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ELEVENTH YEAR. TUESDAY MORNING, SEPTEMBER 30, 1890. ONE CENT.

BIRCHALL GUILTY

And Sentenced to be Hanged on Nov. 14.

PELLY'S NARROW ESCAPE

A Solemn Scene in the Woodstock Court Room.

THE PRISONER'S DEMEANOR.

Eloquent Addresses by Osler and Blackstock—The Jury Out an Hour and a Half—A Terrible Ordeal for the Prisoner—"I Am Not Guilty of the Crime, My Lord"—The Prisoner Back in Jail Before One and Put in Charge of the Death Watch—Precautions Against Suicide.

WOODSTOCK, Sept. 29.—The fate of John Reginald Birchall was solemnly sealed at exactly midnight to-night, when the jury brought in a verdict of guilty of the wilful murder of Frederick Cornwallis Benwell in the lonely Blenheim swamp on Feb. 17 last. It just took the jury 1½ hours to make up their minds, although it was supposed by many when the court room was finally cleared at 10 o'clock that they would remain out for three or four hours. The jury were unanimous on the first ballot, but they discussed the matter for over an hour before coming to their final decision. The court room itself was utilized for the purpose of considering the verdict and the big crowd were bundled out into the chilly atmosphere with very little ceremony by the posse of constables. Birchall when the room was cleared was whirled away to the jail. At 11½ precisely Deputy-Sheriff Perry tripped across the square to the O'Neill House where Mr. Justice MacMahon was in waiting in his room. The deputy informed the judge that the jury had agreed and in 10 minutes His Lordship was back in his seat on the stage. There was a rush for places in the court room after His Lordship entered the room. Although it was so near the witching hour of midnight half-a-dozen ladies were bold enough to squeeze into the room among the 400 or so of men.

Birchall was brought back to the room at exactly 11.48. He was securely handcuffed to Constable Marshal Anderson. When he sat down in the dock it took the constable nearly five minutes to remove his ill-fitting manacles. The prisoner's face was white and blanched, and he seemed to realize that it was all over with him. After the names of the jury had been called Clerk Canfield, amid a death-like stillness, said: "Gentlemen of the jury, have you agreed upon your verdict?"

George Christopher, the most intelligent-looking man on the jury and who is a retired farmer living at Ingersoll, had been chosen foreman and he immediately arose and said: "We find the prisoner guilty of the murder."

Mr. Hellmuth asked to have the jury polled and this was accordingly done. As each of the twelve names was called out His Lordship enquired: "How say you? Is John Reginald Birchall guilty of the offence charged?" Each one of the twelve answered, "Guilty."

Mr. Hellmuth: "Your Lordship, in the absence of Mr. Blackstock, who is unable to be present, I move that the crown reserve the case because of the introduction of the Mellerish letters."

His Lordship: "I see no reason to reserve the case."

Mr. Osler: "I move for the sentence of the court."

All eyes were turned towards the doomed man, and in a solemn voice the judge commanded the prisoner to stand up. Birchall did so promptly, his face becoming ghastly pale, but he did not appear to move a muscle. He fixed his eyes steadily on the judge, who returned the glance as he leaned over on his table and prepared to pass sentence. His Lordship spoke ow, but with somewhat of a tremor in his voice. It was Justice McMahon's first death sentence. His Lordship then asked: "What have you to say, John Reginald Birchall, why the sentence of the court should not be pronounced on you for the felony of murder that you have committed?"

The prisoner looked more intently if possible at the judge and said in a loud, clear voice: "Simply that I am not guilty of the crime, my lord."

The audience looked on with something almost akin to paralysis.

His Lordship then addressed the prisoner as follows: It is part of a solemn and painful duty cast upon me to pass upon you the sentence of the court for the felony of which you have been convicted. I can only say I fully concur in the verdict which has been returned by the jury on the indictment against you. You have been defended with great ability, and there has been no point connected with the defence that has not been fully brought before the jury and pressed upon them with all the fervor and all the ability that human nature could command, and while I say that I may say also that the inevitable conclusion that has been reached in the minds not only of the jury but of almost every one who has listened to the trial was that you on your part, you prepared to take his life and to reap the miserable reward that you thought was to be obtained by asking the price of the blood money which you would get by the draft that was to come from England and the property which you immediately took possession of. It is melancholy to think that, along with the education you possess, with opportunities which no doubt you must have had to further your own material interests, you should so far have forgotten yourself as to pursue the course which you have pursued and you should have prepared to dip your hand into the blood of your fellow man. It is melancholy to think that after such a short period after you became a married man and became connected with an estimable and respectable family you should have brought this trouble and disgrace upon them. I can hold out to you no hope whatever of any commutation of the sentence I am about to pronounce. There is, I may say to you, but a short time in which you can be permitted to live, and I earnestly implore you to take advantage of every hour that remains to make your peace by supplicating the Throne of Heavenly Grace for forgiveness of offences committed by you in the flesh.

