

The Richard Gray Trial.

The trial of Richard Gray on the charge of murdering the infant child of his daughter Estella Gray began at the Court House Tuesday morning before His Honor Judge McLeod. The new Solicitor General, Hon Harry F. McLeod, appeared for the Crown, this being his first important case in that capacity, and by the irony of fate he found himself opposed by Hon W. P. Jones, whom he succeeded in office and who strange as it may seem, represented the Crown at Gray's preliminary examination. Mr J. C. Hartley was in Court assisting the Solicitor General, who of course was a stranger to the jury panel.

The members of the Grand Jury were John A. Lindsay (foreman), Andrew Myles, B. B. Manzer, H. E. Gallagher, N. Foster, Thorne, B. W. Cummings, A. J. Marsten, Harry Mooers, Frank Atherton, W. B. Belyea, Coles W. Dugan, H. E. Burt, Howard Clark, Haddon Burt, H. D. Stevens, John Malaney, B. Harry Smith, Israel Kinney, Judson Burpee, G. Hugh Harrison, Harry McCartney, Willard Carr and Edward London. After being out about half an hour, during which time they examined Estella Gray, A. R. Foster and Dr. Burton R. Field, the jury returned a true bill. As the hour for adjournment had arrived the judge ordered a recess for dinner.

At three o'clock court resumed. The Solicitor General moved for trial, and the prisoner was placed in the dock. Gray was dressed in a neat suit, with white collar and dark tie, and had been clean shaven, on the whole presenting a far better appearance than at the preliminary hearing. Jail life had evidently agreed with him. He bore, moreover, a more cheerful look than formerly, no doubt glad that the determination of his case was at hand. Calling the jury was at once proceeded with, Mr Hartley assisting the Solicitor General. Rainsford Birmingham, the first man brought forward was objected to by the Crown, and stood aside, after a lively tilt between counsel, Hon Mr Jones contending that as Birmingham had placed his hand on the book before Hon Mr McLeod's objection, he should be sworn. The judge decided that Birmingham must stand aside. Holland H. Smalley proved acceptable to both sides, and was sworn. Charles E. Gallagher and Harding Crain were likewise accepted, but Hon Mr McLeod stood Frank Doherty aside. John Brown was sworn as juror No. 4. Gilbert Giberson was called, but as he was a witness, was not eligible. Amos DeMerchant was also sworn. Conn W. C. Rideout was challenged by Hon Mr Jones as being over 60, and dropped out. Eber Kearney was accepted as No. 6. Hon Mr McLeod asked that Henry B. Smith stand aside. John Farley and Wilmot Robinson passed without objection. Hon Mr Jones challenged Geo. H. Arnold. Henry Post was sworn No. 9. John J. Rogers was challenged by Hon Mr Jones. Michael Keenan was sworn No. 10. Frank Hayward was stood aside by the Crown and Hugh Dalling was challenged by the defence. The Crown likewise stood aside Squire Edward Kearney and David Shaw. This exhausted the panel and those previously stood aside were again called. Hon Mr McLeod challenged Rainsford Birmingham and Frank Doherty, but withdrew objections to Henry B. Smith and Frank Hayward, which latter two completed the jury.

The Solicitor General, in opening, delivered a very brief speech, carefully outlining the Crown's case. He called as his first witness

ESTELLA GRAY

In answer to Hon Mr McLeod she said she lived at Upper Knoxford, was 17 last December, and had lived at home all her life except an interval of three years commencing in 1902. At this stage the witness became rather cut up, and on the suggestion of the Crown counsel the court room was cleared of spectators. The details of the birth of the child and its disappearance in so far as she knew of the circumstances were then brought out. She identified blanket produced in court as one that had been in their house the day before her sickness. Said she saw her father take something from her room which resembled a child wrapped up, but did not get a good view of him in doing so. This was about half an hour after its birth. She had been virtuous with other men. On cross-examination she admitted to Hon Mr Jones that a certain young man had been a frequent visitor at her father's place, but not to see her she claimed. She had not seen her mother wrap up the child. Thought she had heard it cry. To the judge "I did not see father take it out of the room." Was not able to remember much that took place that morning.

