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## HARKLEY ONCE MORE FREE AFTER SPENDING FOUR MONTHS AWAITING TRIAL

AFTER VIGOROUS DEFENCE BY COUNCIL JURY RETIRES  
AND IN TEN MINUTES RETURN WITH VERDICT  
OF "NOT GUILTY."

After being out only ten minutes yesterday afternoon the jury at the assize court found Jack Harkley not guilty of the charge of murdering Frank Martin at Swamp Point on September 10. Judge Murphy who was conducting the assize at once ordered the prisoner to be given his freedom and the jury to be discharged.

The verdict was received with applause by those present, sheriff, and when Harkley stepped from the dock he was welcomed by a number of his friends and even those who had not known him before congratulated him on his luck.

#### Vigorous Fight.

L. W. Patmore, the counsel for the defence, put up a vigorous fight and as the evidence in the case for the crown was punctured and the evidence for the defence slowly unfolded during the two days of the trial it became plain to those present that there could be but one verdict. Then came the addresses by counsel and, most important of all, the stating of the law in regard to the case by the judge, all of which confirmed the idea that Harkley had fired his gun in self defence as provided for in the criminal code.

#### Recalled Jury.

When the jury had retired Judge Murphy remembered two minor points which he had forgotten in summing up and he sent for the jury and mentioned these before the verdict was given.

At the afternoon session a number of witnesses gave evidence as to the good character of Harkley and the quarrelsomeness of Martin, these witnesses were Bert Olson, M. R. Jamieson, John Conway, Fred Ritchie, George A. Clothier, Joe Wheatley and John E. Stark.

#### Reviewed Evidence.

In reviewing the evidence Mr. Patmore set aside that of the Japanese as of no importance and spoke of the discrepancies in Constable Shiel's evidence, this being an indication that he could not be relied upon. His evidence not only differed from that he had given at the preliminary trial but also it varied when repeated under cross examination.

In regard to the evidence of the doctor in regard to the direction the bullets had taken, Mr. Patmore said his theory was that the man on seeing the gun pointed at him bent forward just as if someone was about to strike him in the stomach and thus one of the bullets entered his heart.

Counsel suggested that they did not suggest that the pro-Germanism of the man was justification for shooting him, even though some people openly advocated an open season for shooting pro-Germans. In spite of this pro-Germanism Harkley had refused to quarrel with him.

Prisoner had refused to run away after the shooting even though he had had every opportunity. He had shot the man in self defence and he felt he was justified in doing so. He was afraid of serious violence to his person, had reasonable ground for his fear and did everything he could to avoid the conflict. What flashed through his mind was that the man was going to beat him up. Little Jack Harkley was afraid of big Frank Martin. He knew Martin was a bully and had roughly handled men. He was also afraid because of the man's pro-Germanism. Here was a man beyond the pale of human sympathy taking money from the government he was seeking to overthrow. Martin had threatened him and this was known to Harkley.

#### Self Preservation.

Mr. Patmore then spoke of the physical weakness of the prisoner and of the danger to him if he should get into a scuffle. He had no other means of protecting himself. Self preservation is the first law of nature and a man's first instinct is to fight. Had he not owned a gun it is probable the positions of the men would have been reversed. Counsel also spoke of the good nature of Harkley and the ill nature of Martin. A verdict of "not guilty" would gladden the hearts of all right thinking wherever Jack Harkley was known.

R. R. Earle for the crown did not attempt to address the jury in an appealing way but simply

set out some of the salient facts of the case from his viewpoint. The killing was admitted and it was only a question as to whether it was not. For seven years Harkley had seemed to have harbored bad feelings toward his victim. Living alone he had doubtless brooded over it until when the opportunity came he had taken revenge. The letters written clearly showed Harkley had anything but an angelic character.

Mr. Justice Murphy in summing up clearly stated the law in the case showing that a man might be legally assaulted without actually suffering bodily injury. He was very careful to cover every point and as he proceeded it became more clear, every minute that only one verdict was possible.

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