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SUPREMECOURT

Thursday, July 12

AFTERNOON SESSION

Annie Sims' evidence (continued). At the request of Counsel, Mrs Sims went on to illustrate the relative locations of ranch, house, porch, road and Kennedy's lane by a diagram. The witness then gave evidences as to the night of the theft, her evidence in this regard tallying closely with that of the previous witness. After opening the front door for her husband she ran to the ranch, where she saw three men, standing about 30 yards from her. She called her husband, the men started running and she started after them, going as far as the door of pen no. 2, which she shut, put a stick against, and then started running after the men again.

She was gaining on them a little, she thought, when she lost her footing on the wet grass and fell. She then returned, put the hasp on pen no. 2, and went back to the house.

The foxes in pen no. 2 and no. 6 she believed to be worth from $150.00 to $200.00 each. The parents had taken prizes. As for the men one of them was smaller than the others, and one of them had rubber boots on. She did not recognize any of them.

Cross examined by **Mr. Strong**, witness stated that later in the magistrates court, as she was going by the prisoner, Binns, she said "I'm sorry Boys, and touched Binns with her hand. She did not pat him on the head, she stated. Counsel questioned Mrs. Sims as to what pups she owned out of the different litters, and what interest, if any, she had in the foxes in pen no. 2 and pen 6.

Asked about the men she had seen running away from the fox ranch, witness she was not able to describe their dress, except that one of them wore rubber boots. This she was able to see because he was nearer her and slower in getting away than the rest.

Constable Biggar, examined by Mr Saunders, testified to having been called out to Mr. Sims' fox ranch. There he had a conversation with Mr. Sims. He described the car tracks in Kennedy's lane. As a result of this conversation with Mr. Sims, he went first to French River, and then to New Annan, in a search for Louis Binns, who worked at the Lealand fox ranch there. Sims and Moase went with him. He then had a talk with Emmanuel Mallett, the prisoner.

Here **Mr. Johnston** objected to anything said by the prisoner being put in evidence. **The court** ordered the Jury to retire while the point was being considered.

The court said that British courts were very severe about such matters as policemen getting statements from prisoners. This was exemplified very recently in the case of **Miss Savage**. Though such things were sometimes admitted in American courts as evidence, British judicial proceedure did not admit them.

Mr. Saunders submitted that as the statement to Constable Biggar in the case was purely voluntary, it should be admissable. He quoted various authorities to support his contention.

His Lordship said that he first wished to be satisfied that the statement was, in fact, purely voluntary. This had not yet been done.

Mr. Johnston said that this was his contention.

Accordingly the examination of witness was continued further by **Mr. Saunders** in order to establish this point. Witness then went on to state that he asked the prisoner where Louis Binns was. He said he didn't know. Prisoner was then asked if he was with Binns last night. Not getting a decided answer, witness called the accused outside and again asked him where Binns was.

Moase and Sims were also present and prisoner had not received the statutory warning.

At this point **His Lordship** commented that these proceedings seemed to take on the aspect of a cross examination, and as such was passed in British Law. Any admission made to an officer of the law pursuant to cross examination is passed.

Mr. Saunders continued to press his contention, however.

Mr. Johnston combated this position, quoting from authorities, and from the evidence.

His Lordship ruled that the evidence was not admissable, again calling attention to the fact that nothing resembling the American "third degree" was countenanced by British Courts, and ordered the jury to be admitted.

Mr. Saunders then continued the examination of the witness, who testified that he took the prisoner in James Sims' car and went to Ram Island, leaving the car at Princetown and taking boat to the island. He was accompanied to the island by the prisoner, and Jack Mallet, the prisoner's brother, who they met in a car coming in towards Kensington. When they got to Ram Island the witness and prisoner went to the ranch, while Jack went to get his brother Frank.

The six foxes were then produced, and were taken three in each box, to the boat, and thence back to New Annan, where they had left Mr. Sims.

