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ELEVENTH YEAR. SATURDAY MORNING, SEPTEMBER 27. 1890. ONE CENT.

BIRCHALL'S CASE

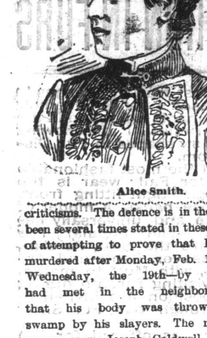
Ingenious Theories of the Defence.

WHEN WAS BENWELL MURDERED?

An Attack Upon the Evidence as to Identity—Why Grocer Millman Was Called—Hopes Based Upon a Possible Disagreement of the Jury—The Prisoner's Anxiety—A Keen Critic—The Addresses of Counsel and the Summing Up to Take Place on Monday—The Candy Butcher's Story—How Baker and Caldwell are Made to Figure.

WOODSTOCK, Sept. 26—The Crown occupied just four entire days in presenting its evidence in the famous murder trial, opening at noon on Monday and offering its last testimony at noon to-day. This does not necessarily imply that the crown has exhausted its store of witnesses, but should it be deemed necessary to offer evidence in rebuttal it is fully prepared to do so. The crown up to noon had put 57 witnesses in the box and it is said the defence has some 25, of whom 18 were examined to-day. The net result is that when the court adjourned this evening the crown had very materially strengthened its case; while the defence, in the shape of evidence, was simply a fiasco. The accused man's lawyers—Mr. Blackstock, Mr. Hellmuth, Mr. McKay and Mr. MacMurchy—are certainly straining every nerve and fibre to present to the jury some ray of evidence that will tell, but as the curtain rings down to-night they have utterly failed. Not that these gentlemen have not shown considerable professional ability, but they are fighting against one of the strongest chains of circumstances that ever was welded around an accused man in a Canadian court of justice.

These reflections may seem one-sided and prejudicial, but indeed they are only hones-



Alice Smith.

criticisms. The defence is in the line, as has been several times stated in these despatches, of attempting to prove that Benwell was murdered after Monday, Feb. 17—probably Wednesday, the 19th—by parties he had met in the neighborhood, and that his body was thrown into the swamp by his slayers. The names of the young men Joseph Caldwell and George Baker, who were out on a spree one of the nights during the week of Feb. 17, were frequently introduced by Mr. Blackstock in his examination of the witnesses, and it is apparent that he is suggesting the possibility of their being implicated in the crime. From the evidence that was presented this afternoon it seems that these young men first appeared on the scene on the morning of Thursday, Feb. 20, at 4 o'clock (the day after the body was found) at a hotel in Drumbo. They were drunk and had wakened up several farmers along the road and invited them to drink from a bottle of whisky which they carried. The young men were next found, still drinking, at 10 a.m. on the same day at Dake's Hotel, Princeton, and late in the day at Gobles. Now, the absolute contention of the crown is that Benwell was murdered on Monday, and if this theory prevails with the jury—and the evidence all certainly points that way, for he was never seen alive after that date—of course the Baker-Caldwell suspicion tumbles to a thousand pieces.

Theories of the Defence.

Dr. J. H. Richardson, the well-known Toronto physician, arrived in town to-day and it is understood he will be called as a witness by the defence. What the doctor will testify to is not yet known outside, but it may be in the line of suggesting that it would be impossible for a dead body to lie in the swamp from Monday till Friday and present the state of preservation that Benwell's did, the weather and other factors being considered. There are some rumors, too, about putting in a plea of insanity; but these are, so far as can be learned, but rumors.

The defence to-day asked many questions of witnesses about the nature of the tracks that were found in the swamp and the existence of the alleged hunters' trail leading from where the body was found to Mud (or Spruce) Lake in the northern part of the swamp. A number of residents in the locality of the swamp who had hunted there for years were brought forward to show that they had never heard of the existence of a path known as the "Hunters' Trail" leading between these two points, and the evidence of two witnesses was heard as to the discovery on the morning following the finding of the body of the tracks of two men leading towards the body. It was sought to show that these tracks ante-dated those made by the parties who removed the body from where it was found to the undertaker's at Princeton. It is evidently on this testimony the defence base their theory that Benwell was killed elsewhere and carried into the swamp. The crown claim that they will explain al about these tracks when the proper time comes.

A Woodstock grocer named Millman swore positively that he saw Birchall, with whom he was on speaking terms and lived next door to for some months in the winter of 1888-9, walking along Dundas-street, Woodstock, in February last about a fortnight before he heard of his arrest. The witness described the clothing worn by Birchall at the time, including his knee breeches with white bowknot and red stockings. Despite his positiveness, however, Millman did not see Birchall but another young Englishman living in this vicinity who was in town that day, and the defence are fully aware of this. The idea in bringing Millman forward is to cast doubt on the evidence of identification furnished by crown witnesses by showing how people can be mistaken in individuals. Millman is honest in his belief that he saw Birchall. It is a case of mistaken identity.

