

Charles Hamilton (5067) - guilty or not?

The following trial appeared in the West Australia, Monday 9 January 1882.

Friday 6 January 1882

Supreme Court, before Chief Justice and a common jury.

ATTEMPT TO MURDER.

Charles HAMILTON was indicted upon information charging him with having, on the 5th November last, feloniously and unlawfully wounded Mr Henry Gray at Geraldton, with intent to murder. There were 5 other counts in the indictment varying the intent.

Mr Howell appeared for the defence.

The Attorney General, in opening, said that he felt it his duty to tell the jury that the charge against the prisoner was one with which involved his life – shooting with intent to murder being in this colony a capital offence. The learned counsel having sketched the evidence, which he proposed to lay before the jury.

Mr Henry Gray, the prosecutor, a merchant residing in Geraldton, said, that on the evening of 5th November last, about 10 minutes to 9 o'clock, while in his house, he was waiting to be supplied with a hot bath by his servant. Feeling very ill and faint at the time, he learnt against the door post of the passage, leading to the verandah, and remained in that position for a few seconds, when he heard a report of a pistol, and received the contents of the same in the face. It was a moonlight night, but in consequence of the verandah being overgrown with creepers, it was pitch dark there, and, he did not distinguish the person who shot him. The weapon was loaded with shot and slugs, of miscellaneous sizes. Witness did not at first feel any ill effects from the shot wounds, and he thought the pistol had been simply loaded with gunpowder and that it had been discharged in a frolic, it being Guy Fawkes night. He soon however discovered that his face was bleeding profusely, and he retired to his dining room, taking his stand near a table, on which a lamp was burning. The glare of the lamp being too much for his injured sight, he stooped under the table, and while in that position, a man of the height and size of the prisoner entered the room. Had known the prisoner for 10 years. Witness heard two clicks of a pistol, and noticed the man fumbling with something he had in his hand. Witness then rushed out of the room and into the back garden, bleeding copiously all the while, and shouted out, "I am shot, I am shot. Lester. Lester", to a man who keeps a shop opposite his premises. Sergeant Peacock and Lester then ran up, and the latter took witness to Dr Elliott's surgery, but the doctor was not in. he subsequently, however, treated him. Had always treated the prisoner kindly, and at the time of this occurrence was in witness's debt to the extent of £13 odd. There had been some difficulties between them with reference to this account.

To Mr Howell: I did not see the man's face or front when he entered the room, or when he fired at me. I simply saw his trousers. Could not say what colour they were, nor am I sure whether he had a coat on or not, my eyes were so damaged.

To His Honour: I had a considerable sum of money in my house on the evening of this occurrence, and also a large quantity of valuable pearls, and jewellery. I resided alone on the premises at night: the servant living in a detached cottage. The prisoner was intimately acquainted with the place where the safe containing my money and valuables was kept, which was in the counting house behind the dining room. The whole occurrence happened in less than a minute.

Alice Norton, a servant in the domestic employ of the prosecutor, said that about nine o'clock on the evening of the affray, she was about to leave the house to pay a visit to a neighbour, and a few minutes afterwards she heard that her master had been shot. When she noticed the clock next morning she observed that it had stopped at ten minutes past nine. It bore evidence that it had been tampered with. Next morning she discovered that her child's box had been ransacked, and she also found a bit of horsehair on the floor of the dining room (alleged by the prosecutor to have been part of a false beard belonging to the prisoner)

John Peacock, sergeant of police, stationed at Geraldton, said that on the night in question he was standing outside Gray's premises at about a quarter past nine, and heard the report of a firearm. About a minute afterwards Gray ran out, shouting 'I'm shot. I'm shot. Lester. Lester'. Witness rushed into the house. In the dining room he found some horsehair, a pistol, and a stick loaded at the end. Here he was joined by Troy and Ward. They searched

the house, and went out into the back yard with a light. There they found some tracks near the fence.

