

O'BRIEN TO HANG AUGUST 23.

From Saturday's Daily.



GEORGE O'BRIEN.

It was clearly proper to admit evidence regarding the murder of the two men other than the one named in the indictment. The crown was not to blame that O'Brien had killed three instead of one man.

The evidence of Witnesses Williams and West was allowed for the reason that although the conversation with Williams took place sometime before the commission of the crime, it was then on the prisoner's mind. He had been in jail a year in the meantime and as soon as the ice permitted after his release he was found in the same locality where he had told West was a suitable spot for the work. The evidence was clearly admissible.

Regarding the statement of the crown prosecutor about O'Brien's being "an old and experienced thief," it was stopped when made, but in view of what the defense itself had brought out of his past history, and taken in connection with what O'Brien had told McGuire at Tagish, it was admissible.

As to the forcing of the prisoner to trial, the prisoner had already been in jail a year and a half; he knew the crown was arranging to bring him to trial; witnesses from many miles away were being held here to testify and if the prisoner had waited until the last hour to procure a lawyer and otherwise prepare a defense, he had only himself to blame. The law presumes that a prisoner shall always be ready for trial.

As to erring in charging the jury his lordship said he would look into it, but was ready to impose sentence on the prisoner, who some time previous had been ordered to stand up.

Clerk McDonald—"George O'Brien, have you anything to say as to why the sentence of death should not be passed upon you for the murder of Lynn Wallace Relfe?"

O'Brien replied—"I might say a word or two. (Addressing the court) I notice, your lordship, that 28 new witnesses of whom I had not been notified were brought against me at the latter part of my trial, and"

"The time for talking about the conduct of the case is past," said his honor.

"Will your lordship permit me to call attention to a very important matter?" asked O'Brien in a clear and steady voice. He was answered affirmatively and O'Brien continued:

"Under instructions from Mr. Bleeker I did not give evidence in my own behalf and against so many other witnesses. I am innocent of the charge against me and if my witnesses were here I could prove my innocence; but I did not care to give my evidence when I had no witnesses to corroborate it. That is all."

His lordship then said:

"George O'Brien, you stand convicted of the murder of Lynn Wallace Relfe. I believe you are rightly convicted. I have no doubt of your guilt. Yours was one of the most heinous in the annals of criminality. Those men had lives which belonged to them the same as your life belonged to you; yet you and your partner, for I believe you were not alone, murdered them in cold blood.

"Therefore, George O'Brien, you are ordered to be taken to the place where you have been confined and there kept until the 23rd day of August when you will be brought to a place within the walls of the jail and hanged by the neck until you are dead. And may God help you."

During the passing of the sentence O'Brien kept his eyes riveted on the judge, his fingers twitched somewhat nervously and a hectic flush appeared on either cheek. Otherwise, there was no sign of weakening on his part.

On motion of Mr. Wade, all the exhibits in the case just completed were ordered by the court to be turned over to the police for safe keeping.

Court then adjourned until Monday morning at 10 o'clock.

On the reconvening of court yesterday afternoon Crown Prosecutor Wade continued his address to the jury. He dwelt with considerable stress upon the fact that O'Brien carried field glasses when on the trail, an unusual thing to do if he had not particular use for them, the particular use being to spy on travelers as they came up the trail. O'Brien had the same field glasses on him when arrested. The brush was cut away from the vantage point on the bluff in order that the glasses might be successfully used on travelers coming up the trail. No one could say they witnessed the actual killing, but the circumstances surrounding the murder are fully as convicting as would be the evidence of actual eye-witnesses. The silent evidence given by sticks, trees, the ax, stove, field glasses and the hundred other exhibits told a story that can not be disputed.

The evidence of the Prather party and especially of Mrs. Prather as to their missing the trail and going more than a mile out of their way, of their retracing their steps and of her coming face to face with the prisoner when he had come from neither up or down the trail, but from some intermediate point, O'Brien then told Mrs. Prather he had been camping there for a few days and if the statement was true then he would certainly know of the murder. The same day, December 27th, O'Brien told A. R. Gibson he had been two days coming from Minto. This of itself was practically a confession from

O'Brien taken in connection with what came out later. The conduct of the prisoner and conversations with him along the trail were reviewed. At that time, having passed Big Salmon, O'Brien changed his story and said he was going to Atlin. There was a vast change in the condition of O'Brien then from what it was down the river. With the Prathers he had plenty of money to pay his bills. He no longer slept on floors and cooked his own grub, but lived on the best to be had, paying cash therefor. At Shoff's roadhouse prisoner paid \$200 in cash for a team of horses which he tried to get permission to take over the railroad grade from Whitehorse to Caribou, the ostensible purpose being to evade the Tagish police post.