WILMOT LAWRENCE

of Upper Knoxford, told of assisting in search for baby's body. Had been engaged to search by the Deputy Sheriff. Was in company with Leonard Woolverton. Two of us found

body under an old tree near rear of Gray's lot. Left it there until orders were obtained from Sheriff Foster. Finally assisted in removing body to Bath, where the inquest was held. On cross-examination said Gray had previously borne a good name in the community.

LEONARD WOOLVERTON

who assisted in the search gave evidence of similar purport to Lawrence in answer to both counsel.

RALPH WHITNEY

testified that he was a Houlton policeman. Went with Foster to hunt for Gray in lumber camp. Found him in South Richmond on Feb 8th. Witness went ahead, followed by Foster, and woke up Gray. Foster put his hand on prisoner saying "Dick, I have a warrant for you." Then they took Gray into an adjoining room where Foster said "Gray, I am arresting you on the most serious charge of all, murder," and then put the prisoner in irons. Proceeding the deputy said "I want you to tell me what you did with the child." The Solicitor General here informed the court that he intended asking witness concerning an alleged confession then and there made by Gray, but Hon Mr Jones raised the objection that the fact of being under arrest must be taken as compulsion, and that no warning had been given Gray that anything he might say would be used against him. The learned counsel for the prisoner cited several authorities, and in turn the Solicitor General argued contra. It being nearly six o'clock the judge decided that he would take until Wednesday morning before giving a decision, and accordingly adjourned the court.

WEDNESDAY'S PROCEEDINGS.

Upon Court resuming on Wednesday Hon Mr McLeod repeated his desire to ask Whitney concerning the alleged confession. Judge McLeod agreed with Hon Mr Jones that Deputy Sheriff Foster should first give testimony concerning any cautions he may have made, or other statements to Gray at the time.

A. R. FOSTER

Examined by the Solicitor General. Q. Mr Foster, you are Deputy Sheriff for this county? A. Well, I used to be, I don't believe I am now. The Solicitor, "Oh, I guess you are yet." (Laughter.) Witness related what took place after Gray's arrest. He thought he said to Gray "You better tell us what you did with the child" or possibly "It will be better for you if you tell me." Upon cross-examination would not swear that he did not say "You better tell me what you did with it."

Hon Mr Jones here contended that anything Gray might have said was inadmissible on the ground that inducements had been held out for a statement and no warning given that it would be used against him. The learned counsel quoted Judge Duff's decision in Rex vs Kay, a case on all fours with this one, in which a confession was ruled out. Hon Mr McLeod started in to combat this view, but the judge stopped him, sustaining Hon Mr Jones. Whitney was accordingly not called.

The Solicitor General then called Mrs Katurah Gray, wife of the prisoner, but Hon Mr Jones was instantly on his feet with the objection that Mrs Gray was neither competent nor compellable as a Crown witness. His honor seemed at first to incline to the view that the wife was competent against her husband and in this the Solicitor General concurred, but Hon Mr Jones by citing Section 4 of the Canada Evidence Act as amended last year conclusively showed that Mrs Gray could not be called by the Crown. His Honor accepted Hon Mr Jones' contention, and ruled accordingly.

A. R. FOSTER, (recalled)

told of the search for the child's body, his being informed of the location by Lawrence and Woolverton, and the removal of same to the Coroner at Bath. There was no cross-examination.

DR M. E. COMMINS.

said he was a doctor, residing at Bath. Also a Coroner. Held post-mortem on Gray infant. Body was brought to him by A. R. Foster. Identified blanket in court as that in which child was wrapped. Child was normal in all vital organs. Dr Fields assisted in the post-mortem. Tested lungs and found that pieces of same would float, and air-bubbles came from portion of lung held under water. Deduced from this test that child had lived and breathed. Cross-examined by Hon Mr Jones, witness said this test was regarded as certain. Did not consider it possible the gas was caused by putrefaction. It is possible that a child born alive might soon after die from lack of assistance in inducing respiration.

