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# Jury Acquitted Samuel Rogers of Murder Charge

### Marmora Trial at the Spring Assize—Prisoner Set Up Plea of Selt Defence—Evidence of the Crown Witnesses.

After a trial lasting from before two o'clock in the afternoon, until six o'clock, Samuel Rogers, accused of murdering James Gallagher on a Marmora Township road on June 30th, 1917, was acquitted by the jury who returned their verdict after only fifteen minutes, deliberation. The prosecuting attorney was Mr. Thos. J. Agar, of Simcoe, while the defence was conducted by Mr. W. D. M. Shorey, of this city. Both counsel were complimented by Justice Rose, who presided, on their able presentations, and the judge himself made a clear presentation of the law on the subject of homicide. The evidence in the case was taken from three o'clock until six-thirty-five. Court resumed at seven forty-five and counsel delivered argument.

Samuel Rogers, the acquitted boy, is 18 years of age and well-built. He is a healthy, bright youth. Gallagher, the victim, was 34 years of age and quite a heavy man. For months past Rogers has been out on bail.

This is the first murder trial in Belleville since Robert Parker was convicted in October, 1910, of murdering William Masters.

**The Jury**

The jury in the Rogers case was composed of Albert Cements, Huntingdon; H. A. Elvins, Belleville; John Enright, Tyendinaga; Alfred McCullough, Deseronto; M. E. Ellis, Belleville; Thos. Hostley, Mayo; Adam H. Davey; Louis Vardy, Dungannon; Charles McMaster, Rawdon; W. J. Hinchey, Belleville; John G. Johnston, Hungerford; and James Jarman, Hungerford. A first panel of twenty-one jurors failed to get any more than nine, twelve being challenged. Another panel of eight was called, three being secured from the first seven.

Crown Prosecutor Agar outlined the crown's case to the jury. James Gallagher was pathmaster. On the 30th of June last, Hugh Farrell had some road work to do. Rogers was in the employ of Mr. Farrell.

A quarrel arose in the afternoon between Gallagher and Rogers over the Storey going down to spread gravel. The crown contended the Rogers struck Gallagher on the head with a shovel and his fist.

**Edward Flynn's Story**

Edward Flynn was the first witness for the crown, recalled the 30th of June last. He saw Samuel Rogers on that afternoon. Rogers told him he had hit Gallagher on the head with a shovel. Rogers asked him to go and get his employer, Farrell. He went. On coming back with Farrell and others, "What happened?" Farrell asked Rogers, when they met him.

"I struck him and he's as dead as a hammer," replied Rogers.

The men went on and found the team tied to a tree and the dead body of Gallagher in the gravel wagon.

On the following day, Rogers told witness something of the occurrence, how Gallagher made towards the wagon and he struck him. In the quarrel, Rogers said Gallagher called him "a Protestant son of a ——," and Rogers called him "a Papist ——." Rogers said he struck Gallagher two or three times with his fists. He had struck him with a shovel and jumped down. As Gallagher did not look very good, Rogers went to the stream and carried some water to the man.

Cross-examined by Mr. Shorey, Flynn said he did not ask Rogers any details of the scrap on Saturday. Rogers did not seem to want to get away. The next talk with Rogers was on Sunday morning. Flynn did not remember anything being said by Rogers to Gallagher "running on" Storey. "He told me that Gallagher made towards him, that he was afraid he would get on the wagon and he struck him."

To Mr. Agar—"He said he struck him with the shovel two or three times and then jumped off the wagon."

Mr. Shorey—"You did not tell us that at the inquest?"

"I did not remember it until last night."

Mr. Downard, of Marmora Township, testified he saw Rogers on Sunday. Rogers said that Jimmy and he had got into a jangle and that it was not his (Rogers') fault. Flynn was present at this conversation. Rogers said Jim Gallagher made for him, saying Gallagher called him "a Protestant son of a ——" and that he hit him with a shovel.

The witness was not cross-examined by Mr. Shorey.

