

FRITH SENTENCED TO BE EXECUTED

NOVEMBER 27TH FIXED AS DAY OF HANGING

The Jury's Strong Recommendation to Mercy Will Be Forwarded to Ottawa for Consideration.

Upon the Assize court resuming yesterday afternoon at 2:45 a jury was empanelled to try the case in which A. J. Frith is accused of the crime of murder against F. J. Bailey.

In outlining the case Deputy Attorney-General McLean stated that the prisoner stood accused of the greatest crime known in the law of England—murder. The question of the gravity of the crime depended upon the element of premeditation connected with it. In this instance it was murder in the highest degree, because there was evidence that it was premeditated some time before. It was a sad case in every respect. The murdered man was one who had held a responsible position in the service of the crown, having a family dependent upon him. The accused likewise held a responsible position, and one whom one would not expect to do such a thing. He had, however, through getting into evil ways, become negligent of his duty and through intemperance had to be discharged. He seemed to attribute the dismissal to Bailey, and this ranked in his mind as an insult. Mr. McLean recounted the circumstances, stating that at 7 o'clock in the morning the accused at an inn made the statement that he was coming back to settle Bailey, and that he had in his possession a revolver. The Deputy Attorney-General continued to trace the story of the crime.

In concluding Mr. McLean said they had the evidence of Frith made to a fellow prisoner that in killing Bailey when he had got rid of one of the greatest hypocrites he had ever known.

Dr. Stoddart, in charge of the Naval hospital at Esquimalt, testified as to the appearance of the body of Bailey when called to the sail and stores loft. The body was then warm, lying on its face. There were no staves or clubs of any kind there. The following afternoon he examined the body. A bullet had entered the back of the head a little to the right of center. It had passed through the skull. It was apparent the man had been shot from behind at close range, as the region of the wound was charred.

Cross-examined by Mr. Powell witness said that the prisoner suffered from a constitutional weakness, for which he had treated him for some years.

In reply to His Lordship he said the constitutional weakness was hereditary. The deceased could not have inflicted the wound himself.

Fred. Payne, storehouse keeper, testified to having received instructions from Mr. Bailey to provide some packing cases for accused whom he understood was leaving for Vancouver. The packing cases were kept in an adjoining room to that in which the body of Bailey was found.

Cross-examined by Mr. Powell, the witness said he had never had any trouble with the accused.

Chas. Harris, naval storehouse man, having charge of the stores, testified to Bailey being the senior storehouse clerk. The accused was under the latter. Witness had discharged Frith on 19th June on account of his having persistently absented himself from duty. He had never noticed any vindictiveness towards Bailey on the part of Frith. He had at first refused Frith the privilege of having the packing cases asked for on account of the charge from the service. Being pressed by Mr. Bailey he had consented afterwards.

Cross-examined by Mr. Powell witness admitted that Bailey had come to interfere for Frith.

H. W. Pauline testified to meeting accused on the morning of 27th June about 7 o'clock at the Ship Inn hotel. Frith bid him good-bye, as he was going to Vancouver. Accused said he was going that evening. After some further conversation about his leaving, witness said he would come back some time and "fix him." Accused mentioned no name. He understood that he referred to Bailey on account of a rumor.

His Lordship objected to this evidence as Bailey's name was not mentioned. His Lordship made it plain that this was only an inference in the mind of the witness.

Witness continued that accused drew out a revolver when he mentioned this circumstance.

Cross-examined by Mr. Powell witness said that he did not think accused had been drinking. He took one drink then, he thought whisky. The prisoner was flushed and seemed excited. He paced up and down while talking. He looked as though he had been drinking the night before.

Witness had been in the navy yard about two years and nine months before when accused had a talk with him. He saw him being very poor kicking and going through the motion of swimming. When the revolver was produced on 27th June he paid little attention to it as he thought it was an act of bravado.

A. Murch, of the Royal Marine Artillery, was a sentry at the front gate on the morning of 27th June. He told of hearing that Bailey was missing about 9:20 o'clock. The body of Bailey was found about 11 o'clock.

Lance Sergt. Lowth saw Bailey and Frith together crossing the yard about 7:40 on the morning of 27th June. He had afterwards entered the storehouse by a window, the door being locked and the key missing. He had found Bailey's body inside. The key of the adjoining storehouse was found in Bailey's hand.

In answer to Mr. Powell, witness said he acted as a nurse to Frith in December. He thought it was fits that ailed him.

