THE DAILY NEWS

PRINCE RUPERT - BRITISH COLUMBIA

Published Every Afternoon, except Sunday, the Prince Rupert Daily News, Limited, Third Avenue.
H. F. PULLEN, Managing Editor.

Advertising and Circulation Telephone - 98
Editor and Reporters Telephone - - - 86

SUBSCRIPTION RATES:

Transient Display Advertising....$1.40 per inch per insertion
Transient Advertising on Front Page.....$2.80 per inch
Local Readers, per insertion.....25c per line
Classified Advertising, per insertion.....2c per word
Legal Notices, each insertion.....15c per agate line

Member of Audit Bureau of Circulations.

DAILY EDITION — Friday, November 21, 1924.

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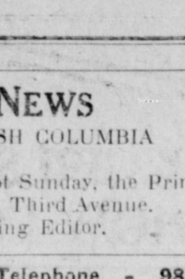

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3rd Ave. and Fulton St. Phone 9.
We stock Pictorial Patterns.

ASSAULT CASE IS CONCLUDED

John MacDonald of Ocean Falls Found Guilty and Sentence Reserved

ACCOUNT OF FRACAS

Defense Was That Defendant Did Not Know Who Constable Was

After deliberating for one hour and ten minutes, the jury at the Supreme Court assizes in the case of John MacDonald of Ocean Falls returned a verdict at 6:40 last evening finding accused guilty of assaulting a police officer, Provincial Constable Arthur Collins, while engaged in the execution of his duty. Sentence will be passed by Mr. Justice Gregory at the end of the assizes. Nearly seven hours was devoted by the court to the case. E. F. Jones prosecuted and H. Castillou of Vancouver defended. The cases of George Hall and Fred Bremer, charged with collaborating with MacDonald, are being proceeded with today. It was expected that the $3,000 damage action Sidener vs. Shirley would be started this afternoon. There are also three divorce cases to be heard.

At the resumption of court at 2:30 yesterday afternoon after the noon recess in the MacDonald case, Sam Zirilich, crown witness, was cross-examined by H. Castillou, counsel for the defence. Zirilich declared that Collins was not under the influence of liquor at the time in question and he denied that he had made a statement that, had Collins not been drunk, he would easily have been able to lick MacDonald. Mr. Castillou was checked by Mr. Justice Gregory for "wasting time on trifling points."

Fight in Lane

Wilfrid Owen, sawmill employee, gave his account of the fight. About 10 o'clock he came from the bunk house to the verandah of the hotel where the fight was finishing. The taller man (MacDonald) knocked down the shorter one (Collins) and, jumping astride of his neck, asked if he had had enough. The latter said "Yes" and went out, the other man following him and telling him to keep moving. Then the accused and two men went out into the lane and the shorter man came back from the street and followed them up. More blows were exchanged and Collins came out with his face covered with blood while MacDonald's hair was tousled and his face flushed. Under cross-examination. Owen said he had had a clear and unobstructed view of the fight. It was dark in the lane.

This concluded the case for the crown.

Defence Witnesses

In opening the case for the defence, Mr. Castillou stated that he intended to call the accused to tell his own story and also other by-standers to give their account of what had happened. Asked by Mr. Justice Gregory what the defence was to be, Mr. Castillou replied self-defence.

The first witness for the defence was George Miller. He had been shooting billiards in the hotel. Macdonald was at the soft drink stand. He picked up a chair and dropped it down softly and then walked out by the verandah. He appeared as if he had been drinking but created no disturbance. Then some man (Collins) came through the pool room after him, caught him by the collar of his coat and shook him with both hands. Both men were strangers to him then and he did not know their names. MacDonald said "Who in the Hell are you?" After Collins had pulled MacDonald to him, the latter hit Collins. MacDonald knocked Collins down on the verandah and the latter had hold of his leg. Collins got to his feet and started the fight again, this time outside the door. The next thing MacDonald had hold of Collins and they were tussling. He saw that MacDonald had the gun in his hand. He had his arms around Collins and the gun was pointed away from the latter. Saying "I don't want this thing to fight you with," MacDonald threw the gun down and Zirilich picked it up. They went up to the hotel and were fighting again. The policeman went into the hotel first. Then they went outside. The constable had never spoken to MacDonald as far as he heard.

Under cross examination by Mr. Jones, Miller denied having discussed with anyone the evidence he was to give. He had heard no foul language.

J. B. Mayville, boom foreman, gave evidence corroborative of Miller's. He did not hear Collins warn MacDonald that he was a police officer. The crowd was shouting at MacDonald to "jump on him." "I said 'stand back,'" said witness, "and that cost me $100."

