure. No one at the time the statement was made believed it to be a dying declaration. "The doctors," he continued, "in asking for her statement were acting quite within their rights."

His honor further expressed the belief that it was not an uncommon thing for a sick person to become despondent and make melancholy predictions.

Afternoon Session.

At the commencement of the afternoon session, Mr. Jones said that during recess he had not had an opportunity of consulting authorities to meet points raised during the morning.

In the meantime Miss Edith Maxwell, Victorian nurse, was called. She told briefly of the circumstances under which she went to assist at the operation on Miss Clark.

"What would you say as to the condition of the patient on Sunday," asked the solicitor-general.

"She was very weak. She seemed limp," Judge Tuck ruled that the witness could tell all that she could recall up to the time of the alleged declaration.

"You are not frightened, child," observed the judge. "Why go on, go on."

The witness told of hearing Dr. Roberts ask the patient how she came to have received certain medicine. The physician was informed by the deceased that it had been brought to her by her friend, Howard Camp.

"Would you say the operation was successful?"

"Yes, sir."

"Had you any further conversation with the patient during her illness, in which her condition was spoken of?"

"No, sir."

To R. L. Gerow, the witness described her services at the Clark home preparatory to the operation.

"In your opinion," asked Judge Tuck, "do you think the girl died because of the operation or because of something that had happened before?"

"Because of something that had happened before."

"Do you know if a minister was called in on the 28th?"

"I do not know."

Dr. J. H. Scammell was called, but was not present.

Dr. Joseph Henry Scammell is his name," said the chief justice. "I know it is. I have lived in this country for a long time."

Judge and Jury.

His honor, in the interval, addressed the jury, respecting their presence on Saturday afternoon. He said it was no

wish of his to deprive the members of a half holiday, but he was desirous of bringing the trial to a close by the end of the week, if possible. "Will you do that for me?"

There was a general nodding of heads.

Mr. Scammell by this time had arrived, and was answering the usual preliminary question, when his honor suddenly interrupted a query:

"Married?"

"Yes, sir."

"That's right."

The witness told of administering an anesthetic, and of assisting in other ways.

Count Pays Compliment to Mr. Jones.

"Before the operation had you any conversation with her relating to her physical condition?"

"Yes, sir."

Mr. Skinner objected.

"Of course, of course," observed his honor, "but let me say that no man ever conducted a criminal examination with more propriety than the solicitor-general."

The witness here repeated evidence in connection with what Miss Clark had told him about the attempt to procure an abortion.

"I then wrote out what she told me," he continued, "and the statement was signed by her."

"Did she on Sunday refuse to make that statement," inquired the judge.

"Not at all."

The witness repeated evidence respecting the statement made by the patient on Monday, when she mentioned the name of the physician who had previously been treating her. The witness, and Dr. Roberts, pointed out to her that in the event of her death, they would be charged with her death, they would be charged with her death, they would be charged with her death.

"I did not know her mind at the time, but I think when she made the statement it was under the impression that we wished to protect or clear ourselves."

"Do you know what a dying declaration is," asked Mr. Jones.

"My idea is that when a person makes a dying declaration she thinks she is going to die."

"I believe the doctor knows as much law as the solicitor-general or myself," said Judge Tuck.

"What was the statement," asked the witness, "I did not have in mind, whatever, the thought of a dying declaration."

"Your opinion too," remarked the chief justice.

"Have you anything to say about the autopsy that has not already been reported," asked the solicitor-general.

"Nothing to say whatever. The report was very complete."

The examination was here temporarily suspended, the solicitor-general desiring a brief consultation.

"Pardon me, your honor," he said, "and pardon me too," said the chief justice.

The lapse of proceedings lasted for about five minutes.

"Would you say the operation was successful?"

"So far as I was able to judge, at the time, it was quite successful."

Mr. Skinner began his cross-examination.

The judge put a query and in answer the witness said: "Everything was done that was possible to be done to make the patient comfortable, in view of the patient's condition."

The witness, in replying to Mr. Skinner, used the word "anesthetic."

"What's that," asked the chief justice.

"Anesthetic."

"The reason I ask you is because I never heard the word before."

Before your point pointed out that, in his opinion, death would surely have resulted if the operation had not been performed.

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