DR BURTON R. FIELD

examined by Hon Mr McLeod, said he lived and practised at Centreville. Remembered having taken part in the Gray post-mortem. Made a thorough examination. Everything seemed normal, excepting the brain. Made a particular examination of the lungs. Swore positively child

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was born alive. Nothing new was elicited on cross-examination. To Hon Mr McLeod witness said he could not swear positively what caused the child's death.

DR COMMINS (RECALLED)

Swore that the infant's lungs were open to the air only through the trachea. On cross-examination thought no air had got in them during his examination at post-mortem.

Here the Crown rested its case, and the judge asked Hon Mr Jones to proceed for the accused. The learned counsel replied that he proposed not to call any witnesses, and immediately began his address to the jury.

HON MR JONES' ADDRESS

Hon Mr Jones, in opening, said it was not necessary for him to warn the jury of the seriousness of the charge against Gray. They must approach their finding in a calm dispassionate manner. The penalty for the crime in the indictment is the most severe in the calendar. Evidence of improper relations had been admitted, but the jurors need not thereby be misled into a feeling of resentment against the prisoner, for there is yet the charge of incest to be preferred against Gray, and that would have to be decided apart from the murder charge. (The Solicitor General here began to cry out "Rot, Rot" interrupting Hon Mr Jones, but the latter turned on him in lively fashion, characterizing such an interruption as unbecoming, unprofessional and unworthy of a representative of the Crown, one which hitherto had not been used in courts of law. Hon Mr McLeod evidently took the hint, for thereafter he sat mute.) "Will you, sworn to do your duty, send a man to the gallows on such evidence as has here been presented?" asked Mr Jones. The law says the prisoner must have the benefit of every reasonable doubt. There was great doubt that the child was born alive, in fact that it could live under the circumstances existing at its birth seems beyond reason. Hon Mr Jones laid emphasis upon the responsibility each man would bear. The mother of the infant said she heard it cry once. "Do you not believe," he asked, "that her evidence under the circumstances is not altogether to be relied upon? If child had been alive at birth and cried then is it not reasonable to believe that it would have cried more than once? The conclusion seemed irresistible that the child died a natural death before being taken out of the room, if indeed it ever lived. Children frequently die right after birth, even under the most favorable circumstances. Gray, it is true, ran away from his home, because conditions were intolerable, but he remained within the county. A murderer would have gone far away. Mr Jones expressed his conviction that on such testimony as had been adduced no jury could ever convict. He warned them against confusing the issues, and to remember that medical tests are not always absolute. Mr Jones' masterly address lasted about a half hour.

SOLICITOR GENERAL MCLEOD

also spoke about half an hour. He is of course an orator, and was listened to throughout with breathless attention. He said it was his duty to present the case fully and fairly. He would adduce only the facts presuming guilt. It was not his duty to strive unnecessarily for conviction. All he asked was that justice be done. It was the duty of all to give prisoner a fair trial, and each juror owed a duty also to the community. Mere sentiment should not be considered. Estella Gray had sworn she heard the child cry, and stuck to that statement, therefore the babe must have been born alive. The two physicians corroborated her story that child was born alive, as the only recognized medical test proved that the child had breathed. He read the girl's testimony, combatting contention of the counsel for accused. He warned the jury to have no consideration as to what else might be charged

ed in a separate indictment. Waxing eloquent the Solicitor General pictured the care and protection which Gray should have had for his daughter, but he whose duty it was if need be to lay down his life for her honor, had ruthlessly divested her of it. Without regard to sentiment, and solely on the evidence before them, Hon Mr McLeod asked the jury to judge the prisoner. His address was forceful, logical and eloquent. Court then adjourned until after dinner.