**Rogers' Story to Sullivan**

William Sullivan, next called, told of seeing Rogers in a field at Farrell's on Saturday evening. Rogers said it was awful. Farrell asked now it happened. Rogers said something about Gallagher running on Storey, whom he wanted to go down on the road, and that he would not stand for it. Sullivan asked if he struck him with his fists and he said he did.

Under cross-examination, Mr. Sullivan said Rogers did not say anything about bad names being mentioned.

**Rogers' Employer Gives Evidence**

Hugh Farrell, a farmer in Marmora Township, for whom Rogers worked, gave evidence that he was assessed for three days' road work. On June 30th, he sent Rogers and Edward Storey to do the work. Mr. Quinn sent Storey to work in Mr. Farrell's place and Farrell went to build a fence for Mr. Quinn.

Once Rogers [illegible] with Gallagher. On his return, Rogers said he would never go to Marmora again with him, as he did not use him right.

About four o'clock on the afternoon of June 30th, Flynn came along and as a result of what was said, Quinn, Flynn and Farrell went back along the road. They met Rogers. Farrell asked, "Sammy, what have you done?"

"I hit him and he's as dead as a hammer," replied Rogers.

Proceeding, the four came to the wagon, in which was the body of Gallagher. Witness found Gallagher's pipe and marks of blood, about five or six feet from where the load had been dumped, before it was moved on about 600 feet. Two shovels were standing against a cedar tree about five or six feet south of where the gravel had been dumped. Gallagher's pipe was about three feet from the hind wheels' marks.

Witness unhitched the horses and told Rogers to take them home and stay there. Rogers said he had moved the wagon, as Gallagher was living when he put him in the wagon. When Gallagher quit breathing, Rogers said he tied the horses up.

Rogers said he was standing with the shovel in his hand, that Gallagher came up and he hit him. He also stated that he struck him with his fists when he was down.

Rogers said he had unloaded two loads alone, and that he wanted the pathmaster to do the rest.

To Mr. Shorey—Witness was a cousin of James Gallagher. He knew Rogers for four or five years and knew nothing against him. Rogers was not quarrelsome. Gallagher and Rogers seemed to be friends. Rogers had never been heard to speak against Gallagher. Rogers was boarding with Farrell for nine months.

When witness met Rogers after the tragedy, Rogers was in an excited state, sweating. Gallagher was 34 years and weighed 165 or 170 pounds. Then, the prisoner weighed about 130 pounds. He was, he thought, seventeen years old at that time.

The first conversation with Rogers over the tragedy was on Saturday evening, walking in the field. Rogers said: "It was the first fight I ever had. I made a bad job of it. It was pretty near time to do something when a man will come at you and say he will punch the head off you." Sullivan was present at this conversation.

On Sunday morning, Sam told of Gallagher "running on" Storey, and of the use of bad names. He told of Gallagher wanting to quarrel all afternoon but that he did not want to quarrel, and that he was afraid of him. Witness was not just certain whether Rogers said Gallagher "went into" him and that he struck him.

To the crown Mr. Farrell said he was not on good terms with Gallagher at the time of his death.

**Miss Annie Connolly**

Miss Annie Connolly recalled how Rogers once said he was going to give Gallagher a trimming some time. This conversation occurred last spring. Sam was going to put up the stove pipes for her.

To Mr. Shorey—That was all he talked about. Not another word was spoken during the mile walk to her place to put up the pipes. Witness did not like Samuel Rogers.

**Only Eye-Witness on the Stand**

Edward Storey said he was working in the gravel pit on June 30th. In the afternoon Gallagher and Rogers were quarreling. Quarreling began in the pit over money. Sam Rogers said: "I've got money, but I don't get it until I'm twenty-one." Gallagher wanted witness to go and spread gravel on the road. Samuel said he would not allow it. Sam wanted Gallagher to go and spread it. At the top of the hill, Sam said he was going to hit the dirty son of a ——, referring to Gallagher. Rogers drove down 700 yards.

"I did not see Gallagher struck. I heard him struck and saw him on the ground. Sam jumped off the wagon and gave it to G[illegible] in the face.

Witness said, "Sam, d[illegible] o it, because it will be blam[illegible] on me. Don't do it, you'll be hung." Sam replied, "I can't help it; I've got an awful temper."