Nearly all the witnesses called by the defence to-day were men who had given testimony at the coroner's inquest at Princeton when, prior to the identification of Benwell's body by Birchall, all sorts of rumors were abroad as to the dead man being a silver polish vendor, etc. Three witnesses who viewed the body said they had expressed the opinion that it was that of the pedlar in question. This testimony also is called to throw doubt on the value of evidence of identification.

To establish the claim that the man was killed Tuesday night old John Rabb, the German farmer, and a neighbor's wife named Schultz, living opposite, who used to go over and converse in the native tongue, were called. They testified to hearing the shots, but Rabb did not prove a very important witness, as he said the shots were fired in rapid succession, and immediately afterwards two men stepped from the bushes and walked away. He also swore that there were hunters in the woods every day and it was a usual thing for them to discharge their firearms on leaving the woods. He thought the men were hunters.

On these presumptions of facts the defence hope that the jury may disagree at least.

Birchall's Keen Sense of His Position.

The crowd was as large as usual to-day and hundreds of them stood outside in the drizzling rain clamoring for admission. The same old rule was observed, however, of giving the ladies the preference.

Birchall wore an anxious expression on his face throughout the day, and he seemed to fully realize that there was very little in the evidence to cheer him up. Neither Mrs. Birchall nor Mrs. West-Jones was present at the trial.

I mentioned yesterday the fact that the prisoner on leaving the dock each night gathers up all the daily newspapers on the reporters' tables and takes them with him. Jailer Cameron informs me that each evening he reviews and discusses the evidence and points out where he thinks Mr. Blackstock has made a point in his favor or where he believes Mr. Osler has got the best of the legal battle.

The defence will conclude to-morrow about recess, when the court will probably adjourn, leaving Monday clear for the summing up and address of counsel. It is not probable that the verdict will be known before Tuesday next.

It is expected that there will be a tremendous rush for admission to the court room during the addresses of counsel. Many legal gentlemen from different parts of the province will be present and the Toronto bar will be largely represented.

THE CROWN CLOSES ITS CASE.

The Concluding Links in the Iron Chain Around the Prisoner.

Miss Ida Cromwell, a young lady who lives near Eastwood, was the first witness this morning. She testified that she was at Eastwood station on Feb. 17 last and fixed the date by the fact that she met some friends

Ida Cromwell.

there. Witness noticed Alice Smith, Miss Swayzie, Harry Jones, James Hayward and the prisoner there. She first saw Birchall in the lane that leads off the Brantford road to the station. He had on a short navy blue coat and a black cap similar to the one produced. She had known the prisoner before that. She saw him later on enter the ticket office of the station and ask for a ticket for Hamilton. Witness saw prisoner in the jail shortly after his arrest.

Q. Have you ever seen him since?—A. No, sir, not until to-day.

Q. Do you see him now?—A. Yes.

Q. Please point him out.

Miss Cromwell lifted her hand and with the index finger pointed to the prisoner.

Q. Have you any doubt about that?—A. No, sir, not at all.

Witness stated that prisoner had on light pants, which were rolled up at the bottom, and his boots were very muddy.

To Mr. Blackstock witness stated that she could not give the day or date of any other visits she had made to the station, although she had been there several times.

Q. You were a witness at the inquest, Miss Cromwell?—A. Yes, sir.

Q. And your recollection seems to be better now than then: like wine the older it gets the better? Now, at the inquest you said prisoner was coming up the Brantford-road to the station, and now you say that it was in the road leading off the Brantford-road. Which is correct? Do you deny that you said at the inquest he was on the Brantford-road? Will you swear that you did not?—A. I don't recollect saying that. [After a pause.] I did not say that. I said I saw him in the lane that leads off the Brantford-road.

Q. How did you describe his cap on that occasion?—A. I said it was a black cap.

Mr. Blackstock: "No, you didn't. You said a curly cap."

Witness: "Yes, that's what I said."

Q. Did the prisoner have any parcel in his hand?—A. No, sir, he had a cigar, that was all.

Mr. Blackstock: "Now, that's something new again. You never mentioned the cigar before."

Q. Did you say anything before about his having on a blue coat.—A. No, sir.

Q. Now, Miss Cromwell, I want to know on your oath of what explanation you can give to this jury for all these new statements to-day. [A pause.] Very well, if you can't explain it, that will do.

To Mr. Ball witness stated that when she was examined by the Coroner she made no statement but merely answered questions.

He Knew the Date by a Draft.

E. James Hayward, a young storekeeper and postmaster at Eastwood, had a draft due on Feb. 17 last and went to the station to pay it to Mr. Dunn. He arrived there at 3¼ p.m. and saw Miss Swayzie, Miss Smith and the prisoner there. Prisoner and Miss Smith were on the platform together talking. Witness knew he had seen prisoner before, but could not place him.

