

Investigation of charges against Police Magistrate McCulley of Chatham.

SATURDAY FORENOON, AUGUST 31.

Court opened at 10.35 a. m. on Saturday, pursuant to adjournment.

Dr. Wm. Pugsley, Q. C. appears with Messrs. Lawlor and Winslow for petitioners.

Mr. Lawlor calls for the Police Court record in the case of the Queen on the information of John Menzies vs. James Thompson, record produced, offered in evidence and admitted.

Mr. Winslow reads the testimony to T. Coughlin given at the trial of James Thompson for violation of the Scott Act—this witness who gave testimony before this commission in reference to Inspector Menzies having him liberated from the lockup where he was imprisoned.

Mr. Winslow also reads from the record the testimony of several witnesses.

Mr. Lawlor calls for the record in case of the Queen, on informant of Anthony Forrest, vs. James Boyle, for interfering with informant in the discharge of his duty as policeman, in which Boyle stated he got liquor from Mary Murphy.

Mr. Lawlor also reads record of the case of the Queen on the information of John Menzies vs. James Thompson, on affidavit of Jas. Boyle taken in prison.

Mr. Lawlor states this information was written by Mr. McCulley in the lockup, while Boyle was a prisoner. He reads the evidence of Boyle at the trial.

Mr. Lawlor also reads record in the case of the Queen vs. Robert Armstrong on information of John Menzies, 7 April, '92 for violation of the Scott Act.

Mr. Winslow submits the 2nd case of the Queen on the information of John Menzies, vs. Robert Armstrong.

Dr. Pugsley says, having just arrived, he has not had opportunity to consult with the petitioners and counsel and thinks if an adjournment can be had until after the documents submitted and other evidence connected with the information is filed, it will facilitate its progress rather than otherwise.

Mr. Murray objects, as he thinks the inquiry has already been subjected to too much delay and should be pushed through.

After further discussion an adjournment until 2 p. m. sharp, was had.

SATURDAY AFTERNOON, COURT REASSEMBLED AT 2 P. M.

DR. W. PUGSLEY, Q. C.

Chatham, sworn, and examined by Dr. Pugsley: Have been practicing for 24 years as a barrister; know Mr. R. A. McCulley, Police Magistrate, Chatham; have had considerable experience before the different courts—Mr. McCulley's also several times. My personal relations with Mr. McCulley have been and are friendly—extremely friendly on my part. It is I who have appointed Police Magistrate.

Without at present, going into the details of each case, how, in your opinion, has Mr. McCulley administered justice, being that opinion on what you have observed at the several cases in which you have been concerned before him?

Objected to by Mr. Murray, as the proper way is for witness to go into details—to give specific facts.

Mr. Pugsley said if he did not follow this up by questions on specific facts it would only have weight on its merits. Admitted. The Commissioner again stated that this was a different inquiry from one before the regular courts from which there would be appeal. He had admitted this kind of testimony all along, and it would only be such of it as was supported by other testimony in detail that he would consider as included in the record. He would reject all save legal testimony.

Witness: In many cases in which I have appeared as counsel before Mr. McCulley, he has erred in judgment and showed a total incapability of dealing with the matters in a judicial way. I do not say that this was done mentally; my opinion is that from his mental make-up he is not capable of dealing judicially with matters. Very often, in my experience, he reversed the principle of law which gives the benefit of doubt to the accused, and has given it to the prosecutor. In many cases he has not been governed by the preponderance or credibility of the testimony, but has given credit to witnesses who were not entitled to credit.

What do you say as to his admission or rejection of evidence? I have observed in many instances, that he would admit improper evidence that would tend to prove the case for the prosecution, and reject testimony that would tend to show the innocence of the accused.

Do you remember the case of the Queen on the information of John Menzies vs. James Thompson, in Jan. 1894, in which you appeared for the accused?

Yes. That case was tried before Mr. McCulley.

I think you asked certain questions on the cross-examination of the prosecutor, in reference to Thomas Coughlin, who was then confined in the lock-up and sentenced to imprisonment and who had stated that Mr. Menzies said he would pay his fine if he would give evidence against James Thompson. Mr. Menzies testified as follows, according to page 9 of the record: "I did not pay his fine before he gave his evidence. He was to give evidence and I was to pay his fine. I was not going to run any risks to let him out, until he gave his testimony."