"Who took it out of you?" asked Mr. Justice Gregory.

"Judge Hill," replied witness.

Mayville said he had not seen the gun. Under cross examination, witness said he was as sober then as he was now. He was not a heavy drinker. He had not seen MacDonald drinking nor did he hear loud talk from him. He denied that he had been drinking at Ocean Falls on Tuesday night when he had left the steamer for Prince Rupert to attend the trial.

James D. Muir gave further detailed evidence of the incident for the defence. Under cross-examination, he admitted that he had met MacDonald about an hour after at the point, a couple of miles distant, where there was a sporting house. The next day he took MacDonald to work at Lutz' camp. He understood that Collins had told MacDonald he would not bother him. MacDonald later had said that "Collins was a pretty good fellow" having told him that he would not bother him. Witness said he had not been drinking. He had heard no bad language from MacDonald.

Accused's Story

MacDonald, called to the stand, said he was 29 years of age and had never been in trouble before. On the night in question, after having a soft drink with a couple of fellows, he took a seat beside the wall. He got up and, feeling good at getting to town after being in the woods, lifted up the chair and set it down heavy and then went out. A stranger came up and grabbed him by the shoulder. He had not previously come into the hotel and told him to "keep hold of himself." He had never tried to break a window with his chair. Collins pulled him and struck him on the chin. Not knowing he was a constable, he struck back and knocked him down. He came up but he knocked him down again when he had come at him. Outside, he saw Collins had a revolver. He took the gun away and he (Collins) came at him with a rush. He threw down the gun without attempting to fire it. He had no intention of shooting. After the fight in the hotel, he (MacDonald) went down the lane with a couple of strangers. It was dark but he heard footsteps behind him and somebody hit him on the back of the head. It was the same man who had attacked him in the hotel. He (Collins) made a couple of swings with his club before he took it away from him. Then he struck Collins in the face and he "beat it." It was not until two hours after the fight that he found Collins was a policeman. "He seemed to me more like a drunken logger looking for trouble. I smell booze on him," asserted MacDonald.

Under cross-examination, MacDonald said he had taken the gun from Collins fearing that he might use it on him.

Counsel's Addresses

Addressing the jury, Mr. Castillou pointed out that accused did not know Collins was a policeman but thought him a "drunken logger." Had the officer been in uniform, the trouble would never have arisen. He argued that the crown evidence was not corroborative. How had the fight been started? Was not MacDonald justified in defending himself from an unwarranted attack, especially not knowing that it was a police officer? If striking back in self-defence, he was not guilty of assault. Mr. Castillou suggested that evidence had been adduced sufficiently to prove that Collins was lax in the execution of his duty as a police officer and might have been under the influence of liquor. The whole unfortunate affair had been caused by the over-officiousness of the officer. If there was a doubt it should be given in favor of accused. He asked for the acquittal that accused was entitled to.

Mr. Jones argued that the defence had devoted its efforts not so much to proving it was a case of self-dentence but that Collins had been drunk and that MacDonald had not known he was a police officer. Insinuations and suggestions had been resorted to thus showing the weakness of the defence. In spite of this, there was nothing in the appearance of Collins to indicate that he was a drinking man. The witnesses for the crown gave distinct evidence giving the lie to any suggestion that Collins had been under the influence of liquor. It was conclusively apparent that he was perfectly in sober senses. It was shown that he was an exceptionally good officer and a reasonable one. Accused had not given a very good explanation of why he had picked up the gun. The jury could take the evidence of the defence for what it was worth. A police officer had been assaulted. This was not to be countenanced and it was the duty of the jury to see that justice was done.

Judge's Charge

In charging the jury, Mr. Justice Gregory concurred with the crown counsel in that the defence seemed more to prove that Collins was drunk than to establish self defence on the part of MacDonald. Even if the officer were drunk it was no justification for MacDonald to assault him. There was no doubt Collins had received serious bodily injury. The fact that accused did not know that he was assaulting a police officer was no excuse for doing so. That point might be brought up by defence counsel in asking for a reduction of sentence, in case of a verdict of guilty being found. In the case of self-defence, no more serious injuries than necessary should be inflicted. Neither should the offensive be resorted to if retreat were possible. "It seems to me that the evidence of drunkeness on the part of the constable is exceedingly slim," said His Lordship. It was up to the jury to make its decision as it would in its own private affairs. If any prejudice was shown by himself, Mr. Justice Gregory warned the jury not to take this into consideration but decide the case in its own mind.

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