Q. Did you notice how he was dressed?—A. He had on a dark blue coat and a cap.

Q. Tell me how it is that you say it is Birchall now, when you could not place him then?—A. I had seen him before and had been told his name was Somerset.

Q. He had been away for some time and when you first saw him you could not place nim for the moment?—A. Yes.

Mr. Blackstock: "Did you tell anybody at the Woodstock races, pointing at the same time to some person, That man is as much like Birchall as the man I saw at Eastwood on Feb. 17?"—A. I don't think I did. I might have said that he resembled Birchall.

Q. Did you say on the day of the races that if Birchall was not in jail you would think that man was Birchall?—I don't think I said that, but remember saying to Mr. W. Brown, to whom I was talking, that some man looked like Birchall.

Harry Jones of Drumbo said he was formerly porter at the Grand Trunk station at Eastwood and remembered Feb. 17.

Q. How do you fix the date?—A. It was the first day the agent came on duty after being sick.

Q. Who did you see there?—A. A man whom I had known by sight as Lord Somerset.

Witness stated that Somerset was standing at the northeast corner of the platform talking to Miss Alice Smith. They remained talking until the arrival of the train at 3.49. (Copy of register of train produced.) I saw same man at the jail two or three months ago and picked him from among about 30 prisoners.

Q. Are you quite sure that it was the same man you saw at the station that you recognized at the jail?—A. Yes, sir.

Q. Have you seen him since?—A. Yes (looking round). I see him now.

Q. Where is he?—A. That man sitting in the box there.

Q. You are sure that's the man. There can be no doubt of that?—A. Not the slightest.

Mr. Blackstock: "What day did the station agent go off duty?"

Witness: "I can't give the date, but it was about a week before."

Q. Was it not an important thing—the agent going off duty?—A. Well, rather.

Q. And yet you cannot recollect the date although you tell us you remember Feb. 17?—A. Yes.

Witness was examined at considerable length as to the manner of his identification of Birchall at the jail, and explained that Misses Smith, Cromwell and Swayzie visited the jail at the same time. Some of the prisoners were in jail clothes and others in plain clothing.

Mr. Blackstock: "Do not young Englishmen frequently get off at the station at Eastwood going to Mr. T. C. Patteson's?"

Witness: "Occasionally they do but I could not say frequently."

Q. But they quite often do?—A. Yes, sometimes.

She Thought He was a Shrewd Young Man.

Mary Swayzie, who was one of the witnesses at the inquest at Princeton, was positive to-day as to Birchall's being at the Eastwood station on Feb. 17. At 3 p.m. on that day she saw a stranger on the platform talking to the stationmaster. Afterwards saw the same man in the Woodstock jail, and also see him in the dock now. He was not pointed out to me at the jail. He wore lightweight clothes, his shoes were very muddy and his trousers were turned up.

The witness insisted on telling the court that when she saw the stranger with the muddy boots at Eastwood station she at once came to the conclusion that he "was a sharp, shrewd-looking young man," but the court would not entertain the young lady's opinion under this head. She did not, however, leave the box until she had made another declaration that this was her private opinion of the stranger. Witness glanced down at Mr. Butcher, the court reporter, evidently divining if he were printed that declaration down as part of her evidence.

To Mr. Blackstock witness that she did not know whether at the inquest she had stated that the man she saw at the Eastwood Station was "medium tall." If she did it was true. She went to the jail with Detective Murray. The officer spoke to Birchall but did not call him by name. The officer said to the prisoner, "Look this way," as his face was turned from us. There were two other men in the jail corridor at the time, but they were not prisoners. One of them was Jailer John Cameron; the other she did not know.

George Hay, brakeman on the Grand Trunk, was brakeman on No. 10 local on Feb. 17. Witness stated that it was his duty to keep a record of the run of his train and produced the record. No. 10 local is due to leave Woodstock at 3.29 p.m., Eastwood 3.38, Hamilton 5.35, and is due to arrive at Suspension Bridge, Canada side, at 7.10. The actual run on Feb. 17 was then given by witness. No. 10 left Woodstock 3 minutes late, and was 3 minutes late at the next booking station, Paris. She left Hamilton 5 minutes late and arrived at Niagara Falls at 7.24—14 minutes late.

Q. Is that the place where the telegraph office is in which Operator Phemister is employed?—A. Yes, sir.

Q. Did you see any person you recognized on that train?—A. Yes.

Q. Who did you see?—A. I saw the prisoner.

Q. Any doubt about that?—A. No, sir.

Q. Where did prisoner get on?—A. At Eastwood.

Q. And where did he get off?—A. At Niagara Falls.

Q. Had you seen prisoner before Feb. 17?—A. Yes, in the winter of 1888, when I knew him as Lord Somerset.

The witness testified further that prisoner got off the train at Hamilton and returned with a ticket Niagara Falls to Buffalo.