What record shows that you then asked this question— "Who told you that Coughlin offered to pay Mr. Menzies's fine for him?" which was objected to by Mr. Murray and not

allowed. You followed it up by another question, as follows: "Was it Mr. McCulley, the police magistrate, who told you?" which was also objected to by Mr. Murray and not allowed. The record shows that you then asked— "Did Mr. McCulley tell you that he had talked with Coughlin, and that Coughlin would give you information, if you would go up to where he was in the cell?" This was also objected to by Mr. Murray and not allowed. And you then asked "Was it not, in consequence of what Mr. McCulley told you that you did come up?" which was also objected to and not allowed. Do you remember that taking place, as stated in this record of proceedings?

Yes, but my recollection is that there were more questions asked. State to the commission what you were seeking to elicit by those questions.

It was because I believed that these questions, if answered, would tend to show Mr. McCulley's complicity with Mr. Menzies, in connection with the purchase of Coughlin's testimony.

I would not expect you to remember all the cases, but perhaps you can recall incidents in some others as illustrations?

There was a Conway case.

What was there in his conduct in that case to sustain what you have said of him?

In that case he evinced a desire to convict. (Objected to. Allowed.) It was the charge of selling liquor to an Indian. (Record produced.) There was only the testimony of a drunken Indian, as against that of the defendant, and other witnesses and he chose to believe the drunken Indian. Under the Indian Act one credible witness, other than the informant, must prove the case. Mr. Menzies, the nominal informant, when examined, stated that he knew nothing whatever of the offence having been committed, except from the information he derived from the Indian. I contended that a conviction could not be had, as the Indian was, to all intents and purposes, the informant in the case. Mr. McCulley adjourned several times, in order to take the opinion of the Crown officers. The attorney-general, I understand, Mr. McCulley so states in his record—said he might convict on the testimony of the Indian, he being the informant, and Mr. McCulley did convict. I am still of the opinion that the conviction was wrong. Outside of the grounds mentioned, the weight of evidence was, in my opinion, strongly against the prosecution. Record in the Conway case is here put in evidence.

In the Thompson case I think the magistrate's rulings were unfair to me. I think his conviction of James Boyle was wrong, as there was no evidence to sustain the prosecution, but the purchased testimony of Coughlin, while there were three witnesses for the defence—the defendant himself, his wife and son. No attempt was made by the prosecution to impugn the evidence of the two latter witnesses, nor do I think it could have been successfully done, for Mrs. Thompson, wife of defendant, was a very respectable woman, while her son was about 14 years old and gave his testimony in a most creditable manner.

The two Tingly cases were others in point, in this connection; one is 5th July '94 and the other 5th September '94. (Records put in evidence.)

If a magistrate commits a wrong by convicting a defendant under the Canada Temperance Act, either without evidence, or against the weight of evidence, is there any means of redress by appeal to a higher court?

Objected to by Mr. Murray, as it is a matter of law.

Commissioner says the question is one of law and everyone knows it is true. Not pressed.

It being the case, that where a magistrate does commit a wrong, by convicting a defendant under the Canada Temperance Act, either without evidence or against the weight of evidence, there is no redress by appeal to a higher court, is it, in your opinion, of the highest importance that persons in the position of Mr. McCulley should hold the scales of justice evenly and be altogether free from bias or partiality?

It is, and holding that view strongly, I have frequently endeavored to impress it upon Magistrate McCulley.

Have you, in any way, directly or indirectly, initiated these proceedings?

Neither directly or indirectly have I initiated these proceedings against Mr. McCulley. I did not know they were taken until long after they were made. The first time I saw them they were filed in Fredericton. I was away from home, I believe, at the time, or might have seen something of them, as they were prepared by Mr. Bennett, my partner.

And do you say, Mr. Tweedie, that in expressing the opinion which you have expressed, which you have given us of Mr. McCulley's conduct as a magistrate, you have done so absolutely without personal feelings against Mr. McCulley?

Certainly without feeling. My feelings are all the other way. I am annoyed sometimes when he goes wrong in his decisions. I think it fair to Mr. McCulley to say, however, that I do not think he goes wrong wilfully, but he seems to approach cases from the wrong side of evidence, and to give the benefit of doubt to the prosecutor, instead of to the accused, as he is bound to do.

