

JURY MAY NOT AGREE

Trial of Train Robbers at Kamloops Likely to Prove Abortive

At Late Hour Last Night Jury Stood Seven to Five for Conviction and Agreement Seemed Hopeless

Kamloops, May 31.—3 a.m.—The jury returned at 12.45 a. m. and could not agree, were discharged at 10 this a. m.

Kamloops, May 30.—At 10 o'clock tonight the jury in the train robbery case were unable to reach an agreement, standing seven for conviction and five for acquittal. They asked the court for information as to what became of the black hat Edwards was said to wear the night of the hold-up. No evidence was given on this point. They also asked to know how far from the railway the men were supposed to have camped for the week or ten days previous to the robbery. The distance was six miles. Information as to imprints of hotel shoes was also asked. The difference in the published descriptions and sizes of men as given by the trainmen has evidently caused confusion in the minds of the jury. A disagreement is probable and if such happens the case will probably be put over until next session, and the jury will be discharged under an indictment charging him with "shooting with intent to kill." at Douglas Lake, May 14.

(Special to The Daily News)
Kamloops, May 30.—The trial of the C. P. R. train robbery case continued yesterday and the case for the crown was concluded just before adjournment for lunch today.

On the reassembling of court this morning A. D. MacIntyre, counsel for the defense, again applied for postponement of trial until the fall assizes and the discharge of the present jury on the grounds contained in an affidavit made by Edwards, alleging that nearly all the witnesses had been intimidated by the C. P. R. secret service. So far as witness knew MacIntyre did not go to Quilchena. If he did, witness did not know. Detective agency, Seattle, he had had the prisoners measured at the jail but had not the measurements with him, and though counsel had Colquhoun and Edwards' measurements, he was under no instructions. He did what he thought necessary and followed the usual rule. The warden of the jail was under close surveillance, he was asked.

"When I think necessary," "You took precautions that were necessary," suggested MacIntyre.

"I did what I thought was necessary," replied the witness. He had heard rumors of intended rescue of the prisoners. "You agree with me that there was considerable excitement in the town over the arrest?" asked counsel.

"Witness denied there was any excitement. There was some little curiosity about the case, but he had given consent that counsel should see prisoners whenever he wished, but separately. He had permitted others to see them for the purpose of identification. Had allowed them to see them. When they were at the jail they were assisting him."

"Was the machinery of justice under the control of the C. P. R.?" demanded counsel.

"No, the C. P. R. has no control over it whatever," was the reply.

Witness had seen the reward bill but had not issued it. He was at the jail with McLaughlin and Brown, but was not sure about Seay.

"Now close your eyes," said MacIntyre, and Edwards folded his coat over his chest. It overlapped several inches. "That will do," said counsel, and witness stepped down and Edwards was again placed in the prisoner's box.

Mounted police corporal Stewart was the next witness and recited the events of the capture of the prisoners, describing how they were disposed about camp for the night. They were taken to the provincial constable Fennie of their being in the vicinity. Witness repeated the evidence given at the preliminary examination with but little variation, identifying a handkerchief with white spots and a black handkerchief as similar to those found among the prisoners' effects.

Cross-examination showed that witness had no warrant and that the mounted police were not wearing regulation uniforms. Station cowboy hats, service boots and pistol equipment excepted, counsel endeavoring to show that the party looked like ordinary cowboys and not persons in authority.

Counsel also tried to show by witness that the prisoners' camp was in full view of a man ploughing a mile away, and in full view of the trail and about a mile from a ranch house. He was frightened out by the witness, however, who stated that the trail near the camp was an old, disused one, the main trail being a mile away.

Stewart and another mounted police witness who were both examined yesterday today were closely cross-examined as to the actual words used at the time of the arrest, the words apparently not having been given; also as to what Dunn said, both agreeing that he shouted "It's all up, boys," or something to that effect.

Superintendent of provincial police Hussey was a new witness. He was at the jail when the prisoners arrived from Douglas Lake. He had the shoes, produced in court removed from the feet of the prisoners in his presence and had also received the red and black handkerchiefs from the mounted police. Had heard Dunn speak on several occasions.

He had a good knowledge of the English language, with a slight English accent, might be mistaken for a cockney by some people, but witness would not have drawn that inference.

Cross-examination witness said he was expressing his own opinion on that point.

MacIntyre subjected this witness to a sharp questioning throughout and endeavored to show collection of the provincial police with the C. P. R. He asked witness whether he and C. P. R. detective McLean had not rehearsed this little dialogue about Dunn's voice and hinted that the prosecution was directed by the C. P. R.

Witness said he had come to Kamloops at the request of the deputy attorney general and had employed assistance. He had not asked for the mounted police as a witness, but the court had decided that though Indian ignorance was a good humor, he was doubtless a liar, nevertheless.

"All Indians are phenomenal liars," shouted counsel, "not because they desire to tell untruths but because they are ignorant of what truth is." Counsel regarded Dunn as an unstable man, and his action in shooting was due to excitability. He enlarged upon the activity of the detectives and the provincial police weaving meshes around the prisoners in their anxiety to catch the guilty parties, alleged MacIntyre.

Mr. Justice Irving carefully summed up the evidence pro and con and dissuaded the jury's mind of statements made by counsel. He made a fair statement of facts according to the evidence and in a most masterly manner. He ruled that the jury should not be misled by the remarks it was clear that his lordship relied on the integrity of MacIntyre and the evidence of the other witnesses.

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Colquhoun by engineer Callan and mail clerk McQuarrie, and carefully connecting the links in the chain of evidence.

"Was the act of Dunn in firing at the mounted police when told he was under arrest, that of an innocent man?" asked McLean.

The chain of evidence from the borrowing of a horse from McFadden by Dunn on March 29th, their appearance near the scene of the robbery a month later, the finding of the same horse near Campbell's Meadow on the line of retreat of the robbers, was strongly emphasized. Two bottles of patent medicine found on one of the prisoners, were shown to the jury and counsel dramatically exposed for the first time the contents of a package found by constable Pearce, at the scene of the robbery, an identical similar bottle of medicine.

McLean's presentation of the facts was masterly. Every point was marshalled with deliberation and precision.

J. D. Swanson, on behalf of Colquhoun, followed, making a special appeal to the jury to show the danger of relying upon circumstantial evidence. He referred to the prisoner's good character and the respectable appearance of his client. Swanson's address was forceful and at times impassioned. He spoke for half an hour.

MacIntyre, on behalf of all the prisoners, made an eloquent and spirited defence. He discredited the evidence of Colquhoun. He plainly designated it as untrue and actuated by selfish motives and especially with respect to the identification of Edwards. Counsel rode rough shod over this witness, but dealt more gently with engineer Callan whose identification of Colquhoun he alleged, was incomplete and uncertain. He ridiculed the tracks' theory and alleged that though Indian ignorance was a good humor, he was doubtless a liar, nevertheless.

"All Indians are phenomenal liars," shouted counsel, "not because they desire to tell untruths but because they are ignorant of what truth is." Counsel regarded Dunn as an unstable man, and his action in shooting was due to excitability. He enlarged upon the activity of the detectives and the provincial police weaving meshes around the prisoners in their anxiety to catch the guilty parties, alleged MacIntyre.

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