On the way back they met Mr. Lea in his car. Hhe stopped them and said he wanted witness to let the two Mallett boys go, and he would produce Binns in ten minutes. This witness refused to do.

Mr. Lea went up to his house, then returned and said Binns had left. Witness went over to the place where he boarded, but he was not there either. When he got back to the boat, Jack Mallett had gone. He met Moase with Binns in charge coming down the lane. He called for a taxi from Summerside, handcuffed Binns and Emmanuel together and took them to Summerside. As to Jack Mallett, witness followed a trail leading to a bush behind the barn on Lealand ranch, where he found a pair of rubber boots and an old sock.

Mr. Johnson conducted the cross examination of the witness. Witness, it developed, had placed Mallett and Binns without any warrant in the Summerside Jail. At the time he was not a Constable of Prince County.

Then he also removed them from the jail at Summerside, and put them in the Charlottetown jail—also without any warrant. Witness had also gone to the jail in Charlottetown, at his own request without any warrant—a nice way to get out of jail Mr. Johnston commented. Witness explained that Binns wanted to see the Attorney General. Asked by Mr. Johnston if he had told the prisoner that his lawyer (Mr. Johnston) was trying to double cross him, witness said he meant Mr. Lea.

On the witness being ordered by Counsel on whose authority he took Binns out of the jail, Mr. Saunders objected. Witness testified he took him out of jail, to the Attorney General's office, then back to jail, then out of jail at half past two or three o'clock in the morning to Mallets house at New Annan, then back to Borden. At New Annan witness took a flash light out of the car. Witness said that Binns and he used the flashlight on a man and his wife sleeping in the barn, and Binns at the suggestion told them he had broken out of jail.

They then went to the Lealand Fox ranch, which was to have gone through. They then went to Borden to search for Jack Mallett. They had breakfast, which was paid for by the Government who paid all expenses. Witness went across to Cape Tormentine, leaving Binns in charge of Jack Douse, a barber.

He was then taken back to Queens County jail, out of which he was later taken to Summerside, where he was put in jail out of which he was then taken to supper at the Clifton. They then went for a drive in the car of the brother of the Acting Attorney General, Mr. J. O. C. Campbell, who was at the wheel. They were looking for a man named Morrison—that is, Mr. Campbell.

They told him he would get clear, if he would give evidence against the Mallets. Witness did not hear that he was promised a government job, if he gave evidence against Mallet.

It was Frank Mallet who surrendered the pups on Ram Island, witness stated.

Louis Binns (Sworn) was the next witness. He was examined by Mr. J. O. C. Campbell.

He testified that he had been working on the ranch of Mr. John Lea, at Travellers Rest.

On the night of June 4th he had his tea at 6 o'clock. He then went back into the house and laid down on the couch. It was Mallet's house, and Emmanuel Mallet, the prisoner, was playing the Victrola in the room with him.

About an hour later, John Mallet drove in. He asked the prisoner and witness to go for a drive. John Mallet drove the car.

They went out through Kensington, down through Malpeque, and about two miles the other side of Malpeque to a shore. John Mallet said he knew a man who had some beer there.

It was a kind of fishing shanty. A jar was produced by the man in the house and set on the table. All hands had a drink out of the jar—two or three drinks apiece. Witness then said:

"John Mallet then said he was going to buy a Ford car from some man, and he thought we had better go. We took a gallon of the beer and started. We went back through Malpeque to Kensington. I got out of the car in front of MacFarlane's garage.

John Mallett then got out, and we went over to a drugstore. We were there about fifteen or twenty minutes, perhaps a little longer, when John Mallet decided we had better start for home, so we went over to the car and got some gasoline.

The garage man, Mr. MacFarlane asked him where he lived. He said he lived west of Summerside. He said he needed a lot of oil or something to that effect. We got three gallons, and started out the Johnstone road, and from that down through Long River, and out to French River. He stalled the car on Mr. Stewart's hill, leading towards New London Harbour, and went from there to MacKenzie's lane, till about half way down, where we turned into a grain field, where we backed the car around so as to head out towards the lane.