The Sentence of the Court

upon you, John Reginald Birchall, is that you be taken hence to the place whence you came, and that there within the walls of the prison between the hours of 8 o'clock in the morning and 6 in the afternoon on Friday, Nov. 14 next, you be hanged by the neck until you are dead, and may the Lord have mercy on your soul."

Birchall did not stagger, nor did an audible syllable escape from his lips. He sank back easily in his chair in the dock, while the spectators flocked around his box or peered over the top of the rail at the doomed man. He did not look to the right nor to the left, but simply gazed ahead of him. Mr. McKay and Mr. Hellmuth walked over to him and he shook hands with both of them, adding a pronounced, "Thank you gentlemen."

Once more it became necessary to clear the court room. The jurymen mingled with the spectators and seemed glad once more to breathe the air of freedom after their eight days of confinement.

Fifteen minutes after midnight Birchall found himself back in the jail with the death watch placed upon him. It was whispered throughout the crowd that he would commit suicide, but ample precautions have already been taken at the jail to prevent that.

Mrs. Birchall had long since retired, having been given a powerful opiate by her physician to quiet her nerves. But the awful news was subsequently broken to her by Mr. Hellmuth.

Thus ended this court chapter in this awe-inspiring scene.

FEATURES OF THE DAY.

Some of the Visitors to the Court Room—Some Sympathetic Scenes.

Among the early arrivals at the court room were Dr. MacMahon, M.L.A. for North Wentworth, and brother of the presiding judge. The doctor reached town at 6 o'clock this morning, coming from the West.

Mrs. Blackstock arrived from Toronto at an early hour and was present all through the long session of the court.

The addresses occupied five minutes more than 11½ hours in delivery. Mr. Blackstock spoke for 5 hours and 10 minutes, Mr. Osler for 4 hours and 10 minutes, and His Lordship for 2 hours and 15 minutes. The speaking lasted from 9.55 a.m. to 9.55 p.m., with a short intermission for lunch.

All through these long and anxious hours the prisoner sat with his eyes riveted on the speaker, as the case happened to be, or on the jury. Only his head was visible above the top of the rail of the dock, and his face wore an anxious and fright-ened look all through the lengthy ordeal. For an hour at a time he sat with a statue-like pose of the head, appearing at intervals as if he were attempting to memorize the twelve good men and true. Very few of them, however, returned Birchall's anxious stare. They sat nervously in their chairs, drank copious draughts of water handed them by the constables and seemed wrapt in nothing else but the words that fell with measured pace first from Mr. Blackstock, then from Mr. Osler, and last of all to the stern judicial phrases of His Lordship. After the shades of night had gathered over the court room the gas was lighted and still the incessant recital of the remarkable circumstances surrounding the case went dramatically along. Outside in the square there was a dense crowd, and they howled and blackguarded themselves hoarse in revenge for not being admitted to the already crowded room. Their unseemly disturbances did not in the least appear to disturb the judicial serenity of Mr. Justice MacMahon at his court, for it was while His Lordship was speaking that the throng outside yelled their loudest.

Occasionally Mrs. Birchall and her sister Mrs. West-Jones were in the court room during the speech of Mr. Blackstock and they sat immediately behind his chair. They, however, left the room when the gentleman had finished his speech. Mrs. Birchall, haggard looking at all times gave way to the melting mood when Mr. Blackstock feelingly and pathetically referred to the garland of wifely devotion that invested all her actions towards the accused man since his arrest seven months ago. The scene in the crowded court room during the recital by Mr. Blackstock of this touching reference to the unfortunate woman, for who can say that she is not unfortunate, was pathetic in the extreme. Many of the ladies in the room looked toward the woman and her sister with involuntary and proffered sympathy, but the poor creature heeded them not. Her thoughts were then only known what—probably they were cast in a once happy home in far-off England, perhaps in her husband's lonely cell, perhaps the black shadow of the gibbet filled her soul with horror and dread. No one in the room seemed to more thoroughly appreciate the situation than Mr. Blackstock and the legal gentlemen who so ably assisted him in the defence, Mr. I. Hellmuth and Mr. G. S. McKay.

