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Following the Trail

Of the Fugitive Charged With Toohey's Murder.

Detective Thomas Nickle Gives His Testimony.

Many Irrelevant Questions Ruled Out by the Judge.

Chief Williams and the Detective Agree That Toohey's Pistol Had Not Been Fired.

Peg-Leg Tracks Discovered Near the Scene of the Tragedy.

The Fugitive Pursued by Constables—Three Shots Fired.

Hatless Tramp Seen at Hyde Park and Caradoc After the Murder—Furnished With Food and Head Gear by Persons Who Recognize Him as the Prisoner—A Warwick Man Saw Him Change a Big Revolver From Hip to Coat Pocket—Prosecution's Case Nearly Closed.

Monday Afternoon.

When the court resumed at 2:25 Detective Nickle again took the stand and Mr. McPhillips continued his cross-examination. Witness was questioned about the black hat found on the night of June 24. Witness said he identified it by a hole which he and the chief of police had punched in it. Counsel asked witness if he knew Zella Harkins, Nellie Burnham and Eva Love, and whether or not he knew that there had been within the last few days any colored people in custody. Counsel said he had been given to understand that certain witnesses came from Texas and had been taken into custody by the police.

Mr. Lount objected and submitted that the statement was very unfair. Such a suggestion should not have been made without the best foundation, and in this instance there was no foundation.

The judge expressed the opinion that the statement was unfair and improper without foundation.

A series of questions was put to Detective Nickle as to whether or not he had seen any colored people around the city, or a man about 28 and a woman of 30 being around the courthouse on Monday morning. Witness said he knew nothing of any colored people having been arrested within the last few days, and he had never heard about any witness for Brown having left Texas and arrived in the city. Witness when questioned as to how, when and where he first saw the prisoner said he accompanied Marshal Dilley from North Yakima to Victoria, B. C., where he arrested the prisoner on the charge of murdering P. C. Toohey. This led to some questions by prisoner's counsel as to the charge upon which his client had been arrested in North Yakima. Witness did not know whether or not the prisoner was arrested by Marshall Dilley on the charge of murder, but had heard from some source that Brown had been arrested for selling liquor to Indians.

The judge asked the object of these questions, and Mr. McPhillips referred to the original objection he had made in the pleading about the prisoner having been improperly brought before the court.

His lordship said he had nothing to do with that and would hear nothing of the kind. He was trying the prisoner upon the indictment found against him and nothing else. If the prisoner had been smuggled over into this court, his lordship had nothing to do with it.

Witness, continuing, said he did not tell Brown he was wanted for murder until they arrived in British Columbia. Witness was then taken back to the scene of the shooting. He was positive all the buttons were on the late constable's tunic when he went on duty. The coat minus the second button was the same now as when the body was found. He was positive the revolver Toohey carried had not been used nor the trigger moved, because the hammer was in the same place now as it was when found. If the trigger had been pressed, it would have been at once evident that some effort had been used, because the hammer would have been back and the barrel revolved, to bring the hammer in front of the cartridge. Accounting for the revolver being under the policeman's body, witness said it was customary for the policemen to carry their revolver pouch unbuttoned. If Toohey had been carrying his pouch unbuttoned, the weapon would have fallen out when he fell.

CHIEF WILLIAMS

deposed that he got to the scene of the murder after the body of the policeman had been moved. He spoke with certainty regarding the black hat produced as being the one found at the scene of the murder; he knew it by a private mark he had made. The pistol found that P. C. Toohey carried had not been fired, nor the trigger pressed.

Mr. McPhillips asked the chief if he were on the scene that night and then allowed the prisoner to get 3,000 or 4,000 miles away before being arrested. Mr. McPhillips started to say something about the chief sitting in the office and doing nothing, but the judge told him he must refrain from such statements. Some correspondence which passed between the chief and Constable Smith, of Taylor, Texas, and Sheriff Gamble, of Williamson county, was read. Sheriff Gamble, in a letter to the chief, identified the hat found at the scene of the murder as Brown's hat. The chief explained that Sheriff Gamble was afterwards shot while in a hotel. A letter from Constable Smith, said the sheriff had ben shot while playing dominos in a saloon, and that there was no clue to the murderer. Chief Williams had never heard of Gamble having shot at Brown at McGregor. The date of the descriptive circular and the approximate number sent out were given. He knew nothing of any colored strangers having been in the city.