Witness dumped the gravel. Sam carried water in his hat to Gallagher.

To Mr. Shorey—Everything went all right in the morning. Gallagher was the cause of the trouble in the afternoon. Gallagher took Storey by the arm. Storey did not want to spread gravel and Rogers interfered.

Storey recalled the use of names as given by previous witnesses.

On the way down the hill, Gallagher had his shovel in his hand. Gallagher passed Rogers and went in front of Samuel's horses. Storey was right behind. Sam was on the wagon. Gallagher rushed at Sam. Storey did not see the blow. He was afraid there was going to be trouble and he did not want to see the fight. Storey heard Gallagher fall.

Back on the hill, Sam said "If he keeps it up, I'll give it to him. I cannot stand it any longer." Sam did not appear to want to fight.

O. R. Jones testified that he was a county constable and that the shovel produced was the shovel alleged to have been used by Rogers.

Hugh Farrell, recalled, said the shovel produced was the shovel used by Samuel Rogers on the day of the affray. It belonged to witness.

Patrick Quinn and Constable Tanner were called but gave no new evidence.

**Medical Testimony**

Dr. Bissonette, of Stirling, told of a visit to the scene of the fatality with Constable Tanner.

Dr. Thompson, of Marmora, testified that he and Dr. Crawford performed a postmortem on the body of Gallagher. The body was in the wagon when Dr. Thompson first saw it. The first examination revealed marks on the left temple, broken nose, cut on lip and right eye bruised.

At the postmortem on Wednesday there were found a clot of blood and a fracture of the skull from the right ear upward to the centre line and down the front to the right eye and then to the ear. One eye was blackened and the other bloodshot. The neck was fractured. Either fracture might cause death. The two fractures might be caused by a blow from above. The deceased was in good physical condition, as revealed by the autopsy.

On the day of the fatality the doctor saw the blood but not the evidence of a struggle.

**How Was Blow Struck?**

To Mr. Shorey—The third vertebra was the one that was fractured. The death would likely be immediate. The neck might have been fractured in the fall. Blows with the fist might have fractured the nose, but these likely would not cause death.

Dr. Crawford, of Marmora, identified the postmortem report filed. The fractures could have been caused by the shovel.

Under cross-examination, the doctor said the blow was evidently struck on the left side of the forehead. The fracture was on the opposite side. There might be no connection between the fracture of the skull and neck.

**Prisoner Took the Stand**

This closed the crown's case and the prisoner was called to the witness box by his counsel, Mr. Shorey.

"How old are you?" he asked.

"Nineteen this coming June."

"How long had you been working with Mr. Farrell?"

"Eight or nine months."

"Parents living?"

"No."

"What had been your relations with Gallagher?"

"Just friends."

The pit is about a mile from Farrell's. In the afternoon Storey and Gallagher stayed in the pit while the prisoner drew out and unloaded two loads. At the time of the second load, Gallagher said he had about twenty calves. "I said that would bring quite a lot of money. He said he had money in the bank anyway. I said I had some when I would be twenty-one." Gallagher said Rogers would have to go to war.

"When I drove out of the pit with the third load, I put my shovel on the bank and asked Mr. Gallagher if he was going to help. I don't know whether he said he would or not. I got my shovel. He went to the pit and took Storey by the arm. Storey said 'no'. I said to Gallagher, 'Let the poor man alone.' Gallagher turned on me and said, 'What are you looking for?' I was standing in the centre of the road waiting to see what he would do. I had my shovel on my arm. Gallagher said, 'If you want to fight, throw down your shovel.' I said I did not want to fight. He called me a Protestant son of a —— and a dirty ——. I called him, 'you dirty Papist ——.' He said something [illegible] I [illegible] Storey if he [illegible] gallagher) did not quit I'd have to do something.

"I put the shovel on the wagon. I went perhaps ten yards from the gravel pit. Gallagher said; 'Come on down the road. If you don't want to work, go home.' I said 'All right; it makes no difference'.