Q. Did you see prisoner again after leaving the local at Niagara Falls the night of Feb. 17 prior to his arrest.—A. Yes, he boarded the train I was brakeman on at Suspension Bridge, N.Y., on Feb. 21. The train was due to leave at 12¼ p.m., but did not depart until 2.09. Prisoner rode from the American to the Canadian side of river.

To Mr. Blackstock: The first time I ever saw Birchall was in Woodstock in 1888. He and another man were together. My father pointed them out to me. My father said, "There goes Lord Somerset." I did not know which of the two was Somerset. The two men did not look alike. I was taken to the lockup at Niagara Falls by Detective Murray and Chief Young and I pointed out Birchall, who was then under arrest, as the man who had got on my train at Eastwood.

Here Mr. Blackstock took the witness severely to book for certain discrepancies which appear in the evidence he gave at the inquest at Princeton and the Niagara Falls investigation as to how Birchall was dressed on the

George Hay.

train. The witness made two or three different statements on these occasions as to whether he wore "a check sack coat, a small check or a dark check, a dark stripe or a light stripe."

To Mr. Osler: "I spoke to the prisoner on the day he was on my train. He opened a conversation with me. The first time I ever saw the man was in the Woodstock streets in 1888."

He Asked the Candy Butcher to Drink.

James J. Duffy was a news agent on the G.T.R. on Feb. 17 last. On the afternoon of that day he left London at 2.20 on No. 10 train.

Q. How do you remember that particular day?—A. I had to change my lunch boxes at the Falls.

Q. Did your train stop at Eastwood?—A. Yes.

Q. Did you notice any person get on at Eastwood?—A. No, sir.

Q. Did you notice any person on the train after it left Eastwood?—A. Yes, sir. I noticed the prisoner between Gobles and Princeton.

Q. Have you any doubt as to it being the prisoner?—A. No, sir, I have not.

Q. Were there many passengers on the train that day?—A. No, sir.

Witness stated that he was passing through the train with books and sold prisoner some cigars, a couple of oranges and a copy, he thought, of "The Tramp Abroad." He sold the prisoner the book between Paris and Hamilton, the cigars just before reaching Hamilton and the fruit after leaving Hamilton. Witness saw prisoner, who was in the smoking car at the time, eat the fruit and smoke the cigars.

Q. Had you any conversation with prisoner?—A. Yes, sir.

Q. Where did the conversation take place?—A. At Winona, eight miles east of Hamilton.

Q. Tell us what that conversation was.—A. I can't repeat the words, but it was general—about the weather, business on the road, etc.

Q. Did he offer you anything?—A. Yes, sir, a cigar.

Q. And you smoked it?—A. Yes, sir.

Q. How long did you remain seated with him?—A. Probably half an hour, until we reached Jordan.

Q. Did he tell you his name?—A. Yes, sir, he said his name was Smith.

Q. Did he say anything about expecting to meet any relatives?—A. Yes, he said he expected to meet a brother at Buffalo.

Q. Where did he get off?—A. At Niagara Falls.

Witness described the clothing worn by prisoner. He had on dark clothes and a dark round hat similar to the one produced. His trousers were rolled up and his boots quite muddy.

Q. Did the prisoner offer you anything else?—A. Yes, sir, he had a small flask and offered me some, but I told him I did not use it. He did not say what the contents of the flask were.

Q. Who was the brakeman on your train?—A. George Hay.

Q. Was Hay in the smoking car at one time while you were talking to prisoner?—A. Yes.

Mr. Blackstock: The man who was talking to you said his name was Smith and he was going to meet a brother?—A. Yes.

Q. How long have you been a news agent?—A. Since November, 1888.

Q. And you meet a good many people during the year?—A. I do.

Q. Have you ever been mistaken for anybody else?—A. Not that I know of.

George Crump, assistant ticket agent at Niagara Falls, the witness who had to be sent for last evening to prove the sale of two tickets to Eastwood on Feb. 17 last, took the stand and produced the books of the office. He said he stamped the stub of the ticket produced, which was sold before 3 p.m. of Monday, Feb. 17. There were but two tickets sold to Eastwood from Niagara Falls on that date.

To Mr. Blackstock: There are no other persons connected with our office except Mr. Drago, the agent, and myself.

Mr. Osler: "If I arrive in the accommodation at the Bridge at 7.10 p.m., can I get a connection to Buffalo that night?"

Witness: "Yes."

Mr. Osler then arose and said: "That is the case, my lord, for the crown."

It was now just exactly 12 o'clock.

Mr. Blackstock stated that he would request an adjournment until 2 o'clock, when he would be prepared to go into the defence.

His Lordship: "Very well."

WHAT IS THE DEFENCE?

An Evident Attempt to Connect Caldwell and Baker With the Crime.

When the court met at 2 o'clock the room was packed to suffocation and hundreds could not gain admission. As usual, the ladies outnumbered the male spectators three to one. The audience seemed to think that there was something funny in the accent of the first witness called for the defence, and a lusty ripple of laughter followed one of his answers.

