

THE HIGGINS CASE.

Supreme Court Delivers
Judgment Refusing to
Grant the Appeal.

JUDGE GREGORY ALONE FAVOR-
ED A NEW TRIAL.

Remarks Made by Their
Honors in Delivering
Judgment.

The supreme court this morning delivered judgment in the case of the King vs. Frank Higgins, the condemned St. John murderer, refusing the motion for a new trial. It was the judgment of five members of the court, Judge Gregory being the only one to dissent, and he disagreed with the others on only one of the two grounds on which the application for a new trial was based.

Judge Gregory, who was first called upon, delivered a verbal judgment, prefacing his remarks by reading the grounds on which the appeal was made, which are as follows:

1. Was the trial judge in error in his directions to the jury in relation to the silence of the prisoner after his arrest and after he had consulted counsel?

2. Was the trial judge in error in admitting the evidence called in rebuttal by the Crown?

After relating the circumstances of the case, his honor went on to say that he thought it had practically been the intention in dealing with the silence of the prisoner to have the jury draw the inference as to his guilt or innocence. From one passage in the Judge's charge it was made to appear that the prisoner's silence to the authorities after his arrest ought to be taken by the jury as evidence against him. He did not think that jury had any warrant to conclude that because the prisoner was silent he was guilty of the charge. It had been said that the jury from what had been said to them could as well infer the prisoner's innocence as his guilt. He did not think that that changed the aspect of the case at all, for to infer that he was guilty or not guilty meant practically the same thing. He did not think the jury had a right to infer from the prisoner's non-confession or failure to speak that he was guilty. It was proper in his opinion for the jury to consider the prisoner's statement that at the trial and on the stand was the first time he told the story that Goodspeed had committed the crime, but it did not seem clear to him that the trial judge in his charge had emphasized this point. He (Gregory) had given the matter very careful consideration and had looked up authorities on the point involved, and the conclusion he had arrived at was that a substantial wrong had been done the prisoner in directing the jury to infer that his silence meant guilt. After quoting sub-section F of section 746 of the criminal code, he said that with every respect to his learned seniors on the bench, he was unable to agree with their view of the matter and thought that the prisoner was entitled to a new trial.

In regard to the second point raised His Honor did not think that any importance attached to it, as it was purely a matter for the discretion of the trial judge.

Judge McLeod in delivering his judgment, said that in regard to the second point he thought the crown had been justified in calling evidence to rebut Higgins statement as to the hour he and Goodspeed had returned from the park after the murder. In regard to the point that there had been misdirection in the judge's charge, he did not wish to subscribe to the doctrine that the silence of a prisoner could be taken in any way as evidence of his guilt. For instance if a man is found with stolen goods in his possession and says nothing in explanation, that fact cannot be accepted as evidence against him. In this case Higgins said he was innocent before the trial and afterwards went on the stand and swore that Goodspeed committed the crime. The fact that he kept silent so long, knowing all the time, according to his own statement, that Goodspeed committed the crime, that fact he thought might well be taken into consideration and pointed out to the jury. He endorsed Judge Landry's action in doing this and pointed out in conclusion that the only evidence brought out in favor of Higgins at the trial, was in his own statement, and he could not therefore see how the jury's verdict had been affected by the judge's reference to Higgins' silence.

Judge Barker announced that he was in full accord with the judgment prepared on the case by Judge Hanington. He thought it a proper question for the

jury to consider whether or not an innocent person would have acted in the manner that Higgins did.

Judge Landry, after endorsing the remarks made by Judge McLeod, said that in addressing the jury he had felt it his duty to call attention to Higgins' conduct and demeanor. His silence on occasions when an ordinary man would have spoken, he deemed a fit and proper subject on which to give evidence. There was evidence to show that the prisoner had numerous occasions to speak out and say that Goodspeed had committed the murder, but had preferred to keep silent. The jury, who had heard all the evidence, could not have misunderstood what he (Landry) meant when he referred to the prisoner's silence. With all his knowledge as to who the murderer was, Higgins studiously remained dumb when he should have spoken. It was more reasonable to conclude that the counsel was acting under the advice of the prisoner, than it was to conclude that the prisoner was acting under the advice of the counsel. It was admitted that the evidence as to the prisoner's silence was properly received, then why should not the trial judge call attention to it. It was right for the jury to look into the prisoner's silence as a matter affecting his credibility. Believing that the language used on the prisoner's silence was well understood by the jury and was not spoken in a prejudicial manner, he would adhere to his previous decision and refuse a new trial.

Judge Hanington, after an exhaustive review of the case, remarked that if Higgins were innocent it was strange that he did not say so sooner. Why did he choose to keep silent when he could have cleared himself by a declaration of truth? Looking at the trial judge's charge as a whole, and not picking out isolated points, he was clearly of the opinion that the position taken by him was correct. In regard to the second ground, it was clearly a matter for the discretion of the Judge and no error had been committed in admitting the evidence.

The Chief Justice after expressing himself as entirely in accord with the judgment of a majority of the court, announced that the motion for a new trial was refused, with Judge Gregory dissenting.

The case was argued on Tuesday last, the Attorney General appearing for the crown and Daniel Mullin, K. C., for the prisoner.

A successful appeal to the Supreme Court of Canada or commutation of the sentence by the Governor General, is all that can now legally prevent Higgins from expiating his crime on Dec. 18th.

OUR TOTAL LOSS.