Going back to the questions you put in the Thompson case, and which Mr. McCulley rejected, was or was not the arrangement which Mr. Menzies admitted, that he had made with the witness, Coughlin, in your opinion, a most improper one and calculated to prevent the fair administration of justice?

Objected to by Mr. Murray, on the ground that it is in the record and

the Commissioner or government can form their own opinions of it.

The Commissioner says, though it is improper for Mr. Menzies, Mr. McCulley should be connected with it by evidence, in order for it to affect him. Many persons might think it quite proper to purchase evidence. Question allowed.

Witness: I have always held that opinion.

Was it or was it not by reason of your holding that opinion as to the propriety of that, which you sought, by the questions which you put to Mr. Menzies to ascertain the extent of Mr. McCulley's connection, if any, with him in relation to the purchase of Coughlin's testimony?

Mr. Murray objects, as the question has been answered before. Admitted.

Holding the view I have already expressed, I asked those questions for the purpose of ascertaining how far the magistrate was connected with the purchase of this testimony, and I endeavored, at the time the objection was taken to my asking those questions, to impress upon the magistrate how important it was that he should allow them to be answered, so that no imputation, nor the shadow of an imputation should rest upon him as a police magistrate, in connection with such a questionable transaction. Mr. Murray said it wasn't correct to answer the question. The magistrate would not allow any question to Mr. Menzies tending to elicit that information. He gave no reasons for rejecting the testimony.

Where is Mr. McCulley's store?

Nearly opposite my office on Water street, Chatham, at that time and since, Mr. Menzies has been a frequent visitor to that store?

When I am at home I see him very often in the store, and stand- ing at the door. He is very frequently there—spends a great deal of his time there when in town.

Would it be incorrect to say he seems to make it his headquarters?

I would not say that, for I'm away so much.

Cross-examined by Mr. Murray: I have known Mr. McCulley about 35 years; have been intimate with him during all that time; always had a high opinion of his character as a man; but not as a magistrate.

You thought he was fit to be appointed Police Magistrate of the Town?

Yes; He did not solicit it.

Did he tell you he was not well versed in the law?

He did, and I referred to the late Mr. Blair, who was a good magistrate, but not a lawyer, and told him he would pick it up after a time. I knew at the time he wasn't a lawyer, and had never studied law.

Did you expect he would never err?

I expected he would, but not that he would persistently err—against light and knowledge.

Do you, under oath, say he has persistently erred.

In my opinion, he has. I speak of my knowledge, as a lawyer, in the cases in which I have been before him.

You have spoken of his mental make-up. Is your mental make up not of such a character that you yourself, always—or nearly always—are of opinion that your clients have the right side of each particular case, or the side that should win?

I do not think so. I always try my best to win for my clients.

Can you name a case to me in which you ever thought differently?

Yes, in the case of the owners of the steam tug, Sultan, against the Providence Insurance Company. I found I had no case.

Can you name another?

Yes, the owners of the Sultan against another insurance company.

Can you name any other. How many?

Several—lots of them. I have frequently found my opinions were erroneous.

You state here that Mr. McCulley has reversed the principle which gives the benefit of doubt to the accused. Name one.

The case of Thompson is one. There was a very strong doubt there.

In that case you say three witnesses contradicted Coughlin.

Yes; there was no proof of the sale, save by Coughlin. Three witnesses contradicted him on this point. The circumstances showed there was no sale. Thompson swore he had the liquor in the house for his own use in sickness and gave some to Coughlin.

But Coughlin swore he paid ten cents for it?

He swore he put it on the table and saw Thompson pick it up. Mr. Thompson swore she was present and would have seen the ten cents put on the table if it had been put there and Thompson took it up.

Mr. Murray reads from the testimony in Mr. McCulley's record, when Mrs. Thompson swore she was not present all of the time.

Witness: But she swore to the other thing also; her evidence, in some respects, I know, contradicted that of the boy but not on that point.

Dr. Pugsley: Would not that Mr. Murray, go to strengthen her testimony for if she agreed exactly with her son, it would appear as if they were in a conspiracy?

Mr. Murray:—Don't you know that Thompson had a bad reputation?

I can't say.

Don't you know he had the reputation of keeping a dive?