His Lordship: "I had occasion yesterday to suppress a similar demonstration. For the benefit of those who were not in the room then I will say that if there is another occurrence of this kind I will clear the room of every spectator. This is a court of justice and not a place of amusement."

Mr. Blackstock argue, and said: "I desire to say, with reference to the crown case that we entertain a very strong opinion as to the insufficiency of their case; but for obvious reasons connected with the defence, in our judgment it is not desirable to provoke any discussion of that point, and therefore we will not raise that question, but will go into the defence."

Mr. Blackstock proposed to put in a certificate of the marriage of the prisoner, duly certified under the statute, and which came from the possession of the crown, having been taken from him at the time of his arrest. The certificate showed the solemnization of his marriage with Florence Stephenson, his present wife, Nov. 19, 1888. The marriage was celebrated at Croydon, in Lancashire. The contracting parties were: "Reginald Birchall, youngest son of the late Rev. Joseph Birchall, Rector of Church Kirk, near Accrington, Rural Dean and Proctor in Convocation for the Archdeaconry of Manchester, and Florence Stephenson, fourth daughter of David Stephenson of Maberley-road, Upper Norwood."

Mr. Osler asked if there was any provision in the statute for the reception of such evidence.

Mr. Blackstock said that the object of putting in the certificate was to show that Birchall was in England in October, the time when he was said to have been in the swamp hunting for the witness Ellis.

Mr. Osler said that while the crown could not admit anything the date of Birchall's sailing from England was determined by documents in the possession of the crown and would not be contested.

The importance of this point is quite manifest, as the crown contend that Birchall was quite familiar with the swamp; that during his former residence in Woodstock he made frequent visits to the locality and knew all about its position and its extent.

After further argument on these points for the sake of convenience the document was set aside for the time being.

From the tenor of the questions asked by Mr. Blackstock of the witnesses it is evident the defence is making an effort to connect George Baker and William Caldwell with the case. These two men were at first suspected, but they were never arrested. Caldwell is said to be in Chicago now. Baker is still around Woodstock. Some of the others called for the defence had been subpoenaed by the crown and then not called. As an exhibition of weakness in the line of defence nothing was probably ever heard like it in a court of justice. There was very little in it to cheer Birchall up, as he sat in the box and looked somewhat appealingly at the witnesses.

John Rabb Takes the Stand.

John R. Rabb was the first witness called to the stand by the defence. He is the well-known German farmer who lives in the little house at the entrance to the lonely swamp on the west side. Nearly every visitor to the

John Rabb.

swamp since the murder has talked with Rabb about the crime, and he has acted as guide for hundreds of people, conducting them to the spot where the body was found, explaining things generally in broken English, and earning not a few coins for his trouble. Rabb testified that he was a witness at the inquest on Feb. 26, prior to the date of prisoner's arrest.

Q. How far is your house from the swamp?—A. Half a mile.

Q. If a person is standing in the middle of the road opposite the swamp could you see him from your house?—A. Yes.

Q. Could you see from your house the place where the body was found?—A. Yes, clearly in winter time, but could not see it so plainly in summer time; in fact, could not see it all now.

Witness described a test made by Detective Bluett, who placed a boy in the road even with the spot where the body was found and witness could plainly see the boy from the window of his house and also the outside.

Q. Do you remember the week the body was found?—A. Yes.

Q. Did you see any strangers around?—A. No, sir. I am chopping in the woods most of the time.

Q. Did you hear two shots fired in the swamp on Feb. 18?—A. Yes, about 5 p.m.

Q. Why did you take notice of the shots?—A. Because hunters told me that when they got lost in the woods they would fire off their guns to notify me and I would "holler" to them and if they did not hear would get the old gun and fire it off.

Q. What followed the shots?—A. I was coming from the barn to the house and stayed at the gate to see if the men would come and as the willows were black and the snow white I saw two men come out of the swamp, one ahead of the other.

Q. What space was there between the shots?—A. About half a mile.

This is the answer which caused the laugh for which the audience came very near being turned out of the court.

Witness then explained that he meant he was half a mile away. One shot was fired right on to the other.

Mr. Osler took the witness in hand and John said it was 6 o'clock at night when he heard the shots, and the men came out of the swamp immediately after. Witness thought that the men were hunters, of whom "lots" came out every winter and it was just dusk about the time the hunters leave the swamp. Rabb said he knew it was the 18th because he had been to the barn to see if his stock was all right and that Mrs. Schultz was over to his place.

Q. Of course you see to your stock every night and I suppose Mrs. Schultz comes over often?—A. Yes.

Re-examined: Witness said he and Mrs. Schultz had a conversation about the shots.

Rachel Schultz, an elderly German lady, testified that she lived across the road from Rabb's. She remembered the fact of a body being found in the swamp on a Friday, and also to hearing the sound of a firearm about 7 p.m. of the previous Tuesday.