No counsel ever went into the task by explaining away to a jury the iron chain of circumstances with more earnestness, with more genuine whole-souled expression in his countenance, than did the young advocate from the Queen City.

In strange contrast was the expression on the countenance of Mr. Osler. He seemed like an old warrior who was about entering a battle which he had already won, like a race horse who looked with contempt on his fellow-competitors. But, withal, Mr. Osler was not harsh or spiteful in presenting his facts and backing them up with the experience of an old court campaigner.

The judge, it was remarked from the outset, while he no doubt spoke to the jury as a teacher would to a class of pupils acted as if it was a foregone conclusion and that to him the fact was clear that the strong arm of the law had descended upon the right person, and that it was his duty to so impress the jury and Canadians ought to be extremely thankful that they had no more to do with this terrible crime than bringing the guilty man to justice.

The strongest corroboration of the righteousness of the verdict is supplied by the following, which was not known to the crown, and which could not have been brought out in evidence even had it been known to Mr. Osler:

On the Thursday after the murder of Benwell on the Monday of that week and when the Birchalls and Pelly were at the Falls, Birchall said to Pelly that he knew a horse breeder near Hespeler who had a good place, fine stock, etc., that it was just the place for Pelly, and that he intended to take him there in the morning and place him with the farmer in question. Pelly resented Birchall's way of saying how he intended placing him with a farmer without his consent. Birchall replied that he had Pelly's father's authority to place him. Pelly denied this, and said he would not go with him to Hespeler, especially as he was growing suspicious and had by this time given Birchall over £120. He refused to go. Birchall intended to do for Pelly at Hespeler what he had done for Benwell in the Blenheim Swamp.

Farmer Costan Gets a Seat in Court.

At exactly 9½ o'clock Mr. Justice MacMahon came out upon the stage and took his seat upon the "bench." The chairs which had been placed so conspicuously to the left of that of His Lordship had been removed, and the favored ladies who occupied these places formerly had to seek seats in the body of the court-room. Therefore the court had the whole stage to itself, with no one else to share the limelight, if there had been such an adjunct to this theatrically-set scene.

His Lordship, turning to Mr. Blackstock, said: "Any evidence?" "Yes, my Lord," was the reply, "John McMaster."

A Canadian Pacific telegraph messenger boy stepped into the witness box and testified that he delivered the telegram from the Stafford House, Buffalo, to Birchall, saying there was a letter and telegram for prisoner, to Mr. O'Neill, clerk of Bamfield's Imperial Hotel.

Mr. Blackstock said that since Saturday a new witness had appeared on the scene. He read an affidavit by Mr. Hellmuth to the effect that James Costan, a farmer living ½ a mile from Princeton, could give some evidence in the case. His Lordship said he might be called and he was sworn. Costan was a farmer near Princeton. He recollected the circumstance of the body being found in the swamp. On Tuesday evening of that week a young man, apparently about 35, a stranger and well dressed, called at his house and asked to remain over night. He said he came from Brantford and wanted to go to Woodstock. Witness told him he could not stay. Prisoner said he had applied at many of the houses along the road and they refused to accommodate him. He also asked if there were any woods near. He afterwards saw the body of the man found in the swamp, but he did not bear any resemblance to the man witness saw.

It was quite apparent that Farmer Costan had resorted to this ruse to gain admission to the court-room and get a good seat. Mr. Osler did not deem it necessary to cross-examine the witness.

George Patterson, who took the depositions at the Princeton inquest, was called to prove these. To Mr. Osler he said he did not take question and answer, but wrote it in narrative form, and necessarily had to put down his own interpretation of the evidence as given by each witness.

The register of the Metropolitan Hotel, New York, was put in, which showed that on Feb. 15 last, Birchall, his wife, Pelly and Benwell were all registered at that house, written, as stated by Mr. Blackstock, in the prisoner's handwriting.

The Effort of His Life.