Unsuccessful in his efforts to go over the cutoff, O'Brien next turns up with Witness Hilderbrand on the steamer Nora on Lake Marsh and there, instead of being a pauper, explains why he has so much money by telling of \$2000 he had sent out to his brother in the States and later when misfortune overtook him in Dawson and he got on the woodpile for vagrancy his brother returned him the \$2000, hence the presence of money on him at that time. The twin or "trap-door" nugget was dwelt upon at length and from it was made an irrefutable point. The three witnesses regarding the nugget, Hilderbrand, Noble and Miss Lamar, was not surmountable; it was convicting.

Next the prisoner was found at Tagish Charley's roadhouse and at which place the prisoner disappeared for some hours during the evening of his arrival. He disappeared during the evening, returning some hours later when he displayed some nuggets for the benefit of an Indian boy. Next the prisoner was traced to Tagish post which place he entered with the apparent innocence of a lamb; but he did not go there until he had failed after mighty effort to evade that post, one of his horses having fallen in the river the same morning while he was endeavoring to get around the post. The fates were against him and he was forced to go to Tagish post. He was arrested and searched, but no nuggets were found, they had been cached. American bills which Murray Rads had presumably given Relfe were found on his person; later, and on the arrival of Detective McGuire, two \$100 bills were found concealed within the lining of the arctic socks worn by the formerly poverty-stricken man. The story of the silk mitts, not mates, but one of which was identified as Clayton's was related. The stain on the sled—stained with blood—was another point vividly brought out. The blood on the chip was the same as that taken from the pools at the scene of the murder.

The accuracy of Mr. Pennycook's maps and diagrams was indisputable sustained by the evidence of many witnesses. The same double-bitted ax that cut the 27 trees from the circle on the river was the same ax as cut the logs used in the tent and was O'Brien's ax, recognized as the one he had with him on his escape from jail in '98 and when captured by Constables Lynn and McBeth.

The story of the conversation of Witness Williams and O'Brien the day they went hunting from Douglass Island; of O'Brien's proposition to Williams that they procure rifles and proceed to the Yukon and hold up murder and rob travelers on the trail. It was in O'Brien's mind then and he came to Dawson where, after being one year in jail, he got out and carried out the program he had outlined to Williams. "Kid" West's testimony corroborated that of Williams in that while West and O'Brien had both been in the Dawson jail, O'Brien had proposed to him the same business he had to Williams and West had agreed to join O'Brien in the work of holding up and robbing on the trail. The crown prosecutor said he had been doubtful about introducing such a witness as "Kid" West, a convict borrowed from another country, yet, on the ground that it takes a thief to catch a thief, in this case the evidence of "Kid" West, substantiated by other witnesses, could be taken as the truth. Again thanking the jury and cautioning its members against being taken in by thunderous tones and misrepresentations of the defense, the crown prosecutor closed his address, having spoken three and a half hours.

Attorney Bleeker for the defense opened his address with a plea for his client on the ground that he was one man against two governments which for a year and a half have been collecting evidence against him and his client with no money and no friends had been forced into the trial with but only three week's notice and in which to prepare for trial. While the prisoner was charged with but one murder three murders had been brought into the case and had to be defended. There was no evidence that a murder was committed on December 25th, and no evidence as to anyone who committed a murder that day; that it was only circumstantial and circumstantial evidence can not be relied upon. Joseph's coat was stained with blood and carried to his father Jacob and the latter lamented his son's death but later Joseph turned up alive and well and ruler over all Egypt. The attorney for the defense cited several cases where inno-

cent men had suffered through circumstantial evidence and pointed out that circumstances should be inconsistent with innocence before conviction is made. Mr. Wade objected to Mr. Bleeker quoting from Mark Twain and not mentioning Puddin' Head Wilson and other American humorists.

The speaker cited the Dreyfus case, but the court called attention to fact that true details of the Dreyfus case have never yet been settled.