Q. How was your clock?—A. It was an hour too fast.

Q. So that it might have been earlier?—A. Yes, about 6½ perhaps.

Q. Did you see any person?—A. No.

Mr. Osler: It was getting dusk at the time you heard the shots?—A. Yes.

Q. About the time the hunters leave the woods?—A. Yes.

Q. You haven't got a very good memory, have you, Mrs. Schultz? It's very difficult for you to recollect one day from the other, isn't it?—A. Yes.

Witness stated that her family and that of Rabb visited frequently, almost daily. They visited on Sunday and chatted in German.

Mr. Blackstock: How do you fix the time of the shots as the Tuesday before the Friday?—A. Because it was the night after the thunderstorm.

Mr. Osler: The night after the thunderstorm, eh?—A. Yes.

[The thunderstorm, the crown claim, did not take place until Wednesday night, Feb. 19. The rainstorm of the 17th was unaccompanied by thunder.]

He Gave Two Strangers a Ride.

John Freidenberg of lot 1, Blenheim, about a mile distant from where the body was found, was next called and testified that on the Monday preceding the finding of the body he was teaming logs for Mr. Kipp, who resides on the Governor's road. Witness was drawing logs from near Overholt's mill to Mr. Kipp's.

Q. Did you meet any men that day?—A. Yes, two strangers, who were going in an easterly direction, and I overtook them. They asked me for a ride and I invited them to get into the wagon, which they did, and they rode with me ¾ of a mile, to the place where I was getting the logs. I turned in at the south side opposite Berry's, and the men alighted and proceeded east on the Governor's road.

Q. Had those men overcoats on?—A. Yes, both of them.

Q. Had they mustaches?—A. No.

Q. Was either those men Birchall?—A. No.

Mr. Osler: How many days were you teaming?—A. Perhaps 6 or 8.

Q. Could you tell me what day you quit?—A. No, only it was some Saturday.

Q. Did you carry the men past Mrs. Ferguson's?—A. Yes, half a mile further.

Q. You haven't a very good memory have you, Freidenberg?—A. No, sir.

Q. Do you remember saying before that one was a middle-aged man and had quite gray hair? Your memory is a little shaky, isn't it? It's difficult to remember these things, isn't it?—A. Yes.

Q. Today you say that both were young men. Which is correct? How's that? Can you explain that?—A. No.

Q. You also say to-day neither had mustaches. You said before both had mustaches. Can you explain that?—A. No.

Q. You say there was nothing to distinguish one day from another when you were teaming, didn't you?—A. Yes.

Q. It was about 10½ in the morning when you saw these men you said, I think?—A. Yes.

Q. Well, how do you fix Monday as the day?—A. I used to mark in my book every day I worked.

To Mr. Blackstock the witness explained the mustache discrepancy by saying that he hadn't thought anything about the case since. With respect to the time of seeing the men he said he could not definitely fix the time, but it was the forenoon.

Mr. Osler: You fix the time at 10½ by the fact that this was the time when you got back with your load?—A. Yes.

A Pair of Early Callers.

James Atkinson, a hotelkeeper of Drumbo (about nine miles from the swamp), the town which Birchall described to Pelly on shipboard as a tough town generally, said that on the morning of Feb. 20 (Thursday) last, about 4 o'clock a couple of men knocked at his door. He let them in, and they sat down beside a coal stove in the sample-room. They had a buggy. He gave them a glass of beer and some crackers and cheese.

Q. Who were these two men?—A. I was well acquainted with one of them. He was Robert Caldwell.

Q. Who was the other?—A. I have heard since that his name is Baker.

Q. What kind of boots did Baker have on?—A. Felt boots with rubber over them.

Q. Did the men appear to have any business?—A. They seemed to be the worse of liquor.

Q. Did you see their trap?—A. I saw them drive away in the morning but I did not notice the rig in particular. It looked a little muddy, I think.

Q. What kind of boots had Caldwell on?—A. Common overshoes over a common pair. I remember this particularly because he made a kick at Baker and the overshoe came off.

Mr. Osler: They were apparently two men out on a spree?—A. Exactly.

Q. You knew the symptoms?—A. Yes.

Q. Only that and nothing more?—A. Exactly.

Q. Caldwell is a respectable man, isn't he?—A. He is, so far as I know.

Q. Beyond addicted to indulging in sprees occasionally you know nothing against him?—A. No.

Q. Caldwell's mother lives in the village?—A. Yes, I know her well, and a very respectable woman she is.

Q. At the inquest you stated that Caldwell wore leather boots but no overshoes?—A. Yes, I must have got it wrong either one time or the other.

Mr. Blackstock: Didn't you know that Caldwell was arrested for robbery once?—A. Yes.

Q. And yet you say you never heard anything against him?—A. I didn't know he did it and I think it was the result of a drunken spree similar to that of Feb. 18.