Mr. Blackstock, although he seemed to be laboring under a great load during the first hour of his address, gradually became easier in the presentation of his facts. Everyone who listened to the address admits it should be counted as the effort of his life before a jury. He did not enter into theories, as he frequently remarked that he would not, but he explained away, one by one, according to his views, the strong links of the circumstantial evidence. Mr. Blackstock's address throughout was of that strong and intense kind. He fastened his eyes constantly on the jury, very seldom looking towards the prisoner or around the court room. Birchall followed his counsel's remarks with the keenest of interest, and his gaze towards the stalwart young advocate who was engaged in the task of saving his neck from the rope was never diverted for an instant. Mr. Blackstock's face was pale and he looked careworn, like one who had sat up for a couple of nights preparing his herculean effort, but he exhibited no signs whatever of fatigue during the whole time of his address, which lasted exactly 3 hours and 10 minutes. He did not close without paying a clever compliment to the ability of Mr. Osler, who, he said, was always found on the side of defending prisoners, and it was worthy of remark that he should now be engaged on behalf of the crown. His Lordship, too, was painted to the jury as a gentleman who had made his mark at the bar, both as a prosecutor and as a defender, and he bespoke from the bench every fairness and consideration for his client. There was not a stir in the court-room during Mr. Blackstock's telling speech. There was no effort to emphasize, or, no doubt if there had been, it would have been promptly suppressed. Mr. Blackstock took occasion to roast detectives generally, and John Murray in particular, not because of the way the latter had worked up the case, but evidently because of the thorough manner in which that officer had worked up his case for the crown lawyers.

Mr. Osler's address was just one hour shorter than that of Mr. Blackstock.

Mr. Osler, who is such a familiar figure before juries all over the province, adverted to his old practice of getting directly opposite the 12 good men's line and called all through those long hours to the jury and the jury alone. He appealed as sympathetically for the prisoner's conviction, as he has on many occasions pleaded for an accused man's acquittal of some serious crime. As in his opening address, Mr. Osler carefully went over the whole circumstance of the crime, its motive, how it was committed and how an effort had been made to cover up all tracks of the dead.

Mr. Osler also took occasion to defend Detective Murray from the onslaught made on him by Mr. Blackstock, holding that the Government officer had worked up the evidence on behalf of the Crown in a clever and astute manner. "The hatred of Murray by the prisoner was reflected through his counsel," declared Mr. Osler.

The crown prosecutor told the jury emphatically that he had no doubt of the prisoner's guilt and he asked for his conviction on the overwhelming chain of circumstances presented by the crown.

His Lordship's address was a general review of the evidence, during the course of which he fully instructed the jury on points of law.

THREE STIRRING ADDRESSES.

Mr. Blackstock Holds the Floor for Over Five Hours.

Mr. Blackstock then arose to deliver his address to the jury. He said: However feeble and inadequate my own capabilities may be I have every hope of receiving your indulgent sympathy during the address, for a solemn and that be now scene is being enacted: you are participating in the gravest, most responsible and most awful function which civilization presents to the human being; you are debating the question of life and death. Society, for its own protection, has said that under certain circumstances it has the right to step in and anticipate the messenger of death; that though God gave life man has a right to take it. There are in this community, as well as in many others, a large faction who maintain that under no circumstances should society have the right to forfeit human life, and many states have abolished capital punish[illegible] live in a country where the law a[illegible] es the death penalty, and while we should uphold the law the only justification for its existence must be the highest necessity founded upon the strongest proofs. A vast proportion of the evidence submitted was such as could only be challenged upon oath in the box, but the prisoner was not competent to enter the box in his own behalf, the law did not permit it, it conferred upon him no privilege of combating the statements of the witnesses if he could. Another difficulty was that a large proportion of the evidence was of circumstances far removed from the present scene—some of it took place in England. A considerable portion of the evidence was sprung upon the defence and they were unable to secure testimony to refute it. Another chapter in the narrative of difficulties has been

The Attitude of the Press.