We left the car. John Mallet got out first, followed by myself and the prisoner.

We went across the fields to Mr. Sims' ranch. I went to within five or six yards of the ranch, the prisoner was at my side. Jack Mallet went to the first pen away from the house. A few seconds after we had got the foxes, I saw a person in white coming from the house. I didn't look to see where the rest were; I started down along the pond. I was just at the ranch a short time—a minute or so, perhaps a little longer. I heard a noise of barking in the ranch, and as I was going back in the car, I heard a man hollering. He said "Hold on!" or something to that effect. We ran down along the edge of the pond and up the bridge, and from that west along the fields to the car. I stopped about two fields from the car. Emmanuel Mallet had called to me, and when he came up told me to go easy; he had a pain in his side. We got to the car, and Jack Mallet came up shortly afterwards.

Jack and Emmanuel had had no conversation from the time Emmanuel came up with me until we got in the car. Jack set two bags in the car with him, alongside of him in the seat.

I asked him what he had in the bag. He said "Six pups." He said this after we had started the car.

He drove from there to two miles the other side of Malpeque, to the shore.

On the way the prisoner asked him where he was going to take the foxes. He said he was going to take them home. The prisoner asked where he was going to put them. He said "In a pen." The prisoner asked him whose pen he was going to put them in. He replied he was going to put them in the prisoner's pen on his ranch. The prisoner said he wouldn't allow him to put them in a pen on his ranch; he did not want anything to do with them.

Jack Mallet then said he would take them to Ram Island. Then we had a drink or two of beer, and drove to the other side of Malpeque to the shore. Jack Mallet removed the pups. We got into a boat, and took them to Ram Island. Here we went with a house, and Jack Mallett went upstairs. We couldn't hear or see any one coming down, so I started upstairs, followed by the prisoner, but we met John Mallet coming down stairs, with Frank Mallett.

We all went downstairs and had a little conversation, while Frank was lacing his boots.

The prisoner asked me what part of the country the foxes were taken from. I told him, Mr. Sims' ranch at French River. That was about all that was said on the island. The foxes meanwhile were sitting on the floor by the table. Frand Mallet, after he had finished lacing his boots, took them out to the ranch.

He was out probably ten or fifteen minutes. When he came back, he had another drink or two of beer and started for home. We went back—John Mallet, Emmanuel Mallett and myself—to where we had left the car. He started the car. I went to sleep, and don't remember any more until I woke up in the car at Emmanuel Mallet's home at New Annan.

It would be between 11 and 12 o'clock that we were at Mr. Sims' ranch.

When I woke up in the car, Emmanuel Mallet and John Mallet were in the car with me. One of them said "Come on in the house and we'll lie down for a while,"—just how long I can't say, but we woke up in time to have breakfast. We went to Emmanuel Mallet's home for dinner. After dinner we had a talk. I told him I had worked with Sims for three years.

The prisoner asked if I would take him back to Sims ranch that night, and show him the way. I said I would. He said he was going to get the foxes from his brother's ranch on the island and take them back to Mr. Sims.

(The court adjourned until 10.30 a. m. today).

Traveller's Rest School Closing

On Thursday afternoon, June 28, the pupils of Travellers Rest School entertained their parents and friends with a most unusual form of School closing. The vice-president of their Junior Red Cross Club, David Urch, occupied the chair and the regular Red Cross Meeting was carried out in a real parlimentary manner. The meeting opened by singing "Welcome." The minutes of the previous meeting were read and adopted. Roll Call followed each member answering by telling the month in which he or she was born, and the birthstone for that month. The treasurer then gave a brief report of the years' work after which the chairman of the Picnic Committee reported arrangements for lunches and games for the school picnic which was to be held on Friday afternoon.