Wm. Kenny, a first class petty officer of H. M. navy, saw Frith at the naval pier on the morning of June 27th a little

before 8 o'clock. He was going towards the shore.

Provincial Officer Campbell testified that he had been intimate with accused for years. He gave his evidence largely as given at the preliminary hearing of the case. Frith had told him on the morning of June 27th that he had killed Bailey owing to some trouble at the stores, but that it was in self-defence. He had afterwards taken part in the search for the deceased, and had arrested Frith.

Cross-examined by Mr. Powell, he said he knew Bailey and Frith were friends. Frith admitted to witness after his discharge that it was his own fault that it resulted. He had acted as a nurse to prisoner at one time. There was something the matter with his brain. Witness had been drinking heavy for about two months. At the time he made the arrest of prisoner there was a little discussion as to razors in the family.

Sergt. Murray, of the provincial police, told of Frith being brought to the head office in Victoria. He wished to make a statement to Superintendent Hussey, who cautioned him against it. Witness also cautioned him, but the prisoner persisted in making his statement. This statement was taken down in his presence. It was read in court, and consisted of a detailed account of the prisoner's trouble with Bailey, resulting in his having to shoot him in self-defence. The details of the statement have been given in connection with the preliminary hearing, and are familiar to readers of the Times.

Alexander Gordon, who was in jail when the accused was taken there, testified that he had had a conversation with Frith concerning the affair. Frith asked him what he thought about it. Witness replied that he did not want to say what he thought about it, but on being urged by Frith said that some said Frith should have shot himself after the deed; others said that he must be a lunatic. Accused asked witness if he looked like a lunatic, and witness assured him that he did not. Accused then said that he had, merely done his duty by ridding the world of one of the greatest scoundrels that ever trod the earth under the cloak of religion, and again asked if he looked like a lunatic.

Cross-examined by Mr. Powell witness said he had a conversation with Frith when the latter came back after the preliminary hearing. He had asked him if he felt nervous, and prisoner replied that he did not, but referred peculiarly to the length of the rope. Being asked if the revolver had been found Frith said it had not, and that it was no use any way, as he had to fire twice before it would go off, and that he had not shot Bailey that morning, he would have shot somebody else in the course of the day.

He had often heard prisoner humming tunes to himself. On leaving the jail on his discharge witness had said to Frith: "I wish you luck, Frith." Accused said something about being prepared for anything. Prisoner said he did not care much what way it went.

An adjournment was then taken until today at 10 o'clock.

When the Assize court opened this morning the trial of A. J. Frith for the murder of F. J. Bailey was proceeded with. The case for the crown having been submitted, the prisoner's defence was proceeded with.

Mr. Powell, in opening the defence, said that at the time the crime was committed that the mind of the accused was so affected that he was not himself, and that he did not realize what he was doing. Affected with a constitutional weakness which drained his vitality and also by a hemorrhage of the brain, which affected him so that he was not really responsible.

He said he would show by the evidence to be produced that although a tender father he had done things which it was difficult to explain. Without warning he would seize his wife and violently throw her to the floor. He had also on one occasion put his wife out on the street, locking the door. He had also evidence of desire to shoot the whole family, and had had out threats of that kind against his friends, one instance being M. Payne. Afterwards the accused when spoken of about these things would say that he did not realize what he was doing. His action towards the family had led to his daughter leaving home. Accused also had been troubled with his head, and had required careful attention. Mr. Powell said he was by the evidence to show that the accused was really not responsible for his acts.

Mrs. Frith was the first witness. She testified that in 1901, about Christmas, the accused had had a hemorrhage of the brain, and since that time he had had three attacks of fits. The doctor said they were epileptic fits. Since that illness her husband had acted differently. On two occasions while reading his paper he suddenly rushed upon witness knocking her down and also swearing. He appeared very violent. On another occasion he showed a revolver, and threatened to kill the family. He had done so put her out of doors in one of these fits.

Another time, although he had had no trouble with Mr. Payne, he showed a revolver, and threatened that he would kill him. Next day, this being recalled to his mind, he remembered nothing of it.

For some time he had slept very poorly at nights. Witness could not talk to him in this. He would get up and talk to imaginary people. For some time he had been consuming a bottle of Scotch whisky every night, which he bought himself. He would get up about every half hour and go down and get a drink. On the night before the crime he was drinking as usual. In the morning he awoke in about 8:30. After breakfast he came in about 8:30. After breakfast he called his little boy to him. He felt the boy's neck, and said he had thrown away the revolver and would have to cut the boy's throat. Witness said: "For God's sake, Fred, don't do anything like that."