I would be the last person to prescribe the liberties of the public press, but if a verdict of guilty is pronounced by you, gentlemen, it will not be upon the evidence, but because the dragnet of the newspaper has been abroad through the slimy slough of inuendo and insinuation. The human mind is not so constituted as to be able to dissociate the testimony given in the witness box from what they had read or been told, consequently the jurors would be unable to eliminate entirely from their minds entirely the false impressions they have formed on the incipient stages of the case. In making use of this language I do not wish to condemn indiscriminately the work done by the newspapers. Some of the work was good work. In my own opinion all the honest detective work in this case has been done by the newspapers. While not denying the right of the press to publish a fair account of all the facts, it was not their province when a man was on trial for his life to publish the whisper of inuendo that dare not come into the box to seal its testimony with the oath. The expensive and extensive preparations made by the Crown were referred to. The defence had no money to bring witnesses from England, to bring testimony from Nevada, or with which to purchase the Ellises. While the testimony of many of the witnesses for the crown was loaded with malice and dishonesty he defied anyone to put a finger on a witness for the defence who showed indications of unreliability. The solicitors for the defence had found themselves crippled at every turn because they had not the funds at their disposal to meet the enormous expense connected with the case. They had labored almost without reward for months, because having undertaken the case of the prisoner they felt constrained to leave no stone unturned to see that he secured justice. All the circumstances constrain me to ask you to bring upon this case your fidelity and clear sightedness. It is not alone the prisoner who is on trial. The institutions of the country are on trial. It is on trial whether we shall return to mob law, whether the newspapers or a jury shall try a man. I therefore ask you to sink the plummet line of your intelligence and your honesty to the bottom of the evidence, for I tell you my client has been pilloried for a crime of which he is innocent, but is endangered by malignant passions and prejudices to which no prisoner in any court of justice has ever been exposed. After explaining the duty of the advocate and pointing out the utter unreliability of the testimony of detectives, Mr. Blackstock cautioned the jurors that if in the conduct of the case there had been faults of temper, faults of tact, if one witness had been unduly pressed or another too harshly dealt with, not to let the lash of censure fall upon the prisoner, but upon the shoulders where it belonged. His was the fault, not the prisoner's. The learned counsel also pointed out that Birchall was not on trial for the honesty of his conduct, and told the jury that, unexplained, the dealings of the prisoner with Benwell were not consistent with his innocence or dishonest dealings. It was undeniable that he had made statements to induce the deceased to come out to this country which were not in accord with the facts. It appears that he was endeavoring to get somebody else out here to furnish the capital with which to start a business, and brought him here on false representations as to his business. But you have no right to take into consideration the honesty or dishonesty of these dealings. I do not, therefore, defend him upon these points: first, because I should be at a loss to do so, and secondly, because it is not the charge in the indictment.

Sifting the Evidence.

Mr. Blackstock then proceeded to review the evidence with respect to prisoner's statements to Lumberman Hull, Operator Phemister and Captain Cox. I do not say that his witnesses were deliberately false, but take into account the frailty of human memory and the vast change a little difference makes. Let me point to two cases illustrating that. Hull was put in the box and said, "Prisoner told me that he had a letter from Benwell, enclosing a baggage receipt, and he was going to stop off at Woodstock or Paris on his way down." What the prisoner likely said to Hull was, "I had a letter from Benwell enclosing a baggage receipt," and then paused; then continued that he was going off at Woodstock or Paris on his way back, and Hull imagined that he said the letter contained this latter statement. Take another case. Pelly says prisoner spoke often of Pine Pond; that it was within easy drive of Niagara Falls. I asked Pelly if he mentioned Niagara Falls, and he said yes; I asked him if he mentioned Woodstock and he said yes, and I have not the slightest doubt in the world that actually took place was that the prisoner was speaking of Woodstock and not Niagara Falls When Pine Pond was mentioned.

Was the Prisoner at Eastwood?

Mr. Blackstock then proceeded to discuss the case under two heads: "Was the prisoner at Eastwood on Feb. 17?" and "Even supposing he was at Eastwood, what then?" The prisoner and Benwell unquestionably left Buffalo on Feb. 17. The crown say they bought tickets that morning at Niagara Falls for Eastwood. Why were those tickets not produced, and why was not the agent who is said to have sold these tickets summoned as a witness? Is it because the evidence will not fit? The difference of one or another too harshly dealt with, not to let the lash of censure fall upon the prisoner, but upon the shoulders where it belonged. His was the fault, not the prisoner's. The learned counsel also pointed out that Birchall was not on trial for the honesty of his conduct, and told the jury that, unexplained, the dealings of the prisoner with Benwell were not consistent with his innocence or dishonest dealings. It was undeniable that he had made statements to induce the deceased to come out to this country which were not in accord with the facts. It appears that he was endeavoring to get somebody else out here to furnish the capital with which to start a business, and brought him here on false representations as to his business. But you have no right to take into consideration the honesty or dishonesty of these dealings. I do not, therefore, defend him upon these points: first, because I should be at a loss to do so, and secondly, because it is not the charge in the indictment.

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Circumstantial Evidence.