I don't know. I've heard of him striking a person one night.

Didn't you hear of the fellow he killed—nearly killed.

No, I didn't.

Mr. Murray: Well I heard him make the remark himself, but the fellow wasn't hurt. Don't you know he had the reputation of

beating his wife unmercifully sometimes?

I never heard that.

Don't you know he beat his boys and turned them out of the house?

I do not. Such things might occur and I don't know it.

Were you aware that he was driven out of Fredericton and Bathurst for his ill deeds?

I never knew he was in Fredericton. I know he left Bathurst but I don't know why. It didn't come out in evidence.

Were you aware that while in Bathurst he nearly killed Chas. Bose by striking him with a wagon shaft?

I was not. He was a man I knew little about.

Were you aware that his wife was sometimes under the influence of intoxicating liquor?

No. She was several times in my office on business and she impressed me as a woman of some refinement and education.

Previously, at the time you asked Mr. Menzies if it was not Mr. McCulley who told him to go to Coughlin, as he wanted to tell him something, had you not asked Mr. Menzies "Who told you Coughlin wanted to see you?"

I think I asked that question but I don't know whether it was before or after.

Didn't you and I have an argument on the question?

Can't say; very likely we had.

Will you cite an authority from Clark's Magistrates' Manual, showing that the right of the defendant to cross-examine the informant did not go to the extent of from whom he got his information?

I don't recollect that you did—you might leave done so, but I hardly think you would quote anything so impertinent to the subject, and I think it was wrong in rejecting the evidence.

At the time I objected to that question, do you recollect Mr. McCulley said, for his part, he was willing to have the answer?

I think he was willing to have the answer, but he was not willing to answer the question, when he might have allowed the answer, for he had the power; my impression was and is that he was aware of the transaction between Coughlin and the informant, and that he was not content to let it pass as a matter of course, but that he was not content to let it pass as a matter of course, but that he was not content to let it pass as a matter of course.

And yet you think Mr. McCulley is an honorable man?

I have a good opinion of him as a man, but as a magistrate he seems to think that any means is justifiable in order to bring a charge home to an offender; I think it possible that a person who is a magistrate, and is honorable as a man, until occasion led him to act otherwise.

Had you no knowledge that these charges were to be preferred before you saw them in Fredericton?

I was told of an intention of some parties to place charges against Mr. McCulley before the government and I advised them that unless they were sure of their ground, and could show some one case of misconduct, it was useless to prefer them.

Were you professionally consulted by any of these parties?

Never!

When you spoke to us as a member of the Government about them?

I was spoken to about them, in a casual way, but whether as a member of the government I cannot say.

Were you not spoken to about them at a gathering in Newcastle, during the Hill-Menzies trial when Robert Armstrong, John McKane, Richard Grenley, John Robinson, Jas. Robinson, or some of those, or some other, were present, and you were told that if you didn't get McCulley dismissed the party would not support you?

I was at no such gathering at Newcastle at the time mentioned, but I remember, during the Hill-Menzies trial, being in Newcastle one evening in the company of Mr. R. A. Lawlor, John McKane and Mr. Robert Armstrong. These were the only persons present, Mr. McKane, I think it was, made the remark that there was sufficient evidence elicited against Mr. McCulley in the case we were trying to justify the government in dismissing him as a magistrate. I replied that Mr. McCulley could only be dismissed for good cause shown, and that it was useless to talk to me of dismissing him, unless charges were made against him which, if proven, would justify the government in removing him.

I think someone said that a great many of my friends thought he should be dismissed for misconduct. I intimated to them pretty forcibly that he would not be dismissed for just cause, but I think, the whole of the conversation.

Did you not say if they would prefer the charges you would see that the Government would pay attention to them.

I did not. I rather took the other ground.

Did they not threaten what they would do unless McCulley was dismissed?

I'm not the man to be threatened, I think.

Didn't they say they wouldn't vote for you?

They might have said it, but I have no recollection of it.

Having stated in your examination in chief, that you endeavored to impress on the magistrate the importance of his allowing these questions to be answered, I would ask you was that not at the time the first question was asked, viz: "Who told you that Coughlin wanted to see you?"

I think not; I won't say, positively, that it was not, but if I did so when the first question was asked, I did so much more strongly when I asked if it was Mr. McCulley who had given the information to him (Menzies).