DR. SEABORN.

On the night of June 24, Dr. Seaborn left his house on Dundas street at 10 minutes to 10. When he arrived at the scene of the shooting, the body had not been moved. It was lying face down, as though it had fallen first on the knees and then headforemost. The shot was fired in close proximity, as the powder had scorched the tunic. It entered at the top of the ninth rib and passed through the body, downward, and a little backward to the right side. The course was just below the apex of the heart. Death was due to a bullet wound. From the position of the wound he would say it was fired in front and a little to the east. From the locality of the bullet wound he would say both men were standing.

Cross-examined—Witness said the men might have been five or six feet apart when the shots were fired. He did not know that when a man was shot he necessarily fell face downward. It would depend on circumstances. He had examined the prisoner recently, and on the lower portion of the back he had found a scar which looked very like a recent bullet wound, one from six months to two years old. He would not say the wound was a serious one—it was simple, and one that did not necessarily require the attention of a medical man.

To Mr. Lount, witness said the course a bullet took through the body was no indication of the direction from which the shot came. The doctor could not positively say that the scar on the prisoner was a bullet wound. If it were made by a bullet while a man was running, it might make him stop, but it could hardly make him run faster.

Dr. McLaren corroborated the evidence of Dr. Seaborn, and the defense asked no questions.

Dr. J. R. Flock, coroner, swore to the notes taken at the inquest. He produced the bullet taken from the body of the dead policeman. The ball retained its shape almost intact.

W. A. BROCK,

gunsmith, gave some expert evidence regarding bullets. The one taken from the body of P. C. Toohey was of 44-caliber. The ball which struck the watch was of the same caliber. He knew this because the apex of the bullet retained its shape, and measurements proved it to be the same as the other bullet.

The cross-examination revealed nothing.

P. C. CAMPBELL FOUND TRACKS.

George Campbell, ex-policeman, sworn, told of being at the scene of the shooting. He was one of those who went to search the northeastern portion of the city. He struck the C. P. R. track at Quebec street, and continued east, a little east of Quebec street, and came across the tracks of the peg-leg and a big foot. The peg marks were on the left side, and they continued along the switch to the long grass, where the trail was lost sight of. After that he went home, as it was useless to follow on aimlessly in the darkness without a weapon.

Cross-examined, witness was asked why, as a guardian of the law he did not summon the whole force, and follow on the track, but he explained that at the time the whole force was looking for the peg-leg, because it was the general impression that the man who had assaulted Ross shot Toohey.

MR. FRED HENRY.

Mr. Fred Henry, architect, was recalled. He had made some measurements regarding the distances along Ontario street to the place of the tragedy. Presuming that a man took two steps per second, covering an average distance of 2 feet 6 inches each time, it would take about four minutes to go from Dufferin avenue to Elias street.

Cross-examination did not alter witness' statements.

CONSTABLES CALLED.

Acting Detective Robert Egelton and P. C. Harry Greene were both called to prove dates and time of having visited the various witnesses in the neighborhood of Strathroy.

WM. PRINCE,

sectionman on the G. T. R. at Hyde Park, saw P. C. Greene early on June 25, and the policeman had told him about the murder. About 8:30 in the evening witness saw a peg-legged man coming along the track to his house. The tramp had his left leg off. He wore a dark gray suit of clothes, had no hat, and was of very dark complexion. The man came up, sat on his doorstep, and Mrs. Prince gave him some bread and meat. Witness positively identified the prisoner as the man who came to his place. Mr. Prince remarked to the tramp, "that it was a wonder he wasn't arrested, as he looked like the person who shot the policeman in London." The prisoner had replied that the police in London had told him he looked like the man who shot the policeman, and advised him to skip or he would be arrested. The prisoner said he lost his hat coming in on the train Friday night, and asked for a hat, but Mr. Prince had not one to give away. After satisfying himself, the prisoner thanked them and went away.