"Gallagher went on down the road. I drove by him and stopped at about twenty feet. Gallagher had his shovel in his hand. I stepped to the ground between the wheels and Gallagher was running to me. He had his shovel in one hand and his other hand clenched. He said he'd smash my d—— head. I put up my shovel to stop him. He fell. I struck enough, I thought, to keep him from striking me. I struck him with my fist two or three times as I was afraid he'd get up and hurt me again.

"Storey told me not to hurt him. I got water from the creek. I realized Gallagher was hurt. I rolled him over so that the blood would not strangle him. I ran to Quinn and came back and then told Quinn, 'He's living yet.' I said 'Send for Mr. Farrell.' I dumped the load and put Mr. Gallagher in the wagon and started on the way to Mr. Farrell's."

Witness did not remember saying to men that he was on the wagon when the blow was struck.

On May 24th, 1917, witness, in going to Connolly's to set up the pipes, only said to Miss Connolly that Jim (Gallagher) seemed kind of mad. He said nothing about giving him a trimming. That night he did not speak to Gallagher.

"If he had not rushed at you that afternoon, would you have struck him?"

"No, sir, I would not."

Under cross-examination by Mr. Agar, the prisoner said Farrell, Sullivan, Downard and Flynn were reliable men. He knew Farrell and Gallagher were not on good terms.

Gallagher walked down in front of the horses and crossed in front of them. Rogers drove by. Gallagher ran at Rogers, who had got down between the front wheels. Rogers thought Gallagher would hit him as Gallagher was coming at him with the right fist closed and the shovel in the left, the handle up.

**Evidence of Good Character**

Albert Reid, of Madoc Township, testified that he knew Rogers since he was a child, sixteen or seventeen years. Rogers' reputation was good. He had no reputation for quarelling.

Joseph Lee, farmer of Madoc Township, testified that he know Rogers since he was a baby. Rogers bore the very best reputation. Mr. Lee had never heard of him as quarrelsome.

Mr W. D. M. Shorey in his address to the jury set up the plea of self defence on behalf of the accused. The prisoner, he contended had told a straightforward story in his boyish manner and had hidden nothing. Rogers was only defending himself from what he considered was an attack upon him which might have caused him grevious bodily harm. He unfortunately delivered a blow which caused Gallagher's death. The law of self-defence was applicable in this case and the accused should be acquitted of the charge he was accused of. If there was a reasonable doubt in their minds, the prisoner was entitled to that doubt.

Crown Prosecutor Agar dealt with the plea of self-defence, contending that that element was lacking, that if it were, the blow delivered was not commensurate with the necessity considering the portions of the two men. The prosecutor explained to the jury their duty as jurors.

Mr. Justice Rose in his elucidation of the law said that homicide or the killing of a man was a crime unless justifiable or excusable. Justifiable homicide is in the case of an execution. Self defence is an excuse but it is not always a sufficient excuse. In this case was the force used reasonable to repel the force used or appearing to be about to be used against him, if this is a case of self-defence. Homicide is murder if it means to intend the cause of death or to cause any injury known to the doer as likely to cause death. Homicide which is not murder is manslaughter if the man did not mean death. Homicide, which would otherwise be murder may be reduced to manslaughter if the person causing death does so in the heat of passion by any wrongful act or insult if the offender acts upon it suddenly before the passionate impulse is past.

The case went to the jury at 9.45 and before ten the jury returned a verdict of not guilty.

Mr. Shorey, the prisoner's counsel moved for his discharge. Rogers stepped lightly from the dock and left the court room. Outside he and his counsel met Rogers' friends.

Crown Attorney Carnew was associated with Crown Prosecutor Agar.

Hugh Farrell, Rogers' employer and Gallagher's cousin, sat by the side of Mr. Shorey during part of the trial.

# True Bill In Sedition Case

### Judge at Assize Explained Nature of Sedition to Grand Jury

The grand jury at the assize brought in a true bill last night against Charles Hawkes on the charge of uttering seditious wounds.

