

January 1928

Canadian Justice

J. P. O'Connell

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

Recommended Citation

J. P. O'Connell, Canadian Justice, 5 Denv. B.A. Rec. 21 (1928).

This Article is brought to you for free and open access by the Denver Law Review at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

Canadian Justice

houses and others make a lease contract or agreement of sale upon installments, retaining the title in the seller. This is not required to be recorded. Your purchaser, therefore, buys at his peril and the party causing a levy of attachment or execution to be made therefor, never knows when a third party claim may be filed on behalf of some holder of an installment contract, and upon the filing of such claim it becomes necessary that

the so-called "seller" or third party claimant should be paid the amount of his claim unless the attaching party or execution creditor presents to the sheriff within five days a verified statement that the claim of title under the conditional sale is void for reasons therein specified and delivers to the officer a good and sufficient indemnity bond which bond is made both to the officer and seller or third party claimant.

Canadian Justice

By J. P. O'CONNELL,

Assistant District Attorney of the City and County of Denver

ON the evening of July 18, 1927, one George McDonald and his wife Doris, together with one Frank Price, anxious to leave Canada before being apprehended and charged for having issued spurious checks, engaged the services of a taxi driver to take them from Montreal to Rochester, New York. When about fifty miles out of Montreal, they killed the driver and taking his money and the machine, fled to the United States.

The McDonalds, travelling under the alias of "Carter" arrived in Denver about August 5th. While here they spared neither storemen nor bankers in their successful campaign to see just how much they could raise on wholly worthless paper. They then proceeded to Butte, Montana where they were arrested by local police acting upon wires from Denver. After being returned to Denver their real identity was discovered from finger prints, etc. and the Canadian authorities were notified.

In due course Canadian Authorities arrived with extradition papers. These were the most complete that the writer has ever seen. Not a detail had been overlooked and it was apparent that no expense had been spared in prepar-

ing them. Canadian Justice thinks only of results. No matter how costly the securing of detailed information, if it is a link in the chain, the Canadian authorities see that it is secured.

The case of The King as George McDonald and Doris McDonald was called for trial on the morning of December 6, 1927 in a little town called Valley Field in the province of Quebec, about forty miles from Montreal. It is a French speaking community and the trial therefore was conducted in both French and English. Everything said in French was translated into English and vice versa.

A jury panel of about one hundred had been summoned for service. These men were selected by lot by the Sheriff of the County. The writer was credibly informed that all juries in that community are for conviction. Once a man is apprehended it is almost taken for granted by the jury that he is guilty.

The defendants were represented by the most able lawyers in Montreal. They had been appointed by the Court and although the case lasted nearly two weeks, they received nothing for their services. The attorney for the Crown received \$20 a day when en-

gaged on the case. (He is allowed to have his own private practise).

The jury selected was composed of six Frenchmen and six Englishmen. At the conclusion of the case both defendants were found guilty and the Court immediately pronounced the death sentence setting March 23rd as the execution date.

Procedure

The procedure differed in some respects from that in our courts as did the conduct of the case. The principal differences noted were:

1. Selection of the jury.
2. Rule as to objections and exceptions.
3. Instructions.
4. Attitude of officials and citizens.
5. Attitude of the press.

Selection of Jury

The jurors are called one at a time and accepted or rejected before another juror is called. While inquiry may be made, in this case not a question was asked of a single juror concerning his qualifications to sit. Under the law the defense had a right to 20 preemptory challenges for each defendant, giving them a total of 40. The Crown had but 4 in all. As each juror is called however the Crown has the right to ask him to stand aside. He then waits until the panel has been exhausted before again being called into the box. In the McDonald case the defense exercised all its challenges but enough of the panel remained so that it was unnecessary to recall any who had been asked to stand aside.

Objections and Exceptions

It is not necessary for the defense to object to the admission of incompetent or otherwise objectionable testimony as the Crown assumes the responsibility. If such testimony is admitted it is error regardless of failure to object. The reason given to the writer by Judges with whom he talked, was the severity of the Canadian law and the

almost certainty of conviction. This forces them to throw every possible safe guard around the person on trial.

Instructions of the Court

The system of instructing the jury is the same as that used in our Federal Courts. It consists of a statement of the law mingled with the comments of the Court on evidence produced or the failure to produce evidence. It is stated that perjured testimony does not escape the trained mind of the judge as it does the jurors in so many cases.

Attitude of Officials and Citizens

In the many courts visited by the writer he saw none of the maudlin sympathy toward the defendant on the part of citizens or court attendants that is found so often here. Inquiry showed that any act on the part of an official which would tend to create sympathy for the defendant met with the Court's disapproval at once. In the McDonald case the mere putting of an arm on defendant's shoulder caused the removal of the Matron in charge of the woman prisoner.

Attitude of the Press

The cases in the province of Quebec are tried in the court room and not in the Newspapers. All that the papers print is the testimony given and not the views of the editors upon the guilt or innocence of the accused. The judges by use of contempt proceedings control the conduct of the papers and are thus enabled to see that real justice is meted out.

The cost of the case of Crown vs. McDonald, including capture, extradition and trial, was \$60,000. The utter disregard of expense, the surety of punishment and the absolute certainty that the verdict will not be interfered with by pardoning boards undoubtedly account for the low crime rate in Canada.

(NOTE—Mr. O'Connell was taken to Canada as a witness in this case).