Mr. Bleeker said the very fact that Tagish Charley's O'Brien turned back from the river trail and went towards the police post was the act of an innocent man. His client's actions at Whitehorse were those of an innocent man because he could, by hitching his horses abreast, have traveled over the rail road grade from Whitehorse to Caribou.

The attorney explained O'Brien's having changed his name on the trail as due to his having but recently been discharged from prison where the name O'Brien was known and he did not wish to be known along the trail as an ex-jail bird.

Finding an ax or a stove belonging to a particular man in a tent does not signify that the man owns the tent or ever lived in it. Regarding O'Brien's partner on the trail, the man supposed to be Graves there was nothing about their being together that would indicate that they were partners more than that they may have traveled together for a few days. The stories about O'Brien's partner's "Cockney" accent disagreed, and there was nothing to show O'Brien had anything to do with the woodpile camp where Pennycook saw the peculiar stove.

There is no caste in the Yukon and it was not strange that O'Brien wore black silk mitts. He had a right to wear them if he wanted to.

There was no evidence to show but that the prisoner was making misrepresentations when he told on the trail he had no money in order that he might dispose of by barter and trade some supplies which he had with him. The hiding of large bills in his arctic socks was natural on the part of the prisoner or any other man who was making his way to Atlin.

It had not been proven that more than one man occupied the tent. The matter of the dog Bruce going to the tent when told to go home was not unusual as the dog lived at camps and on trails and would naturally follow any trail and stop at the first camp reached. No weight should be given the testimony regarding the peculiar nugget as the testimony of two of the witnesses did not agree. The evidence of Chris Williams was unworthy of credence as it was unlikely O'Brien would make such a proposition to a man he had known less than a week. The talk about holding up people on the trail was idle and harmless. Many people make such remarks—are frequently made in levity and mean nothing. Mr. Bleeker did not think Mr. "Kid" West worthy of belief or credence. Mr. "Kid" admitted he was a burglar, thief and gambler and appeared to have lost all honor and was not worthy of belief. West had entered the court with a lie on his lips, a coward at heart.

Mr. Bleeker said the reason the defense submitted no evidence was because there was no proof to refute, no evidence to rebut; the crown had failed to make a case and there was nothing for the defense to counteract.

Mr. Bleeker said Olsen could have committed the crime as well as O'Brien and yet he was not suspected.

"What about his teeth?" asked Mr. Wade, and the attorney for the defense said Olsen's body and teeth had not been positively identified. He had mentioned Olsen as an illustration more than anything else.

Mr. Bleeker paid a noble tribute to the police who have so thoroughly investigated the case, special reference being made to Capt. Search for the fair and broad manner in which he conducted the matter of securing evidence for the prosecution.

Mr. Bleeker insisted that it was better than 99 guilty men go free than that one innocent man suffer. A false step by the jury might make its members practically the murderers of the prisoner and the speaker guarded against that step being taken. On behalf of the prisoner he asked that the evidence be carefully considered and that right and justice would be done. Thanking the jury for its attention, Mr. Bleeker closed his address, having spoken two hours and twenty-seven minutes.