In cross-examination, Mr. McPhillips wanted to know why witness had not informed the police that such a man had been at his place. Mr. Prince said he started to come to London, but met a friend on the road, who said that the bulletin boards announced the peg-leg's capture in an old barn near the asylum. Witness did not grab him and hold him, because he was not built that way. The tramp was mild-mannered, and did not act as though he was fleeing from pursuit. Witness, when pressed, said there was not the remotest possibility of his being mistaken. The reason he remembered which side the peg-leg was on was because the prisoner sat facing north, and his peg-leg was to the west. At the time Brown had about a week's growth of beard.

Mrs. Prince was called and corroborated her husband's statements in toto. The defense asked no questions.

MARGARET McLELLAN.

of lot 18, con. 8, Caradoc, first heard of the murder of P. C. Toohey on Monday from her brother-in-law. On Sunday, June 26, a partly colored man, with a peg on the left leg, without a hat, wearing a dark blue coat (almost black), came to her place, passing through an orchard, into which he emerged from the woods beyond. The tramp came to her door about 2 o'clock and asked her for food. She gave it to him, and while he was eating it sat near the door. The tramp said he had lost his hat on the train, and had lost his leg by horses running away with him. To the best of her judgment the prisoner was the man. He asked for a hat, and Mr. McLellan got up off the lounge and gave him a black stiff hat. The tramp went away in the direction of Hugh Turner's, who lives a short dstance away.

Cross-examined—Witness did not pay much attention to him. She knew it was the left leg, but could not speak with unhesitating certainty that the prisoner was the man.

HUGH TURNER,

a neighbor of the previous witness, heard of Toohey's murder on Saturday night, and on Sunday a peg-legged mulatto tramp called at his place about 2 o'clock. He wore a black stiff hat, and the prisoner was the man to the best of witness' judgment.

MARY PAYNE,

of Albert street, on the outlying portion of Strathroy, deposed that on Sunday, at 7:30 p.m., she saw a mulatto with a peg-leg coming from Mr. Bennett's to her place. She saw him for about ten minutes. He sat outside her front door and ate the lunch. His left leg was a peg, his clothes dark, his eyes "black," and a big, round, fleshy face. Asked about the prisoner's identity, Mrs. Payne said: "Oh, yes; he looks familiar. To the best of my judgment he is the man." Mr. Payne, who is an invalid, got up and asked the tramp if he had come from London, and the tramp replied: "No; I am just going there."

No questions by the defense.

ARTHUR BENNETT,

of Strathroy, said about 7:30 or 8 o'clock on the evening of June 26 had seen a man at his place, who greatly resembled the prisoner. He crossed over to Mrs. Payne's. Witness thought prisoner was the man, but was not positive. The tramp had a peg on the left leg, and looked like a colored man.

No questions by the defense.

JOHN NEWTON,

who lives near Strathroy, was next called. On Sunday night, June 26, while in company with Mr. Bishop, the hotel-keeper, had seen a peg-legged tramp on Nicholson's sideroad, north of Bennett's place, going towards the G. T. R. tracks, about 7:30. The tramp passed within 40 feet of the witness, going down the track, when the peg-leg turned round and looked toward witness, then went over and crawled through the barb-wire fence, into a field of long rye, which bordered on a wood. Mr. Newton watched, while Mr. Bishop went to inform Chief Dodds. When Chief Dodds and Bishop got back, the three searched the woods and the field, but the peg-legged man could not be found. Witness said the tramp was a half-negro, with the peg on the left leg. The prisoner was the man to the best of his judgment.

The defense asked no questions.