Adam Oliver, farmer, 1½ miles north of Princeton, testified that on the night of Feb. 18 two men rapped at his door and said they wanted to get back to Princeton to buy horses. Witness told them they were only 1½ miles from Princeton, and to proceed on their journey and they would soon arrive there. He only saw one man, but from what he said concluded that there were two. They had a rig with them. Witness said he had been acquainted with the swamp for 20 years and had been in it often, but never saw anything of a trail leading from near the spot where Benwell's body was found to Mud Lake.

To Mr. Osler witness said it was about 3 o'clock on some morning, Wednesday or Thursday, he thought, that the men called. He was certain it was one of those mornings. He did not know Caldwell.

Andrew Young, farmer, ½ mile north of Princeton, heard strangers at 3 o'clock Thursday morning, Feb. 20, asking the road to Princeton. They woke him up, but he did not get out of bed, and directed them on their journey. The men had rubbers on overshoes on, witness thought, as they made no noise when they opened the kitchen door, which was unlocked and walked in to the hall door. This was locked.

Mr. Osler: You live across the road from Oliver's?—A. Yes.

Q. So that if the men were the same as went to his place Oliver could have directed them as well as you?—A. Yes.

Q. You say it was Thursday morning. How do you fix the date?—A. Because a cheese meeting was held the previous day.

Baker and Caldwell at Princeton.

Samuel Stroud, son of the proprietor of Stroud's Hotel at Princeton, testified that about 10 o'clock on the day prior to the discovery of the body in the swamp, two men named Baker and Caldwell came into the hotel. He had seen Baker at the inquest but had seen neither since. The men were driving and did not appear to have any business in particular.

Q. Could you say whether they appeared to have driven far!—A. I couldn't say anything about that. They told me they had come from Drumbo.

Witness said the day following the discovery of the body, about 9½ a.m., he with three other members of the coroner's jury visited the swamp to inspect it and saw the tracks of two persons leading from the spot where the body was found. These tracks looked as though they had been made with moccasins. He did not think deceased's boots would make a similar track. Witness said the swamp was dense and it would be impossible for a man to carry a body through it.

The crown contended that these tracks were those made by the Elvidge brothers, who discovered the body.

Witness was minutely cross-examined. He stated that he signed the verdict of the coroner's jury committing the prisoner for trial after investigating the facts.

Q. Did you satisfy yourself that there was nothing in these tracks before signing the verdict?—A. Yes.

Q. And you were satisfied these tracks had nothing to do with the case or you would not have signed the verdict?—A. Yes.

Q. Did you not know that these tracks corresponded with the route taked by the Elvidge boys in entering the swamp?—A. Yes.

Asked what made him say the tracks were those of moccasins or rubbers, witness said it was just a hole in the crust and a flat mark, and that there was no impression of a heel. The crust of the ice was broken through. There had been perhaps two dozen men in the swamp before witness went there. Witness stated that the tracks which came in after the body had broken through the crust the same as the other tracks, but the crust was crushed finer by the boot marks, he thought.

Witness continued: At the time I saw the tracks I thought they might have some bearing on the case, but did not speak of them before the jury or think of them again afterwards until Detective Bluett came and asked me about them.

To Mr. Blackstock: Bluett merely asked me to tell my story to prisoner's lawyers.

After Col. Thomas Cowan had testified to seeing Baker and Caldwell drinking in Dake's hotel at Princeton on Feb. 20, Mr. Blackstock essayed to ask the witness a number of questions as to what explanation the men gave of their presence, as to the opinion he formed of them, etc. Mr. Osler objected to these questions and his objection was sustained by His Lordship, who said counsel can ask witness to give an account of what these men were doing at Princeton, how they looked and how they acted, but witness cannot tell what they said. Witness said that Baker and Caldwell told him what they had been doing but His Lordship refused to allow this as evidence.

William Lancaster, a witness whose name was on the back of the indictment but had not been called by the crown, testified that George Baker and a companion called at his place at Goble's Corners, and Baker asked the road to Drumbo. Witness told him he knew the road as well as he did himself. Baker then started scuffling with the other man.

Thought He Was a Pedlar.

James Oliver, a bartender of Woodstock, who was a witness at the inquest, where he saw the body of deceased, was next called.

Q. You swore that you recognized the body!—A. I swore that to the best of my knowledge I recognized the body as that of a man whom I had seen at the North American hotel selling a silver polish.

To Mr. Osler witness stated that the man who was selling the polish had a light mustache and he had sworn that at the inquest.

Q. As a matter of fact you could not then and cannot now identify the body. You had only a hazy idea that the man with the polish looked like the dead man!—A. That is about it.

J. W. McKay, proprietor of the North American Hotel, Woodstock, said when he saw the body of Benwell he had said it bore a resemblance to a man who had been at the hotel with polish, only the pedlar had a mustache.

George Fowler, a farmer near Drumbo, thought when he saw the body of deceased at Drumbo that it was that of a young man who was peddling cheap clothing at Waterford.

Mr. Osler: You know you were mistaken now?—A. Yes.