A committee of six Juniors were appointed to make plans for an ice-cream social to be held in vacation. The programme which followed consisted of the examination of the different grades intermingled with brief drills, readings, and songs. The classes were examned by Mrs. Harry Walker, Mrs. John Gunning, Mrs. H. P. McNeill, Miss Rena Rayner and the teacher, Miss Ellie McNeill.

It is unnecessary to say that they answered readily because that is naturally expected of "Juniors" and they in nearly all cases "live up to expectations."

Next in order was the unveiling of the confederation plague by Mr. James Marchbank, Trustee while pupils and audience stood at attention and sang "O'Canada."

Mr. Marchbank in a very interesting and education address told the story which led up to Confederation and impressed upon the pupils the noble heritage which is theirs exhorting them to be worthy of that heritage.

For this excellent address, the Juinors tendered to Mr Marchbank a hearty vote of thanks which was conveyed by the chairman and fittingly acknowledged by the Speaker who complimented the pupils on the splendid business like manner in which they conducted their meeting. Mr. H. P. McNeill then complimented the Juniors on the excellent care they were taking of the school furniture and interest in caring for the school grounds.

Prizes were awarded in due course and the chairman announced one more number on the programme, a reading by Edna Urch. Edna then stood and read the following address while little Margaret Marchbank presented two surprise packages one containing a beautiful silk umbrella the other a very dainty pair of candlesticks to the teacher:

Dear Teacher:

The end of this term and the advent of the summer vacation is hailed with joy by the teachers and pupils of all schools in the world since the day of Aristotle. Today our feelings are mingled with joy and a sense of sadness. Joy because we are to embark on a holiday. Sadness because the day marks a temporary breach in a most ideal association.

At this time it behooves us to place on record the fact that we deeply appreciate the great pains taken by you in moulding our young minds and laying the foundation for our intellectual fortifications, which are to be our safeguard through the great battle with the world. We especially wish to lay stress on the humane method by which you impart your much coveted knowledge that of instilling into our youthful minds the great prize of education God's greatest gift by love instead of by force. In this way you have forged a link of comradeship which cannot be smashed by the storms of adversity and you have created a bond of understanding which the sifting processes of time cannot eradicate.

You have brought to Travellers Rest School the method of Ghandi and of St. Enda who by their most wonderful method of love have arrested the attention of the world's greatest seats of learning.

Allow me, dear teacher on behalf of my fellow pupils, whose sentiments these are to present you with this slight token of our esteem and regard.

Hoping that you will enjoy your vacation and wishing for the same cordial relations to continue in the future as have prevailed in the past.

We are your most obedient pupils,
Pupils of Travellers Rest School.