Canadians Who Fell in South Africa
Number 243.

Ottawa, Nov. 15.—A statement issued by the South African Memorial Association shows that of the Canadians who fell in the war, 228 are buried in South Africa, 4 in England and 11 at sea, making a total of 243.

The relatives of 218 have been communicated with and the relatives of 14 cannot be traced. Of the 11 buried at sea, it was not considered necessary to communicate with the relatives as to place of burial.

Out of the 228 buried in Africa the graves of 89 have been definitely located by the association through the general officer commanding Cape Colony.

Three firms of stone masons in South Africa have been asked to submit drawing for two large memorials, one of Paardeburg and the other at Kleinbart's river, the two actions in which Canadians especially distinguished themselves.

The Loyal Guild of Women, and Canadians prominent in South Africa, among whom are Mr. DeLothiner, Colonel Steele and Colonel Greenwood, have promised their hearty co-operation in the work. There is at present \$5,400 at the credit of the association and Lady Minto trusts that further donations will be forthcoming to aid in the completion of the work.

THE MARKET

Farmers are Obtaining Good Prices for Their Produce.

Farmers have no reason to complain of the prices being received in the market for their produce this season, for they are certainly higher than for many years. Prices have been good from the standpoint of the producer for several years past, but this season there seems to have been an advance all round. Unfavorable weather interfered somewhat with the size of today's market and it was not a large one for the time of year. Poultry appeared to be quite plentiful and was in fair demand. Chickens brought from 40 to 60 cents, and a few turkeys, not of the best quality, sold at 12 and 13 cents per pound. There were only a few geese brought in and they were quickly disposed of at 75 and 80 cents each. Spring lamb was plentiful at 7 and 8 cents, veal brought 5 and 6 by the quarter and mutton 6 and 7. Several good quarters of

beef sold at 4 and 5 cents per pound. Good fresh eggs were rather scarce and what were to be had went at 22 cents. Butter was fairly plentiful at 20 to 22 cents, the latter figure being paid for rolls. This is an off year for potatoes and only a few are brought in to market for the reason that the farmers have none to bring. They are easily worth from \$1.50 to \$1.60 a barrel at the present time and it is predicted may reach the \$2.00 mark before spring. Other kinds of vegetables, however, are plentiful and bring about the usual price. Turnips are worth 40 cents per barrel, carrots, 75 cents, beets, \$1.50 and onions, \$2. Fall and winter apples bring all the way from \$1 to \$3 per barrel.

THE BEST

Pies,
Cakes,
Pastry

ARE MADE FROM

BUDA
FLOUR...

Barrels and half barrels,
for sale by

JAS. HODGE

JUST RECEIVED

100

Half Barrels

Labrador

Herring

Will be sold while they
last for

\$2.50

Per ½ bbl.

M. DOOHAN

Regent street.

Something

... FOR ...

Nothing

We are giving away one
piece of Opal Ware with
everypound of

Imperial
Blend Tea

Order at once and get first
choice.

C. H. BURTT

Grocer, Queen st.

F. ST. JOHN BLISS

Barrister, Notary, etc.

Offices—Corner Queen and Jarvis streets
Entrance Carleton street. Tel.

NOVELTIES.

Tenasitine 5c. and 15c., (mends everything). New Skin 15c., (Liquid Court Plaster). Floral Leaves 10c. (for the breath). Violet Breath Hearts 15c.

JUST RECEIVED.

C. FRED CHESTNUT,

Apothecary, 308 Queen St., E. Mon.

ALARM..
CLOCKS



Just arrived. Six dozen Nickel Alarm Clocks, to sell at \$1.25 and \$1.50, and all fully guaranteed, just the article needed for these dark mornings. Also beautiful line of Mantle and Cabinet Clocks.

F. E. BLACKMER.



SKATING
BOOTS..

At
LOWEST
PRICES!

AT

LOTTIMER'S Shoe Store

We have an excellent assortment of Ladies' Skating Lace Boots.

We have also Misses' Skating Lace Boots.

Ladies' Box Grain Skating Lace Boots, felt lined, only \$1.25.

Ladies' Dongola Kid Skating Lace Boots, warm lined, only \$1.50.

Ladies' Dongola Kid Skating Lace Boots, fleece lined, only \$1.75.

Ladies' Crome Grain Skating Lace Boots, warm lined, \$1.75.

Ladies' Box Calf Skating Lace Boots, warm lined, \$2.00 and \$2.25.

Misses' Box Grain Skating Lace Boots, felt lined, only \$1.15.

Misses' Box Calf Skating Lace Boots, warm lined, only \$1.50. See them in our window.

LOTTIMER'S CASH SHOE STORE 210 Queen St. E.

First-class Cafe

Edgecombe Block, York st.

Everything new and clean. Experienced cook and caterer. Oysters, Clams and Delicacies. Ice Cream a specialty. Dinners and meals at all hours. Our motto: "Cleanliness."

E. Washington,

Proprietor.

PHONE 61.

BURN

Springhill

Coal



The only Soft Coal that will give satisfaction in stoves or furnaces. Plenty in stock. Price reasonable.

P. FARRELL

Apples. Apples.

We have a lot of the cleanest and best quality of

Famous Apples

That ever came to town. Also a large assortment of other varieties that we will sell at market prices, by the peck or barrel.

H. C. JEWETT,

Corner King and Regent street. Tel. 338