She recounted Mr. Bailey coming to their place after Frith's dismissal, when the latter said it was his own fault that he was dismissed. She heard and heard Mr. Bailey say that if all men were like Bailey and Carroll it would be all right.

Cross-examined by Mr. McLean, witness said that she did not tell Mr. Payne to be on his guard after Frith had made the threat he did. She kept it to herself though she had fears that he might carry it out.

In answer to His Lordship witness said before his illness her husband was

very kind to his family. He had been in bed ten days at the time of his illness in 1901. The first outbreak of passion occurred about two months after the sickness. She thought that the threat concerning Payne was made after his discharge. For about two weeks before Bailey was killed he had been consuming a bottle a night. For some months before he had been drinking heavily.

Miss Isabel Frith testified that she had gone to Vancouver in January last. Since his illness in 1901 she had been on two occasions her father had acted very peculiarly. On one of these he asked if a certain gentleman was coming down to the house that evening. He showed his revolver, and said he wished to shoot him. She escaped out of the house. About a month before she went to Vancouver he also expressed a desire to kill them both, but she again escaped. The next morning her father was called by the name of Bailey, and she, therefore, decided to go to Vancouver.

Cross-examined by Mr. McLean witness said that the action of her father was the real cause of her going to Vancouver. She thought that it was the wisest thing to do. When she escaped from the house she went to Mrs. Campbell's. She did not say anything to Mrs. Campbell of why she came there. She stayed there for some time. She kept these things from everyone.

Dr. Hart was called to give expert evidence.

Mr. Powell laid the circumstances as outlined by the witnesses as to the actions of the accused, and asked the doctor's opinion of the sanity of the accused.

Dr. Hart said that these facts would indicate a certain amount of mental derangement, otherwise insanity. It might indicate homicidal mania, but not necessarily. He thought the man might be incapable that morning of knowing what he was doing.

Cross-examined by Mr. McLean, the doctor said that the prisoner did not appear now anything but normal. A man might be dangerously insane, and yet show no signs of it. As a rule an impression was left on a man subject to fits of insanity generally.

Pressed by Mr. McLean for an answer as to whether a man addicted to liquor did not do things which resembled his insanity. Dr. Hart returned that a man under those circumstances was insane-alcoholic insanity.

In answer to His Lordship the witness said that a man might be actuated by an uncontrollable impulse to commit an act, and yet immediately afterwards realize that he had done wrong.

The doing away with the weapon used very shortly after did not indicate any homicidal impulse to commit an act.

The attacks upon the wife were not such as a violent tempered man under the influence of liquor might not commit. The feeling a child's neck with the woman's hands, however, indicated something altogether different, and looked like an unbalanced mind. In society as they found it in this country they did not expect to find a man who committed murder altogether rationally.

Dr. Frank Hall, the last witness to be called for the defence, having been summoned away suddenly, Mr. Powell expressed his inability to proceed with the case. It was suggested that if he wished to visit the scene of the murder that it might be done.

The foreman of the jury expressed the desire to visit the place.

The question then arose as to whether the prisoner would have to accompany them, the jury, and sheriff. After investigation it was decided that the jury should go in company with the sheriff only.

A special car was provided for them, and an adjournment taken by the court until 2:30 this afternoon.

Yesterday afternoon the trial of A. J. Frith was concluded in the Assize court, and the prisoner was sentenced to be hanged on November 27th.

George Powell, the counsel for the accused, made a splendid defence. The prisoner was not at the time he committed the deed responsible for his act. Mr. Powell made out the strongest case possible for the accused. His argument was so effective that he was not himself, and showing a thorough mastery of his case. His conduct of it throughout put Mr. Powell easily in the front rank among the criminal lawyers of this province.

A few witnesses were examined, and the arguments on both sides were delivered.

The first witness called was Dr. Frank Hall. Mr. Powell outlined, as for Dr. Hall, the many circumstances contained in the evidence of the witnesses for the defence and was asked his opinion as to the sanity of a man doing as outlined.

Dr. Hall said these actions were very peculiar; they were not those of a sane man. Any man who had a hemorrhage of the brain had a diseased brain. Epileptics were, in the minds of some of the best authorities, diseased or lateral. A great many of them, sooner or later, went insane.

He cited a personal case in which an epileptic had come to the conclusion that another medical man was trying to poison him, and suggested that he might be right in shooting him.