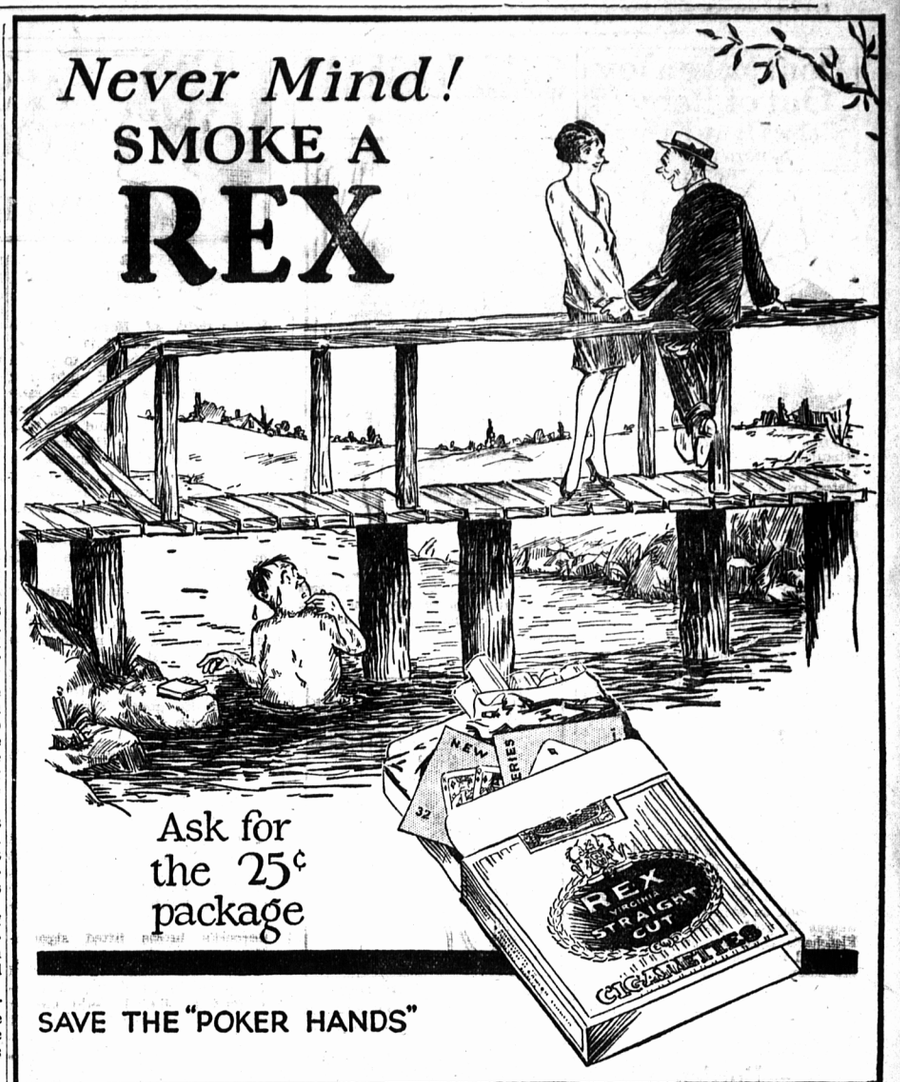
Miss McNeill who was completely taken by surprise thanked her pupils very sincerely for their generous gifts.

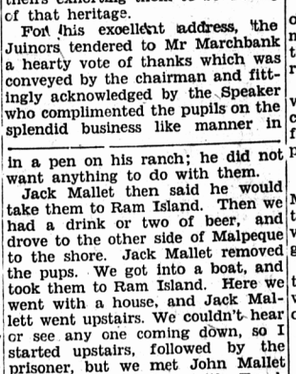
A treat of fruit and candy was then passed and the programme was terminated by singing the National Anthem.

The following prizes were awarded:
Highest Average:
Grade I. Millie Rayner.
Grade II. Mary Marchbank.
Grade III. Rayworth Rayner.
Grade V. George Taylor.
Grade VII. equally merited by Luella Wood, Mary McDonald, Helen Walker, and Ronald McDonald.
Grade VIII. Marjorie Marchbank.
For Neatness: Margaret Marchbank..

A prize donated by the Red Cross Scciety at Charlottetown for the best Health Rhyme sent in from any of the Juniors on the Island was merited by David Urch.

The five pupils who tried the Grade VIII. examinations were very successful and each was presented with a certificates: Marjorie Marchbank, LeRoy Walker, Miriam Montgomery, Dorothy Heffell, and Delbert Rayner.





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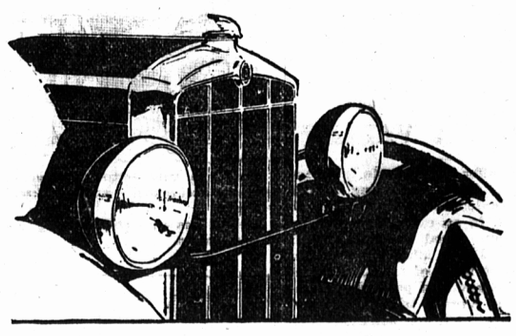

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