This witness' further evidence was corroborative of that of the next. P.C. Troy, but Peacock swore to an additional important piece of evidence, that when in the cell, after he had been arrested, Hamilton said that Venn and Smith had told him of Gray having been shot upon which he had replied, 'Oh indeed!' P.C. Troy stated that on the other side of the fence he saw a number of confused tracks in the sand, and that about 30 yards further on he met Jarvis Holt, with his wife and son, who gave him a red bag, some false grey whiskers, part of the handle of a parasol and a pistol. The bag contained powder, shot, slugs, brown paper and caps. Witness also found a red apron further on and gave all these articles to peacock. Witness arrested Hamilton on Monday, telling him that Sergeant Peacock wanted to see him. Prisoner said he supposed it was something concerning the hubbub on Saturday night, and when told of the charge against him, said he should want two men, Smith and Venn, called as witnesses. He stated that a little before 9 o'clock on the night of the shooting he walked leisurely up the street to Pead's corner, and then met Smith and Venn. Venn asked him whether he had heard the news, and, upon his replying negative, told him that Gray had been shot.

Jarvis Holt, a butcher, living in Geraldton gave evidence confirmatory of P.C. Troys statement as to the red bag and pistol, as also did his son William Holt.

Henry Mainland, police constable stated that he searched Hamilton's premises on the 7th of November, and found there a piece of red flannel which he believed to be the same material as that of which the apron he had picked up was made. He also found some red Turkey twill, the same stuff as the bag, which had contained the powder, shot and caps. Besides this he came upon some green blaze which in his opinion identical with a strip of stuff which served as strings for the apron. Witness further found small pieces of lead – sheet lead, beaten together – corresponding with the slugs in the bag.

Andrew Miller, a carpenter, said that he knew Hamilton well, and that four years ago prisoner had given witness two pistols and powder to take care of for a time. The pistol produced were the ones given to witness by Hamilton. Witness could identify them from the fact they had no trigger guards, that they were fitted with receptacles at the butts, and that one of them had a defective lock. Witness kept them for more than a year before returning them and had not seen them for the last three years.

Cross-examination by Mr Howell, Miller stated that Mr Timperley had sent for him to identify the pistols and that he had described them to the Inspector before seeing them.

A son of the last witness, Thomas Miller, gave evidence corroborating the statements of his father, respecting the pistols.

Doctor Elliott, resident medical officer at Geraldton, said that he had been called in to attend Mr Gray after the latter had been shot, and found him suffering from shot wounds in the face. Witness had extracted eight shots and one slug, altogether, and could confirm Gray's evidence as to his injuries. Mr Gray had lost a good deal of blood, and was wounded badly but not dangerously, nor had he suffered much beyond the loss of his teeth. The injury to his eye must have been from powder, not shot.

Cross-examined by Mr Howell, Doctor Elliott said that he had minutely examined Hamilton's clothes and boots, but had found no blood upon them.

To His Honor: If the slug had penetrated the eye it would probably have caused death.

Witness wondered if Mr Gray could see at all after he was shot.

At the close of Dr Elliott's evidence the Court adjourned until Saturday at 10 a.m.

West Australian, Saturday, January 7 1882

The Court resumed at the usual hour.

REGINA v HAMILTON

Emily Brocklesby, a married woman, said that she had entered the employ of Hamilton's wife on the 9th August last, remaining with her two months. Whilst there, witness had made a red bag – the one produced – Mrs Hamilton had given her the material. Witness left the bag behind her when she went away. While in Hamilton's house, he had talked to witness about Gray. She knew that there was some difference in regard to money matters between the two men, and on one occasion Hamilton had said in her presence that he would not go to law, but that some day or other he would shoot Gray dead. A few days after this, being in the kitchen, with Mrs Hamilton, she heard what seemed to be the report of a pistol shot in the direction of the workshop where Hamilton was. When the man came in his wife said to him, 'You did not

think it would go off so loud'. Hamilton said, 'What?' and the wife looked confused, whereupon he said it was no shot at all but a blow.

Cross-examined by Mr Howell, this witness said that she had not seen any pistols while in the house. Hamilton was very ferocious at times, but she had not taken in that he meant what he said about shooting Mr Gray.

Annie Kelly, deposed, that, on the night of the 15th November, being near Gray's house, she had heard the report of the pistol, and had afterwards seen Gray running out, exclaiming that he was shot and wished to be taken to the doctor. About 10 minutes later, being near Pead's corner, she told a little boy that Mr Gray had been shot, whereupon the prisoner whom she then saw, standing about 4 yards away from her, said, 'Oh indeed'.

John Venn and William Smith denied having seen Hamilton after the shooting on the night of the 5th Nov., thus disproving the statement made by Hamilton to P.C. Troy.

