

trial judge upon this case. I am unable to gather that from my reading of the report, or from my knowledge of the facts of the case. Before any confession had been presented, before the judge knew the contents of that confession, he writes to the Minister of Justice a report in which he makes this statement :

No motive whatever was shown for the crime. Even if the person came to his death from a gun in the hands of the prisoner, the circumstances proved are, in my opinion, quite as consistent with the view that the killing was not intentional as that it was premeditated.

Then I want the House to notice this statement, because it appears to be somewhat inconsistent with the later report of Mr. Justice Ritchie :

Perhaps the prisoner's silence militates somewhat against this view, but that I think may be accounted for by his fear of the consequences if his story was not believed. He was only seventeen years old. Viewing the case from the standpoint of a jurymen, I would have been unable to concur in the verdict given.

That was the report, given before he knew anything about the confession. Yet I want you to notice particularly that after the report of the confession has been given, Mr. Justice Ritchie thinks it was very remarkable, if this statement is true, that the boy did not say something at the inquest or at some of the proceedings of the trial. Yet before he knew anything about the confession, he had himself given a very substantial reason why the boy did not give that confession before. Now, after the confession is given, it is sent to Mr. Justice Ritchie, and he sends back a second report upon which the hon. gentleman comments at considerable length. In that report for the first time in his reports of the trial Mr. Justice Ritchie puts forward the view that the verdict should have been manslaughter. But I wish him to pay particular attention to this part of the report where he says : The story is somewhat improbable, but no doubt the homicide might have happened as stated by Dartt. Then he goes on to point out one or two inconsistencies between the confession and the facts as proved at the trial, and I want you to notice what those inconsistencies are. In one respect, perhaps, a little local knowledge of the circumstances will enable you to see how little there is of inconsistency. He places great stress upon this fact : He says it was very improbable that this boy would expect to find large game in that vicinity. Now, I undertake to say from my knowledge of the circumstances, that it not only would not have been very improbable for a boy of 17 to expect to find bears in any place where there is woods, but as a matter of fact, it would not have been very surprising if he had found a bear in that very spot, for they have been seen in that locality.

Mr. McCLURE.

Mr. BORDEN (Halifax). That merely proves that my hon. friend would have been a very good witness for the defence at a new trial.

Mr. McCLURE. I am not talking about the evidence given at the trial ; I am talking about what the judge undertakes to say is an inconsistency. The statement which I make is not inconsistent with any statement made at the trial. This question of large game did not arise in the trial at all. This theory was not put forward at the trial, and I want to impress upon the attention of this committee this important fact, who is to blame for it I am not going to say, but it is a fact that in the report made to the Department of Justice, the judge who tried this case puts forward the view which I have read to you here, to the effect that the facts as proved were as consistent with the view that the killing was not intentional, as that it was premeditated. But I listened to that trial very carefully and read the reports carefully, and I find it strange that view was never presented to the jury. I can understand why the defence did not, because they relied upon the plea of denial. The prosecution had nothing to do with it. I do not wish to criticise the action of the judge, but I do say it is somewhat peculiar that that view, which was strongly presented to the Department of Justice, never was presented to the jury upon the trial.

Mr. BORDEN (Halifax). I suppose the reason of it was that the defence rested entirely on the line which he had suggested, and would not feel it competent for him to put that forward to the jury.

Mr. McCLURE. That may be a satisfactory explanation ; I am not going into the legal aspect of the case. But I say that up to the present moment, while there has been presented in the papers here most conclusive evidence that that man was shot by a shot from a gun held by that boy, there has been to this hour not one tittle of evidence presented that the boy fired that shot intentionally. We have had a lot of talk about motive. The judge says that there is no motive ; that is very true. The hon. gentleman answers that it is not necessary to prove motive. I agree with him it may not be necessary to prove motive, but it is necessary to prove more than who actually did the shooting, it is necessary to prove that he did it intentionally. Where is the evidence that he did it intentionally ? I grant you that he did it, but the circumstances are perfectly consistent with the theory of accident. If they be perfectly consistent with the theory of accident, what right has the jury to assume that if the boy shot the man, he did it intentionally ?

As the judge said, it was open to them to assume that, although there is no proof he did not do it intentionally. True, the argu-