If a man had a hemorrhage of the brain or was an epileptic he might be seized with an hallucination and might want to kill someone. They very often picked on their best friend. Immediately after might be rational.

Cross-examined by Mr. McLean, Dr. Hall held that a man having had a hemorrhage of the lungs there was always a diseased lung. If a man had an attack of congestion he never recovered. A hemorrhage of the lungs did not necessarily need to be tuberculous, and hence might be cured. A man might recover from a hemorrhage of the brain. After a hemorrhage a part of the clot was taken up into the system, but a part was not, and a new tissue was formed. In the brain there was no way of the remaining part of the blood passing away as there was in other parts. The fibrous tissue was formed and created a pressure. The doctor thought the excessive drinking might account for actions such as those outlined.

Frank Campbell testified that he had visited the prisoner twice at the jail. The prisoner had said he was in a bad way and fast again. He said he made one mistake that he did not put an end to another, a young man who kept company with his daughter.

Jules Johns testified to the conduct

of the prisoner. No prisoner had ever acted better. He never received any reports as to his conduct, either to act strangely, being violent or not sleeping at night. The doctor's attention had never been required while he was there. He had no indications that the prisoner was not when sober.

Guards Paulson and Hunter of the jail also testified to the most rational demeanor of the prisoner while at the jail.

George Powell, in addressing the jury, referred to the responsibility resting upon the jurymen. He felt the greatest responsibility himself. It was a question for them to decide whether the acts of the man were those of a cold-blooded murderer or those of a man deluded by a diseased mind.

The issue with the crown was that the man did not at the time of the killing know what he was doing. The crown's case presupposed reasons for the crime. The theory of self-defence was responsible for the prisoner losing his position. The prisoner's action was then one of revenge. It hinged upon the question of motive, without the motive being clearly established, the case fell to the ground.

He outlined the fact that the two men were very friendly. To a reasonable man there must be established a most despicable act of treachery on the part of Bailey. This was a total failure. Had in friendly manner warned the prisoner. He had even offered to intercede with Mr. Harris after his discharge.

The evidence of Mr. Harris was that the intercession followed and even afterwards he took occasion to get cases for him. Frith never blamed Bailey, but took it all himself.

The crown, with all its force of detectives, has not been able to prove that there was anything but the best of feeling between Bailey and Frith up to the day of the killing.

There was not the evidence of cunning or of a cunning man to brandish his revolver the very morning of the killing, coupled with the statement to Dan Campbell that he had killed Bailey?

If Frith was a sane man he would have had a reasonable motive for committing the act.

It was but a reasonable suggestion that the killing was due to an outburst of a diseased mind, coupled with the results of heavy drinking. Someone had to be killed.

The evidence of Gordon in the jail concerning Frith's statement of Bailey being the greatest hypocrite was, in face of the remarks of the prisoner made as to the manner of his death, and an evidence that he was insane.

The evidence of Dr. Hall went to show that a man having had a hemorrhage of the brain was never quite what he was before. The effect of a diseased brain, upon a man's actions could not be fully understood.

The law would not allow of a man not in the full enjoyment of his reason being sacrificed for something for which he was not responsible. He did not pretend to be a doctor, and he was not a doctor.

He laid great stress upon the peculiar actions of the prisoner towards his wife and to others. He placed no stress upon the fact that he came back to his family and ate his meal. Then shaving himself he took his boy on his knee. The hallucination again came over him, and he spoke of cutting the boy's throat.

It was usual in such cases to find that a man had a mad desire to kill himself or to kill someone else. When it resulted in suicide there was never any trouble in finding a jury to return a verdict that the man's mind was deranged.

Was it not reasonable that he was under the hallucination that he must kill someone?

The design required to carry out the crime was not a necessary proof of the sanity of a man. The story of self-defence as told was not the logical one of a sane man. He told a story which could not be reasonably believed.

He thought that when the accused said that he would "fix some one," he meant the young man who kept company with his daughter, he having expressed before the jury his sympathy with the wife and family of Frith. It was not to sympathize with the accused, who seemed indifferent to any verdict.

Deputy Attorney-General McLean addressing the jury, said he had no doubt now that Frith had killed Bailey, that was admitted by the defence. In most cases of murder there was a doubt as to whether the accused had actually killed the victim or not. In this instance there was none. The defence first urged self-defence, but the evidence showed that it could not have been done in self-defence, so that plan was completely abandoned and another line was taken up. It was urged that the prisoner killed Bailey because he was insane, that he was laboring under some delusion that prevented him from understanding the nature and quality of his act.