Mr. Justice Rose in his explanation to the grand jury said: Sedition is a crime of which very little has been heard in the courts until the last two or three years. As it is a crime of which little has been heard, lawyers are not quite at home in attempting to say in what sedition consists. The Criminal Code says certain things are not deemed to be seditious but does not say exactly what seditious words are. From the writings of the older jurists we are able to learn what is involved in the term sedition. Generally speaking an intent is a seditious intent if it intends to bring into hatred or contempt or excite disaffection against the person of the King or the duly constituted head of government of any part of his dominions or raise discontent among the subjects or promote illwill between different classes of subjects.

Sedition involves some disaffection or dissatisfaction with the government of the country, some opposition to the policy of the government of the country in large and important matters. It is not seditious to refer to abuses with the idea of remedy by proper means. This is the duty and privilege of every subject. But it is seditious to spread broadcast or publish any doctrines to aid in rebellion or stirring up trouble that will do damage to the state as a whole or to the King. It is not the same thin as treason but it involves an element of harm to the body politic.

It is alleged that Hawkes made some remarks on a certain occasion when one man was trying to persuade another to enlist. The remarks were alleged as being calculated to dissuade from enlisting and to express disapproval of the way in which the war was being conducted and alleging that he got his information from Germany.

# Cye a Witness For the Crown

### Young Man Found Guilty of Robbery With Violence, Takes Stand Aganist Michand.

Joseph Cyr, a young French-Canadian, was put o ntrial this morning at the assize on the indictment of having unlawfully robbed Charles Weaver and at the same time or just before of having unlawfully wounded, beaten and struck him in his store at Trenton on Dec. 21st last.

An interpreter was sworn in as Cyr does not understand English.

Crown Prosecutor Agar conducted the prosecution and Col. E. F. O'Flynn defended Cyr.

Charles Weaver, retail boot and shoe merchant in Trenton for 30 years, testified Cyr came into his place between 6.30 and 7 o'clock on the evening of Dec. 21st. Another man was on a settee at the front of the shop. Cyr claimed he wanted to buy a grip. He said it was too dear. The other customers were let out and the door locked as it was near seven o'clock, the early closing time. Finally Weaver came back and asked Cry if he had decided what to buy. He wanted a pair of shoes he said. The "hines" were too small and Weaver went to get a pair of "tens." When he came back, Cyr had his own boots on. Weaver put down the boots and Cyr struck him twice with a bar. Mr. Weaver fell. A third blow hit the witness in the forehead. Cyr went to the till. Witness ran to the front door and gave the alarm. Cyr was caught as he was trying to get out. The money in the till was later missed. The other man sat all the time on the settee and made no attempt to help Weaver. He disappeared.

To Col. O'Flynn in cross-examination—The second blow followed the first about a second after. Mr. Weaver tried to get up. The prisoner threw the bar striking Weaver in the forehead. He was not much dazed by the three blows and he was able to run to the front door.

Dr. T. S. Farncomb, who attended Mr. Weaver told of finding three wounds, two at the back of the head, and one on the forehead. Had the forehead blow been as heavy as one at the back, it might have killed Mr. Weaver. The cuts were not long but deep, reaching to the bone. None of these blows might cause dazing. He attended Mr. Weaver about two weeks. There were no brain injuries and no serious after effects. To Mr. O'Flynn, Dr. Farncomb was certain that there were no permanent injuries.

Mr. Romley Williams, the third witness was passing the store when he heard Weaver's cry for help.

Mr. Weaver cried "get him! get him." Mr. Williams found the man Cyr at the rear trying to get out. Witness summoned the doctor and the police.

No defence was put in.

The trial lasted less than an hour. The jury without retiring delivered a verdict of guilty.

**Michaud Brought into Court**

Alberic Victor Michaud was at once brought into court and arraigned on the same charge. He pleaded not guilty. Mr. W. C. Mikel, K.C., defended him. Michaud speaks French and English and did not require an interpreter.

The crown contended that the two men Michaud and Cyr went to the Weaver store both armed, with robbery and violence in their minds, and that they acted in concert; that Michaud made no effort to help Weaver during the assault and robbery by Cyr. Michaud made a getaway during the excitement, wearing a new pair of shoes, which he had not paid for.