At this stage Mr. Blackstock read a list of a score of cases in which innocent men had been convicted and in some cases executed owing to their positive identification by witnesses who subsequently found they were mistaken. In support of his position, he related how, on the train going to Ottawa the other night, Hon. Mr. Wells had entered a car, in which he (Mr. Blackstock) and Inspector of Inland Revenue Morrow of Toronto were seated, and Mr. Wells got into a conversation with Morrow, under the impression that he was Dr. Landerkin. Although both Landerkin and Wells were in public life and came in frequent contact with each other, some difficulty was experienced in convincing Mr. Wells that he was mistaken and that he was not conversing with the doctor. Then there was the evidence of Millman and McQueen, as to seeing prisoner in Woodstock. They were reputable citizens and they either saw prisoner or it was a case of mistaken identity. The crown could accept which view of it they chose. Admitting for the sake of argument that Birchall was at Eastwood, what did it prove? The identification of prisoner by James Hayward passing his mill was unlikely, in view of the fact that he could not recognize an old friend who stood in the gallery of the Court House a day or two ago.

The evidence given by the various men who swore at the inquest that they recognized the dead man as a pedlar was another proof of the unreliability of evidence as to identification. The defence did not for a moment seek to deny that the dead body was that of the unfortunate Benwell, but his identification as someone else was positive and convincing.

The learned counsel discussed the tracks through the Ferguson fields upon which the crown depended so much, and pointed out that they extended a further distance than the pond where the crown say the two men left the field for the 3d concession. He claimed that the test of the time consumed in making the journey related by Engineer Davis was valueless, since he was attired for the journey and the condition of the roads was different, and claimed that Logan and Buck, who partially identified Birchall on the return journey, were mistaken. He expressed extreme doubt as to whether Hickinson, McDonald and Friedenberg, were in the swamp at all the day they alleged to have heard the shots, and mentioned McDonald's admission to the defence that there were four or five minutes between the shots, and cited the testimony of Rabb and Mrs. Schultz to show that similar shots were heard Tuesday night.

Could Not Have Been Murdered Monday.

Mr. Blackstock claimed that the evidence of Dr. Mearns and Dr. Richardson proved conclusively that the bruises on deceased could not have been made on Monday, and everything indicated that the theory of the crown that he had been murdered Monday was wrong—that his death was not encompassed until 24 hours later. The fact that there was a rain and sleet storm Wednesday night destroyed the argument that the body must have been placed in the swamp Monday in order that the elbow and folds of his coat should be filled with frozen rain in the manner they were. The condition of the shirt front when found, looking as if it had just been freshly laundried, also disproved the theory of the crown that the body had been exposed to the weather for five days. The fact that deceased's boots bore no trace of mud, although the witnesses swear the roads were very muddy, is another important point which should not be lost sight of. The circumstance that deceased's stomach was empty was another. Was it likely that two Englishmen with plenty of money in their pockets would pass half a dozen eating houses and still not partake of nourishment for 6 or 8 hours? The suspicious actions of Caldwell and Baker were referred to. The discovery of the tracks in the woods by Stroud and Martin was, the learned counsel said, of the utmost importance, as it showed that two men must have entered the swamp and two left it. Were they not made by the men who deposited the body there? The correspondence was next reviewed, and doubt cast upon the value of expert testimony. His experience had been, with this class of evidence, that it was a case who first put salt on the bird's tail. He had no doubt that if he had been ahead of Detective Murray with his fee Writing Master O'Dea would have been just as willing to testify that the letters of Benwell and the Bastell telegram were *not* in the same handwriting.

Where is the Motive?

Where was the motive for the murder? The crown did not pretend to contend that Birchall murdered Benwell for his money, but their theory was that it was done in order to induce Colonel Benwell to send out the £500. While many of the statements in the famous letter were untruths, others were such as must prevent Birchall securing "the money unless Benwell was present." The intention to send the money insured in the names of both parties prevented the possibility of Birchall securing the money unless Benwell also put in an appearance. If he was dead and Birchall knew it, it was absurd for him to suppose that he could obtain the money! It proved that Birchall expected Benwell to turn up in a few days and write to his father. The journey of Birchall to Toronto and the information of the body was cited as an additional proof of his innocence, while the fact that on his previous visit to this country the prisoner had been under the alias of Somerset was explained by the fact that he was bankrupt and did not wish his creditors to know where he was located. The presence of Benwell's keys and gold pencil case in Birchall's possession was another proof of his innocence; had Birchall murdered the man they kept these incriminating evidences in his possession when he had a chance to destroy them? In conclusion, Mr. Blackstock warned the jury that they should give the prisoner the benefit of any doubt which existed, and when the truth was revealed, as it would be some day perhaps by the confession of the real murderer, they would be glad that they had acquitted the prisoner. Mr. Blackstock concluded by referring to the devotion of prisoner's wife, who had clung like a beautiful garland around his neck, displaying the greatest affection and trustfulness in his innocence when the clouds which surrounded him appeared to be the darkest.