Alfred Laycock, near Gobles, also thought when he saw Benwell that he recognized it as a man who he had seen selling jewelry at Drumbo and Woodstock.

Mr. Osler: That was prior to this year!—A. Yes.

More About Those Mysterious Tracks.

Joseph Martin of Princeton, who was one of the jury at the inquest, testified to accompanying young Stroud to the swamp between 9 and 10 o'clock on the Saturday morning following the discovery of Benwell's body, and to seeing tracks of two different people in the snow leading into the swamp towards the body. The tracks were in a circuitous direction and very large, and the ground had frozen after they had been made. The tracks circled around to the west and came out the same way. There were other tracks, but they were on the fresh snow. The large tracks looked as if they were older tracks than those made by the parties who carried out the body. Witness did not think a man could carry a body into the swamp.

Q. You made a search of the locality that morning and didn't see anything of the eyeglasses, cigar holder or cigar case!—A. Yes, we made quite a search and could find nothing.

To Mr. Osler: There was no frozen water in the tracks. The tracks were zig-zag and there were intervals where the tracks could not be discovered, owing to frequent hillocks of brush. There was nothing to indicate that the men who made the tracks had been within six feet of the body, or anything to indicate that the owners had been walking around the body.

Q. You didn't take any stock in those tracks as a coroner's juror?—A. Yes.

Q. These tracks didn't impress you as being important or you would have done your duty as a citizen and spoken of them?—A. Yes.

Q. You didn't offer to give your evidence about them?—A. No, they didn't impress me.

Mr. Osler: Give me an idea on the witness box here of what you think were the size of the tracks!

After considerable halting witness marked out a space, which on being measured indicated 14¼ inches. [The audience forgot the judge's warning and laughed and the judge forgot his warning and failed to order the court to be cleared.]

Witness stated that the footprints had apparently gone through the last crust, as no crust had been formed after the impressions, but there was a little snow in them.

Q. You don't know where the Elvidge boys went in to cut wood the previous day, nor do you know where the man went into the woods on the previous Monday to get tamarac bark for his horse?—A. No.

Q. These tracks may have been made by either of them?—A. They may have been.

Mr. Blackstock: "What is your position at Princeton; you are a retired farmer, I believe?—A. Not a retired farmer but a tired farmer, that's what the people call me. [Laughter.]

Q. How were these tracks?—A. Zigzag, that's what I used to call it when I was on the farm. They followed each other 2 to 2½ feet apart. On seeing the tracks I thought that possibly they might be made in carrying the body into the swamp. The reason the tracks could not be traced up to the body was that the intervening brush was covered with ice and would not receive the tracks.

William Burgess, or "Old Knuck" as he is more familiarly known, who has hunted in the swamp for not less than 50 years, since it was a wilderness, swore that he never heard of a trail leading from near where the body was found to Mud Lake, and thought he would "of known it had it existed." "Old Knuck" pathetically told of the time when, half a century ago the swamp was a wilderness, he used to shoot deer, but now even the rabbits were disappearing. He had not been in the swamp very much the past two years.

John Stroud and Robinson Smiley, who had hunted in the swamp for years, also never heard of the trail to Mud Lake.

To Mr. Osler witness said he had not entered the swamp from the 2d concession for four years.

A Bad Case of Mistaken Identity.

Frederick Millman, a young grocer of Woodstock, said he knew prisoner. Met him in Woodstock between 10 and 11 a.m. in February last, about two weeks before he heard of prisoner's arrest from one of the clerks in the store. Had seen Birchall frequently when he was in Woodstock before and knew him well by sight, having lived next door to him.

To Mr. Osler: Am sure it was between 10 and 11 o'clock. I passed him in Dundas-street, and turned round after he passed to look at his back. Birchall was going east.

Q. You have nothing to fix the day?—A. No.

Q. It might have been as early as January?—A. No.

Q. Or as late as the last week in February?—A. No.

Q. How was he dressed?—A. In the same clothes as he had on when he used to live in Woodstock. He wore knee breeches, with long stockings red in color, I think, and at the knee there was a white bow tied. Prisoner wore a brown sealskin cap.

Q. You didn't stop to speak to him, though he had been a long time away?—A. No.

Q. Where had you been when you were coming down that morning?—A. I can't exactly say.

Q. All this occurred at 10 o'clock in the morning and you were feeling quite well? Nothing wrong with your liver?—A. No.

Thomas Midgley testified to the fact that, although Albert Hayward had known him for 20 years, he failed to recognize him while standing in the gallery of the court house the other day.

Photographer F. A. Westlake testified that he photographed the body of Benwell and furnished Detective Murray with pictures.

Two photographs of deceased were put in by witness.

John Stewart, aged 13, son of the proprietor of the cabs in Woodstock, testified that he stood in the road on the 2d concession in front of the swamp, and while standing on the culvert crossing the road west of where the body was found noticed his head Bluett standing in front of Rabb's