This ended the case for the Crown, and, the Attorney General having very clearly and at some length summarised the evidence which had been addressed,-

Mr Howell proceeded to address the jury on behalf of the prisoner. The learned counsel wished, in the first place, to allude to a circumstance which he had of course not been touched upon by his learned friend, but which in his own position it was right that he should touch upon – the escape, namely, of Hamilton from prison, which was of course a notorious fact. Many people might draw the inference from this act that the prisoner had incriminated himself, but the learned counsel knew the jury too well to think that they would for a moment allow their minds to be biased by anything that they had heard outside, and which was not before them as evidence. His learned friend had told them that the prisoner was in peril of his life – shooting with intent to murder being a capital offence in this colony and punishable with death. There was no rule to prevent counsel telling a jury why punishment was attached to an offence. The prisoner at the bar, had been indicted, and rightly so, in several ways. Under certain counts his life was in danger, while in others it was not. He (Mr Howell) had also been surprised to hear a remark, which fell from the Attorney General that the prisoner at the bar was addicted to masquerading and to practical jokes. They had heard no evidence in support of this contention, and the jury should dismiss it entirely from their minds. He (Mr Howell) would meet the case in a very different manner. There was nothing to connect Hamilton with this shooting until ten minutes after its occurrence. There was no evidence to identify, not a particle of testimony to show that Hamilton was the man who discharged the firearm, or who subsequently came into Gray's dining room. Gray had, it was true, gone so far as to say that the man was of the same height and size as the prisoner. But let the jury consider Gray's condition, at the time, and they would probably come to the conclusion that there was no reliance whatever to be placed upon his statement. He was glad that the Attorney General had alluded to the motives operating in the commission of the crime, for counsel always tried, in such cases, to ascertain what the motive might have been. Gray told them that he had had transactions with Hamilton for some years past, that in August last they had adjusted accounts, and that Hamilton had signed a memo, of indebtedness. Gray never suggested that since that time there had been any ill feeling between them or any grounds for it. They were therefore, as far as Hamilton was concerned, completely in the dark as to what motive could possibly have caused him to commit this crime, supposing he had committed it. There were three questions to be answered in reference to this case. In the first place – was Gray shot at, at all! In the second place – was the prisoner, Hamilton the man who shot him? And. Lastly – if he was, with what intent did he do it! The first question must be answered in the affirmative. After listening to Mr Gray's and Dr Elliott's evidence, it would be absurd to contend that Gray had not been shot at on the evening of the 5th November. But in regard to the second question – was it Charles Hamilton and no one else, was it he and he alone who did this thing? This is a grave question, and if they thought it might have been anyone else, the case would fall to the ground. This brought them to the circumstantial evidence, which he (Mr Howell) contended was not what could properly be called circumstantial evidence. Certain things found – a pistol and a bag, etc – and where! Not on Hamilton's premises, not in his house, but some distance from Gray's premises. Admitting, for the sake of argument, that the pistol and bag really belong to Hamilton, they were asked to say that because these articles belonged to the prisoner and were found some distance from Gray's premises, therefore Hamilton was the man who shot at Gray. Reviewing the evidence given, the learned counsel would not say for a moment that Gray got into the box with the intention of saying what was not true. But his manner was remarkable, and he evidently was straining every nerve to obtain the conviction of the prisoner. Gray believed Hamilton was the man who shot at him,