A Terrible Arraignment.

Mr. Osler began his reply at exactly 3.35. He remarked that in February last a young Englishman comes to this country full of life and hope, and a few days after he is found foully murdered in a swamp. A duty devolved upon the community to find out who committed that crime. The duty has devolved upon the crown; the crown seeks no man's life, but nevertheless this duty remains. Some of the jury might be opposed to capital punishment, but this was no place to discuss such a subject, since as they had taken a juror's oath they must fulfil that duty honestly and conscientiously. Mr. Osler then pointed out to the jury that it was their duty to find a verdict according to the evidence or not guilty. Should it turn out subsequently that such testimony was incorrect they were not to charge their minds with the responsibility therefor; it was upon the witnesses the responsibility rested. Let us consider, said Mr. Osler, the relationship which existed between the prisoner and deceased and whether from that relationship there was any object to be attained—any gain to the prisoner, for the effect depends upon the background the view you may take of that relationship. In the outset it is fair that you should consider the weight to be attached to circumstantial evidence. If society cannot depend upon circumstantial evidence then all crimes of skill and deliberation must go unpunished. The poisoner and the other assassin who takes extreme care that the deed itself shall be unseen by man will go free. The cases of direct evidence are those the result of passion, but the most deliberate crimes are those unseen by man. So that when my learned friend says you must disregard all cases of circumstantial evidence then the crime of skilled and designing criminals shall be done away with and society's hand is crippled—they cannot follow them, they cannot convict them; they are at their mercy. The educated criminal, the clever criminal, the man who takes advantage of his social condition to commit the crime, shall escape—he shall not be convicted unless he is caught red-handed in the act.

The Motive for the Murder.

Mr. Osler, under the head of the object of the murder, referred to the experience of the prisoner in Canada from December, 1888, to May, 1889. With that knowledge and experience of the country he proceeds to England. How he occupied himself from May to November of last year is not before you and need not be. The story next commences with a correspondence through one Mellerish with Col. Benwell and his son. The letter of December 28, 1889, written by Birchall to Col. Benwell direct with relation to the engaging of deceased as a partner with prisoner in his farm in Ontario, and mentioning that the writer's brother had been for six years his partner, was read by Mr. Osler. Conceive the object of that letter. There was an expressed intent in the mind of the prisoner to entrap some young man to Canada and secure £500 upon representations that can be proved to be absolutely false. Ask yourselves what termination was possible in the mind of the prisoner as to how he was going to get that £500 without farm, without business, without any of the possessions he represented he had. The next date is Jan. 27. Between these letters there had undoubtedly been conferences between these parties, which we are unable to give you owing to the illness of Colonel Benwell. In this letter he prepares the mind of the father for his (prisoner's) correspondence as to the business of the "company." Every line of the letter intimates that Birchall would be the corresponding member of the firm, not young Benwell. Knowing that he wasn't going to have a sale in March (a suggestion made undoubtedly to appeal to young Benwell's love of gain, intimating as it did that he would receive a share of the profits), the jury have a right to accept the view that this was part of the scheme proposed by the prisoner to get that £500. It could not be got in a lawful way, for the material did not exist upon which it was to be advanced.

Its Termination was the Swamp of Death

What was the object of that scheme, what termination could it have except the Blenheim Swamp?

Mr. Osler then took up the embarkation of the party on board ship. Pelly ascertains that Benwell is going out, apparently on the same mission, to become a partner. Appealed to, prisoner tells Pelly, in direct contradiction to what he has told Colonel Benwell, that young Benwell is merely going out to be placed on a farm and that he would get rid of him as soon as he could. Prisoner's glowing description of his alleged farm at Niagara Falls proved to be untrue was contrasted with his visit here under an assumed name and not for any good purpose, and the fact that he was a bankrupt referred to. Prisoner's stories to Undertaker Swarts, to Constable Watson, Operator Phemister and others were also mentioned under the head of the relationship of the parties and the object of the murder. He had got all he was to get from Pelly—the £120—and could afford to laugh at him. That's the distinction between the two young men.

The Letter of Guilt.

Take that situation and the letter of Feb. 20—a letter written two or at the outside three days after the death—a letter that you cannot study too much. That letter was written by a man who had not shown himself a fool in any other correspondence. That letter was not written to be followed by another from the son in a day or two, stating that there was no business, no farm—that he had been defrauded. Take it, gentlemen, and read it between those lines, and the word you read, gentlemen, between these lines is MURDER. The man who wrote that letter knew that the right hand of Col. Benwell's son would never more communicate with his father; he knew that that son was cold and stiff in death. In that letter it states Benwell had inspected the books. Where are the books? It says he had consulted a lawyer in London. Where is the lawyer? It states that prisoner had introduced Benwell to several persons. Who are these persons? Why is there no explanation given?