In reference to your having trouble with Mr. McCulley and finding difficulty in having him rule and decide correctly, have you not had the same experience with other magistrates as to their rulings and

decisions, in proportion to the number of times you have appeared before them as counsel?

I find that a difficult question to answer, from the way it is put. I have, at times, consulted with the decisions of other justices, and in cases where the appeal would lie, have appealed, if I felt aggrieved, but I have never found any justice as the present Stipendiary Magistrate has done.

Wouldn't you think it would be better for the administration of justice if other magistrates were to follow the same course of conduct as Mr. McCulley?

I think if magistrates generally, throughout the country, were to act as Mr. McCulley has done there would be a revolution, for citizens wouldn't stand it.

Will you swear that a large majority of the people of this county don't approve of his course?

Dr. Pugsley objects and says persons in the county generally are not in a position to form a correct opinion as they do not come before Police Magistrate McCulley, but form their opinions on prejudice and hearsay. He had been careful to confine his questions to Mr. Menzies's personal knowledge, as to avoid the hearsay and conjectural testimony which Mr. Murray now desired to elicit.

Witness, however, was allowed to answer.

I might say that a large number of the justified Pilate in giving judgment upon our Saviour, but it turned out it was very wrong, although popular at the time. I can only form my opinion from my own observation and the opinion of litigants who have knowledge of Mr. McCulley's conduct, while the opinion of parties who have no knowledge in those ways would be valueless.

Witness: That's no answer. [Mr. Murray repeats question.]

Witness: I cannot say.

The Commissioner: I have no doubt that there is a class of persons in the community who think it is wrong to convict a person who sells liquor in violation of the Scott Act; and I have also, no doubt that there is another class who think that a person who sells liquor, or is accused of it, ought to be convicted without there being evidence of the fact or not. But what are such persons' opinions worth. I am sure I could never be affected in the least by them.

Mr. Murray: Don't you know that a majority of the merchants of Chatham approve of Mr. McCulley's course and conduct?

I do not know it.

Would you say that the charge that the court over which he presides has not the respect or confidence of the community, is true?

I wouldn't give an opinion about that, for I do not know. I only know what a majority of the lawyers say, and that his court is not held in respect by a majority of the lawyers of the county.

Do you know how many of the lawyers of the county have appeared in Mr. McCulley's court?

I could mention those I have seen there. I think about eight.

Mr. Pugsley suggests that time is being wasted by this kind of questioning. The Com' says the examination is going far from the subject, but he will not overrule the question.

Witness:—Messrs. Lawlor, Adams, Winslow, Murray, the two Thompsons, Butler, Bennett and myself have appeared before Mr. McCulley. I wouldn't say that any lawyers but Mr. Butler and myself have entire respect for and confidence in Mr. McCulley's court.

How many of these are members and frequenters of the Chatham Social Club?

The court thinks the question irrelevant.

Mr. Murray says he wants to show this whole business emanated from the Chatham Social Club.

Mr. Pugsley says he is instructed that the complaint was afoot some time before the Chatham Social Club steward was prosecuted. The Commissioner allows the question.

Witness: There's yourself, Mr. Lawlor, Mr. Winslow, and myself.

Mr. Murray: Mr. Adams isn't he a member?

Witness: He was not a member for some time.

When did Mr. Adams cease to be a frequenter of the Club, and how long did he cease and when did he return. Is he not a frequenter now and was he not a member a year ago?

Witness: Several years ago he was a member.

The Chatham Social Club, at one time, dispensed intoxicating liquors?

Yes.

Of late it has not been doing so?

Not to my knowledge.

Was the stopping of the sale of intoxicating liquors not in consequence of a judgment of Mr. McCulley?

It was, as I understood, pursuant to an arrangement between the managing committee of the Club and Mr. Menzies.

Was that arrangement not made some time after the Steward of the Club had been convicted by Mr. McCulley for violation of the Canada Temperance Act?

I think so.

Wasn't it after a decision of the Supreme Court on some of those cases?

I think so.

There was here some conversation between the Commissioner and gentlemen of the bar—being after six o'clock—as to adjournment, and in view of the approaching circuit, in which some of counsel were to be engaged in different parts of the county, the Commissioner adjourned the inquiry until Tuesday, 8th October.

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