THE JUDGE'S CHARGE

Upon resuming at half past two, His Honor Judge McLeod at once began his charge, which was brief, impartial, and admirably conceived. After a few sentences by way of introduction dealing with the enormity of the crime on which Gray was being tried the learned judge briefly reviewed the evidence. Murder, he said, may be defined as the taking of the life of one person by another, either through malice, recklessness, or otherwise with criminal intent. It was the duty of the jury to consider the following questions:—1st, Was the child born alive? 2nd, Did the prisoner take the child from the house? 3rd, If he took it away, was it then alive? 4th, If dead and he took it away in that state, was he responsible for its death in the house? With a few words of caution respecting the sanctity of their oaths, his honor sent the jury to their room.

THE VERDICT

After nearly an hour and a half they returned and through Foreman Gallagher announced a verdict of "Not Guilty." Gray received their finding with evident pleasure, having in fact all through the afternoon expressed himself as confident of being acquitted. During the addresses of counsel in the morning he was rather downcast, tears flowing copiously while his counsel was pleading for his life.

Upon motion of the Solicitor General the prisoner was remanded to jail until Tuesday, May 19th, in order to give the grand jury an opportunity to consider an indictment against him for incest. Deputy Sheriff Foster took him back to his old quarters in the jail, where it is safe to say Gray felt like a new man despite his gloomy surroundings.

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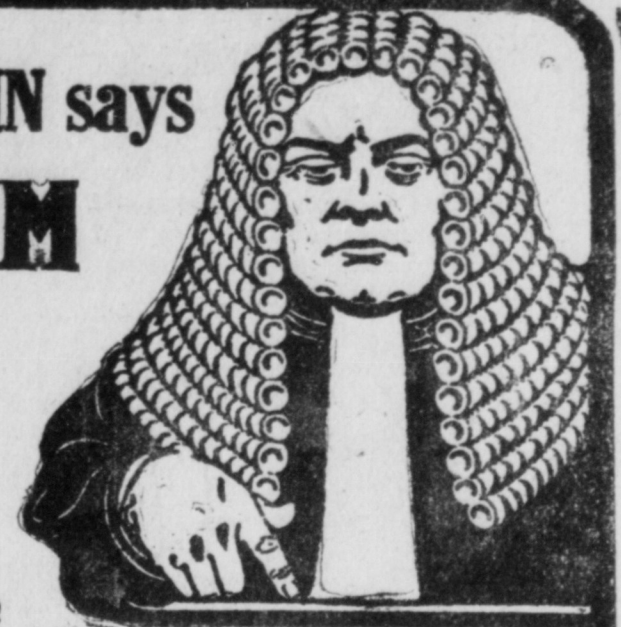
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Hon W. P. Jones K. C. by his masterly defence of the prisoner added another to his already long list of successes in criminal cases. He is of course acknowledged to be one of the best criminal lawyers in the province, being exceptionally well versed in the law in such matters.

Deputy Sheriff Foster for advice and assistance during the conduct of the case. He seemed particularly impressed with Mr Foster's capacity and usefulness in the position of deputy. Sheriff Hayward being indisposed on Wednesday, the Deputy had full charge, assisted by Constables McKinnon, Woolverton and Kimball.

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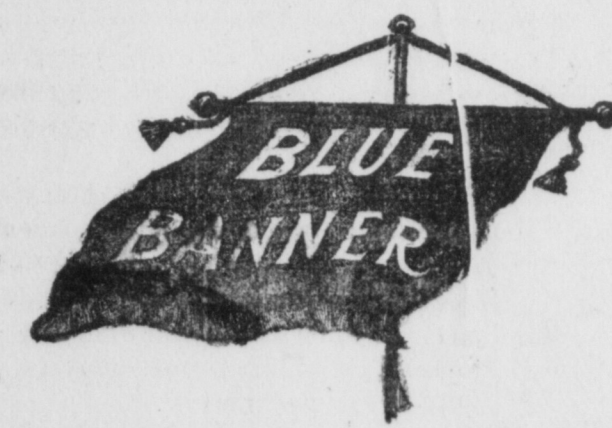
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