If there is a particle of truth in this letter, or if there is any truth in the statements made by Birchall to Capt. Cox and Mr. Hull that he had gone west to look for a farm, there would be proof of who these parties were. Who believes that a young stranger arriving from England would go west wandering through a country of which he had no knowledge? When he found that prisoner's representations were false what would he have done? Cabled to his father, written to his father? Yet we haven't got a scrap of cable or letter to show that they were ever sent. No trace of him whatever since that fateful Feb. 17.

He Could Have Drawn the Money All Right.

He met the argument of Mr. Blackstock that, inasmuch as Birchall in his letter requested Col. Benwell to send the money to the firm he would be unable to get the money if Benwell was dead, by pointing out that the letter requests the money to be sent to the firm of Birchall & Benwell, so that either member of the firm could get the money without the presence of the other. On this correspondence, coupled with the return of prisoner to Buffalo accompanied by Benwell, with that telegram in his own handwriting signed Bastell, he claimed that he would have a right to ask for a conviction of this man without the slightest evidence as to the journey and as to the prisoner's identification. The burden is upon the prisoner to show where he was on Feb. 17. Where was he? Why, gentlemen, my learned friend said that the prisoner's mouth was closed. My learned friend forgets that at the close of the case the prisoner has a right to stand up in the dock and make an explanation of the circumstances, to tell the jury any plausible tale he likes and I cannot cross-examine him. He cannot, though his life is trembling in the balance. He prefers to remain silent and seek to discredit the evidence of the crown, consequent upon little disagreements. It was open to him to show where he was, with clothes and all complete; but in all that Niagara country he cannot find a man who will come forward and say "I saw him." He made an arrangement to send a telegram at 9 o'clock.

Niagara Sometimes Gives Up Her Dead.

Perhaps he thought he could "plake" his victim at Niagara Falls, but then he thought again that the Niagara River sometimes give up their dead and then—further on. But his whereabouts on that day are not a mystery. Twenty witnesses for the crown explain where he was—13 positively identify him.

Referring to the discrepancies in the evidence, Mr. Osler characterized them as discrepancies natural to be found in parties giving different stories of the same occurrence. One of the best tests of trutafulness is the fact that the witnesses differ in the details, but agree in the main. There is running through the thread of the whole story that thread of truth and reliability which is the warp and woof of the correspondence, with the acknowledged fraud with the object in view. You are asked by the defence to say that these crown witnesses have entered into a conspiracy to slay this man through the law; that for mere notoriety these reputable men and women come here to swear this man to the gallows although they know their story is untrue. My learned friend endeavored to convey to you the idea that they were relating a story which they knew was untrue and which endangered the prisoner's life. Mr. Osler next took up the journey, with the query, what was the object of that journey? There being no farm the professed object could not be realized. What was the real object?

The first link we get is the purchase of two tickets for Eastwood. We produce the folis, which are the clerk's vouchers. You can quite understand that a great railway company does not keep its tickets. If there had been no tickets sold it would be a circumstance greatly in favor of the prisoner, and as it stands with the tickets sold it is a circumstance which sustains the crown's theory. When the prisoner returned he told Pelly that Benwell was sulky and would not eat anything. The post-mortem shows that he did not eat anything. Then we have the state of Birchall's boots, showing that he had not confined his journey to sidewalks. Then we have in this connection the Bastell telegram, registered in Mr. Phemister's office by Birchall at 7.44, showing that he must have come in by the train from Eastwood at 7.24—who is "Bastell"? What was there to conceal? Why was he trying to cover his tracks? He knew that an enquiry would be set on foot and they would at once ask, "Who came in?" "Who sent telegrams?" And he at once chooses a name which will lose his identity, although Pelly, who could receive a message from nobody else, would think it was a misony. Why this concealment? It can only be explained on the ground that there was something to conceal. Then Birchall told Capt. Cox that he left Benwell at Niagara Falls station at 2¼. Where were they in the interval?

And now as to the identity? If you believe any one of these witnesses as to prisoner having been identified in any spot it covers the whole journey. The crown does not have to trace him all along the journey. Can you say to yourself that Miss Lockhart and Miss Choate