

March 26th, and that he slept in a barn in London west on Tuesday night, got two cups of tea at the house of the owner about 9 on Wednesday morning, having his own bread; that he met Murray for the first time in the public library and that they were drinking in different hotels. When arrested on Wednesday afternoon he had \$3.86 on his person. His story about his breakfast was corroborated and he was seen about 9 o'clock on his way to the city alone. The two prisoners were seen together several times during the day at hotels, a barber shop, etc. At one of the hotels Fairbairn put his hand into Murray's pocket and took out \$115 in bills which were taken from him and delivered to the landlady for safekeeping. When arrested late in the afternoon Murray had \$17 additional in bills and \$22.42 in silver and coppers. When on his way to the police station he said several times that he had \$18 when he came to London, but he was in a drunken condition when he said it. The denominations of the bills and the silver corresponded generally with that taken from the cash-box, but none of it was identified except two silver coins—one a ten cent piece worn smooth with a very small hole near the edge, and an English threepenny piece, both of which had lain in the mill cash-box for some weeks. Murray did not go into the witness-box nor produce any evidence as to where he had come from or where he had got these two coins or any of the money, and there was no evidence of his having even been in London until the day after the robbery. In my opinion he has made out no case for a new trial and I think his appeal ought to be dismissed.

As to Fairbairn there is no evidence that the \$3.86 found on his formed part of the money stolen, nor is there any evidence that he had ever seen Murray until the forenoon of the day after the burglary. It is difficult to accept his story as to his doings on the day in question, as a considerable part of it is inconsistent with the evidence of the other witnesses, but that may be due in part to the drunken condition in which he then was. He appears to have suffered a prejudice from his familiarity with Murray during the day after the burglary. No special reasons have been given for the granting of the leave to appeal, but it is probably on account of the weakness of the evidence against Fairbairn. On the whole I am of opinion that a new trial should be granted to Fairbairn alone.