Mr. McLean then went on to take up the evidence in detail and dwelt strongly upon that of the prisoner himself in conversation with Campbell, when he said: "Bailey will get no more men dismissed from their job." This showed that he attributed the loss of his position to Bailey. It was not insanity that actuated him, but revenge. The man who allows his passions to carry him away into a course of revenge, must pay the penalty. Again, to Pauline the prisoner remarked that he was going away. Frith replied: "Yes, I am going to Vancouver, but I will come back and fix him."

Pauline was aware that some trouble existed between those men, and although the name was not mentioned felt sure that Bailey was meant. Two hours later the deed was committed. Did that look like insanity. It might have been the result of drink. Men talk when drunk as they will not when sober.

Mr. McLean then reviewed the medical evidence and held that it did not substantiate the argument of the defence. Drinking was not insanity, and drink is no excuse for crimes. In an ancient Greek state there was a law that for a man who committed a crime the penalty was so-and-so; if committed while drunk the penalty was doubled. Mr. McLean referred in feeling terms to the wife and family of the prisoner.

After a recess of five minutes His Lordship addressed the jury. The cardinal point for the jury to decide was the state of the man's mind at the time of the crime. The theory of self-defence had been demolished and abandoned; one question alone remained, and that was whether the prisoner was of sound mind or not when he committed the deed which is acknowledged that he did commit?

The jury then retired until after 8 o'clock. Upon returning they announced that they had arrived at a verdict of guilty of murder—with a very strong recommendation to mercy.

Mr. Justice Irving asked the prisoner if he had anything to say why sentence should not be passed on him.

Frith replied "No, sir." His Lordship thereupon asked him to stand up, and said:

"Prisoner, you have been found guilty of the crime charged, and I have only one thing to do. You have been most ably and ingeniously defended, and everything has been done by your counsel which could possibly be done. I sentence you to be hanged by the neck until you are dead on November 27th, and may God have mercy on your soul."

Frith received the death sentence in the same stolid manner which has been evidenced by him ever since the deed was committed.

The recommendation to mercy will be forwarded to Ottawa.

LOUIS WARNE DEAD.

Popular Member of No. 1 Company, Fifth Regiment, Passed Away Yesterday.

Yesterday morning Louis Warne, a member of No. 1 Company, Fifth Regiment, passed away at the Provincial Royal Jubilee hospital. Death resulted from a severe attack of pneumonia. Deceased was a native of England, and 29 years of age. He came here as a member of the crew of H.M.S. Pheasant, and upon securing his discharge took up his residence in Victoria. Since then he married and leaves a widow and member of the Victoria Rifle and Artillery Club, Court Vancouver No. 5755, A.O.F., and the members of that lodge will attend the funeral in a body.

The funeral is arranged to take place from his late residence, Belton avenue, Victoria West, at 2 o'clock on Sunday afternoon and later at the Soldiers and Sailors' Home. Interment will take place at the Naval cemetery.

Members of No. 1 Company of the regiment and the band will parade, and members of other companies are asked to attend. In this connection the following order has been issued.

No. 1 company and the band of the regiment will parade at the drill hall on Sunday, Oct. 4th, at 1:30 p. m. for the purpose of attending the funeral of the late Gr. Lewis Warne. Capt. Curle will make the necessary arrangements for firing party, etc. Any other members of the regiment who may be able are requested to attend. Dress, church parade order.

D. B. MCCONNAN, Capt.,
Adjutant.

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CERTIFICATE OF IMPROVEMENTS.

(Form F)

NOTICE.

John Hancock Mineral Claim, situated in the Port Renfrew Mining Division of Victoria District. Where located: At Port Renfrew, on the N. W. ¼ Sec. 36, T. 13, R. 9, W. 20. Commencing at Ferguson's N. E. corner post; thence 80 chains east, following shore line to Ferguson's Homestead; thence south 80 chains; thence east 80 chains; thence north to point of commencement 80 chains. Quantsio, 25th September, 1903.

Notice is hereby given that 30 days after date, I intend to apply to the Hon. Chief Commissioner of Lands and Works for a special license to cut and carry away timber from the following described land: Commencing at Ferguson's N. E. corner post; thence 80 chains east, following shore line to Ferguson's Homestead; thence south 80 chains; thence east 80 chains; thence north to point of commencement 80 chains. Quantsio, 25th September, 1903.

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