JOHNSTON COWAN,

of lot 24, con. 6, Warwick, on Monday afternoon, about 4 o'clock, was plowing in a field near his home. He saw a peg-leg man, half-negro, with the peg on the left side, come up the lane from the bush near his place. The tramp came within three rods of him, as the tramp was going in the direction of the house to get a drink. When the tramp saw witness he crossed over another fence, going along the line fence of the lane, and making two fences between witness and himself. As the tramp passed witness saw him take a large nickel-plated revolver from his hip pocket, fix it, and then place it in his coat pocket. The tramp was half-negro, dressed in dark clothes, and wore a hat much too large for him. It was what witness would call a Fedora hat, with a stiff rim. The man's hair was black and curly, and he had about two weeks' growth of beard on his face. He positively identified the prisoner as the man whom he had seen crossing the fields with the revolver.

In the cross-examination Mr. Cowan said there was no possibility of his being mistaken, and ne would say the prisoner was the man, without any reservation or hesitation whatever.

The court rose at 6:30.

Tuesday Morning.

MALCOLM CAMPBELL.

It was 9:25 when the court resumed. Malcolm Campbell, of lot 22, con. 9, Brooke, was the first witness called. On June 27, some constables came to his place, and shortly afterward, he heard of the death of Toohey. About 7:30 in the evening he saw a peg-leg tramp coming from the direction of Johnston Cowan's, to his house. The tramp went to the front first, but he turned and went round to the summer kitchen. There were two doors, one looking north and the other south. The tramp knocked at the door looking towards the road. Witness went to the door, and the tramp asked for something to eat. Mary Campbell prepared some food, and the man took a chair and placed it where he wished to sit. The tramp told witness he had came from Wyoming, and was going to Hamilton. Witness said he was going out of his way, and the tramp replied that he had just strayed down that way. The prisoner in the dock was the man who called. His left leg was off, and he wore a stiff-rimmed hat, dented in at the top. While the prisoner was eating, Duncan Gillies came from the road to his north door, and asked witness if he had seen a peg-leg tramp going along that way—that he had shot a policeman in London. Gillies called to the constables on the road, and the prisoner, when he heard this started out the south door, and went toward the east, in the direction of Napier. About four rods from the house was a fence, over which the prisoner climbed, and as he did so, he flourished a large nickle-plated revolver. Witness explained that the constables from the road—Philip Fuller, John Shaw, and Gillies—were only a short distance behind the prisoner, and had a conversation with him. The prisoner went east over another fence. Fuller went in the direction of Mr. Dempsey's house for a gun. Witness heard three shots after the constables had got the gun. Fuller and Shaw followed the prisoner toward the bush, where witness saw the prisoner sitting on a log, and the constables talking with him. Witness said the prisoner rolled over the fence like a bird. When the tramp was at the witnesses' place, witness noticed the upper front teeth were wide apart—the same as the prisoner's—and witness was positive the prisoner was the man.

Cross-examined by Mr. McPhillips—How many inches were the teeth apart?

Q.—How many inches are there in a man's mouth altogether?

Q.—What then—feet?

Witness (smiling)—Oh, no, I noticed there was some space between them.

Continuing, witness said the police had told him nothing, and that he had told the police all he knew about the matter. When the prisoner called he wore a light shirt and dark clothes. The pants, witness thought, were different from the coat. There was some red in them, he thought. He would not swear to the peg-leg, because a peg-leg could be made any time. When witness first saw the prisoner he was clean-shaven. Witness confirmed the statements he had made at the preliminary investigation. Referring to the visit of the constables to his house, witness said when Gillies had heard of the peg-leg being there, he called to the other constables loud enough to be heard for some distance. Gillies came to his place for a shotgun, and he supposed the constable wanted it to shoot at the peg-leg. Witness would have given Gillies his gun had it been in repair. Witness heard the three shots, but could not say whether or not one of them was a revolver shot. Witness could not speak with certainty about the man's clothes, although the tramp was in his house about 20 minutes; had not heard what passed between the prisoner and the constables at the time the former was

(Continued on Page 6.)

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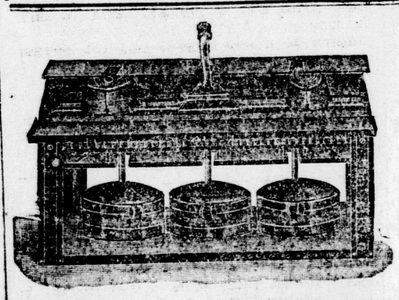

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