Charles Weaver could not positively state that Michaud was the other man besides Cyr in the store. Weaver served the other man with a pair of shoes but had not paid for them. After serving Cyr Weaver started to walk over to the man on the settee when he was struck in the head from the rear by Cyr. During the disturbance the other man did nothing and got away. Witness could identify the shoes he thought. At the preliminary hearing against Michaud, Mr. Weaver saw Michaud's shoes. These were the same as "the other man on the settee" had got off with.

Between $25 and $30 had been stolen from the till.

Mr Weaver could not say whether the two men came in the store together.

Officer Miller testified that he received a bar from Mr. Weaver on the night of Dec. 21st. This bar was put in as an exhibit. It was about a foot long.

Mr. Romley Williams, who ran in to Mr. Weaver's rescue said:—"As I was going in the store, I saw the man I recognized as Michaud." Michaud shoved him.

Edward Martelle of Trenton testified that Michaud and Cyr boarded at his boardnig house and both lived in the same room. They came together and lived there for four or five weeks. On the night of Dec. 21st Michaud paid his board near 8 o'clock. He picked up his valise and went away. He seemed in a hurry. Cyr had gone out after supper and did not come back. Supper was finished about 6.30. Witness could not say whether Michaud went out with Cyr. Wearver's is about five minutes walk from the boarding house. Witness told Cyr that Michaud was arrested. Michaud said, "Is that so?" Mr. Martelle said—"Why don't you go and see him?" Michaud replied, "I wil before I take the train."

**Cyr Gives Evidence.**

Joseph Cyr then went on the stand against Michaud. He had known him for three months. Both worked together at the C. N. O. R. Both had lived at Michaud's mother's at Campellford. Both went to Smith's Falls together, remained there two weeks and then went to Trenton. On the 21st of December Cyr was working at the British Chemical Works and Michaud at the Cresote works. Both had supper together at Martelle's and a smoke Michaud said to come out. Michaud put on his cap. After that Cyr did not feel like the same man. He could not understand. He felt dopey or crazy. Cyr went out and got some popcorn at a restaurant and returned to Martelle's.

In the morning Michaud had two bars and put one into Cyr's hand. Michaud said, "I made the bar." Michaud told him to put it in the suit case.

In the evening, they went out. Michaud was on Weaver's side of the street and Cyr on the opposite side. Each had carried a bar in his pocket. They carried the bars to commit a robbery. On the street Michaud talked of robbery. Michand went in first to see if there were any people in the store. Michaud went in first and came out and said to Cyr "It is time." Cyr went in to buy a suit case.

"While you were there did Mr. Weaver get hurt?"

"I can't remember."

Michaud told Cyr to ask Mr. Weaver for a pair of high boots for working. Cyr sat down and tried the boots. Michaud told Cyr, "Tell him they don't fit." He got up. Michaud told him, "Give it to him." Cyr hit him on the back of the head once. Mr. Weaver started to go to Michaud and Michaud hit Weaver twice and took him by the head and told Cyr "Hold him by the feet." Michaud went to cash register and took the money. Michaud went to a small door in the side and went out.

"Did you take any money?"

"No."

In the morning "Michard told me we'll wrap the bars up in paper so they'll look better."

A week before Michaud said they'd have to rob before they left.

"You spoke about being dopey or crazey, were you drunk?" asked Mr. Mikel.

"No."

"Had you been drinking?"

"No."

Michaud gave the signal to strike to Cyr. Michaud had the bar in his hand.

**Michaud Denies Conspiracy.**

Michaud was called to the stand by Mr. Mikel. He denied being mixed up in the robbery. He did not give Cyr a bar, he did not hit Weaver and did not give Cyr any sign to sit Weaver. Michaud went in to get a pair of boots. Cyr did not come in with Michaud.

While Michaud was buttoning the boots he saw Mr. Weaver on the floor. Weaver arose and Weaver passed in front of Michaud and Cyr was following him. Cyr swore at Michaud.

Michaud was so excited that he forgot to pay for the boots. Michaud left for Sorel that night. He was arrested at Sorel.