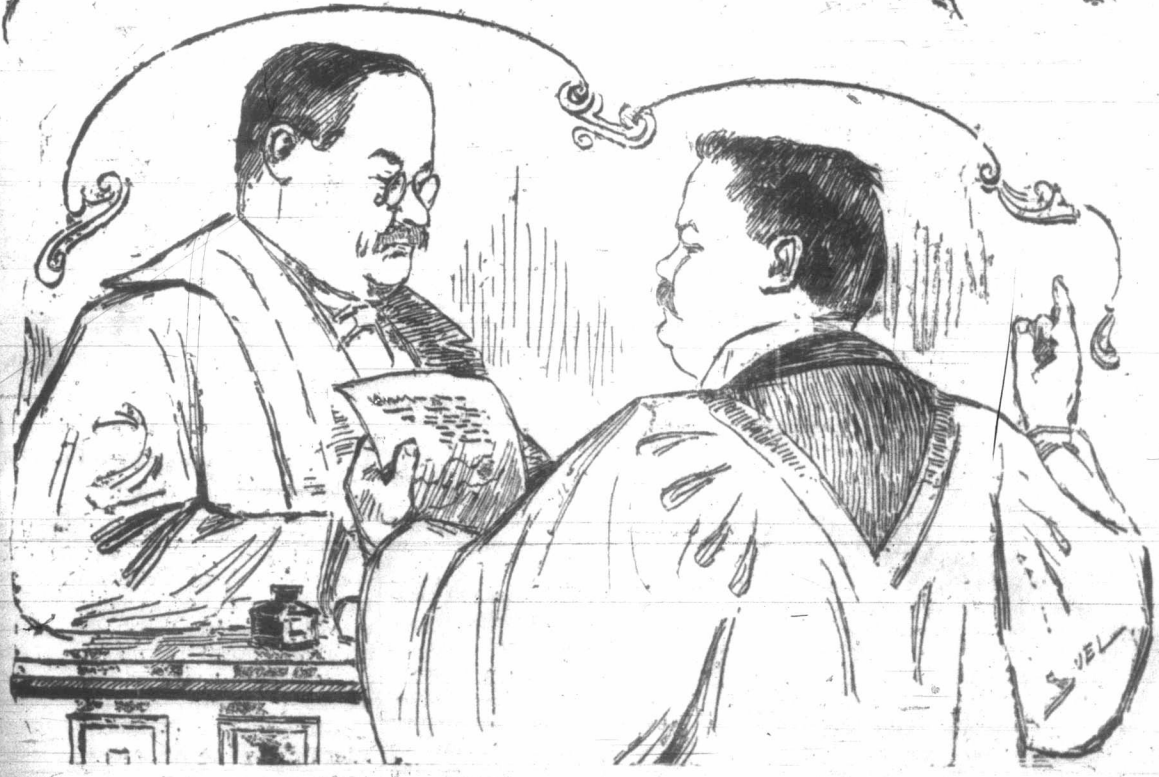
When court reconvened at 8 o'clock last night Mr. Justice Dugas delivered his charge to the jury. He said that having paid remarkably close attention to the evidence and to the able addresses of the learned counsel, it would be unnecessary for him to go into detail in his charge. He counseled the jury that all it had to do was to consider the evidence relative to the murder of Relfe, on which charge the prisoner was being tried. There are various degrees of murder, but the case at hand was not of the kind known as justifiable.

There are, said his lordship, cases where circumstantial evidence is problematical, while there are cases where circumstantial evidence is really better

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DETECTIVE R. L. MCGUIRE.

"OLD SLEUTH" PENNYCUK.



JUSTICE C. A. DUGAS.

F. C. WADE, C. P.

It was 13 minutes past midnight this morning when the jury in the George O'Brien case filed back into the box and answered to roll-call, after having been out one hour and fifty-eight minutes, the exact length of time consumed by his honor in delivering his very able charge.

"Gentlemen, have you agreed upon a verdict?" said Clerk McDonald.

"We have," responded each juror.

"What is it?" said the clerk.

"Guilty," was the answer.

The roll was again called and to each man was put singly the question "What is your verdict?" and low but distinct came the uniform reply, "Guilty."

A moment of deathlike stillness pervaded the densely crowded temple of justice and his honor broke the quiet by saying "Mr. Wade."

The crown prosecutor arose and asked that sentence be passed.

The court was about to do so when

Attorney Bleeker for the prisoner arose and asked that he be given time to file a motion for a new trial.

Justice Dugas heeded the request and deferred the passing of sentence until 10 o'clock this morning. The jury was warmly thanked by his honor and discharged. The court was adjourned until 10 o'clock this morning.

When court opened at 10:25 o'clock this morning every available inch of the space in the room was occupied.

Immediately after the opening of court Attorney Bleeker arose, addressed the court and moved for a new trial on the following grounds:

First—That the court erred in allowing evidence of two murders other than the one charged in the indictment to be introduced.

Second—That the court erred in admitting the evidence of Witnesses Williams and "Kid" West relative to conversations had with O'Brien about engaging in the practice of holding up and robbing people on the trail.

Third—That the crown prosecutor in his address to the jury referred to the prisoner as an old and experienced thief.

Fourth—That the court erred in not granting a postponement of the trial when such was requested by the prisoner and thereby give him time in which to prepare a defense.

Fifth—That the court erred in its charge to the jury.

In view of the above reasons the attorney asked that sentence be not passed, but that all indictments against O'Brien be quashed.

To the above his lordship made reply that to prove one murder it had been necessary to prove all; that they had been committed at one and the same time, being practically one transaction. A case was cited where three burglaries had been committed in one night but in different places, but all believed to be by the same person. On trial for one of the burglaries evidence as to the other two were admitted. In this case