and shaped his answers accordingly. He said, for instance, that he heard the report of a pistol when he was shot. Why a pistol? Because a pistol was afterwards in his room. He stated also that the man who fired the pistol followed him into the house. The Judge took him up there, but still Gray insisted upon ramming this down every one's throat. Mr Gray no doubt believed what he was saying, but there was no dependence to be placed upon that kind of evidence. He was close by at the time, and made search and found the pistol on the floor, but could not say whether it had recently been discharged or not, nor whether it had a cap on. Some time afterwards a pistol was picked up on the beach by Holt's son, and these two appeared to be the prisoners. Miller and his boy being called to prove that three or four years ago, Hamilton gave them to Miller, who returned them within twelve months – a very long time to account for. If the Crown could prove that the pistols had been in the possession of Hamilton, say a month, or within a short time, previous to the occurrence, there would be some reason to suggest that it was Hamilton who shot Gray. He (Mr Howell) would take now, Mrs Brocklesby's evidence. The house was small, only two rooms, and yet she had never seen the pistols in it. If they had been there she must have seen them. For three years past the pistols had been lost to view, and yet the Crown wanted the jury to believe that Hamilton had them on the night of Nov. 5th. The Crown had only one strong point, which it could make, and had it not been for the conversation between Hamilton and Peacock in the cell, the prisoner might have snapped his fingers at this prosecution. In cases of such grave nature, where conversations between prisoners and their custodians were of such grave importance he (Mr Howell) contended that the greatest accuracy should be observed. And that when a voluntary statement was made by a prisoner it was but fair that it should be reduced to writing. This conversation took place eight weeks ago and the Crown asked them to believe what these policemen recollected. There was some discrepancy between their two statements. Peacock could not remember whether Hamilton said anything about time, whereas Troy began at once about the time, which, being the essence, almost, in the case, he (Mr Howell) contended that implicit reliance could not be put upon this test upon which the Crown so largely relied. Then to the statement, of Mrs Brocklesby who said she identified the bag and strings. She declared that she left them on the premises when she went, but at what became of them between October 9th and November 5th, there, was no evidence. And with regard to the threat, which she heard Hamilton make, there was not much in that. They might assume that these had been a little altercation between Gray and Hamilton in September, and the jury knew that when people quarrelled about accounts they would often threaten to do some injury to one another. A man might say in anger – 'Oh I'll shoot that d-l, some day or other', without really intending to do anything of the kind. Mr Howell contended that the so-called circumstantial evidence in this case did not justify a conviction, and went somewhat fully into the law upon the subject, ending with an appeal to the jury in his usual impressive style.

His Honor, the Chief Justice, having summed up, the jury retired at 2 pm. And returned into Court at 2.45 with a verdict of "guilty with intent to murder".

The prisoner being asked whether he had anything to say, made a long and rambling statement. His counsel, he said, had prevented him from saying anything up to the present moment. A great amount of spite had been accumulating against him in Geraldton. The witnesses had not been asked one third of the questions which they ought to have been asked. He was well acquainted with them, and had he cross-examined them himself he would have convinced his Honor as an Englishman, as a gentleman and as a father, and the public, generally, that he was innocent of this crime. Want of money was the cause of him not having any witnesses on his side, he could not afford to bring them down. No one could say that he was cunning in speaking. He had stood in silence while witnesses were giving their evidence. He was a tradesman, he was no vagabond and masquerader, as the Attorney General would have the jury believe. - he then went on to say what a bad man Miller was; how he used to frighten his children by threatening their lives; that the pistols belonged to one Thompson and not to himself; the Crown had grabbed his witness and undermined him. He expressed his astonishment at the perfidy of the witnesses. The boys had come to get the red bag and apron to dress Guy Fawkes in, and that accounted for their being on the beach. He expressed great indignation at the slur upon him that he should be suspected of having had a design on Gray's chest. It was not the result of a night's dream but the real facts that he was putting before them. A certain Mrs Foster would have cleared him but he could not afford to bring her down. Venn and Smith were men who, when any difficulty arose shrank from it.

One of the jurors remarked that he wanted to catch the train so his Honor discharged the jury. His Honor told the prisoner that he did not think he was benefiting himself by his statement.

The prisoner said in reply "my Lord I don't wish to say anything that won't benefit myself" and sat down.

His Honor addressing the prisoner spoke as follows: - "Now Charles Hamilton, the jury have found you guilty of this crime. You have been in my opinion guilty of the crime. There is no doubt that you are the man who fired on your former master. I have not heard one single word in what you have said to excuse you. Now you know Hamilton that you are a very bad man. The time has come when your proceedings will be brought to a close. The sentence I am about to pass upon you is not my sentence it is the sentence of the law, and I have no power to alter the sentence, cruel as it may seem. This is not the first time you have been sentenced to death. A sentence of death was passed on you in 1837, for attempting the life of Dr Williams, and from that time to the present your life represent a career of unmitigated crime.

Notwithstanding that you possess abilities you have attempted the life of this gentleman, who, according to your own admission was kind and a benefactor to you"

(Prisoner: "There is no proof that I am guilty") "from what I can judge of you if you were set free tomorrow you would commit the same crime (Prisoner: Try me my Lord) I must pass the sentence of law upon you, I must do it to vindicate society, and I can hold out no hope of mercy. You, Charles Hamilton, receive your sentence".

Amidst breathless silence, His Honor put on the black cap and pronounced sentence of death on the prisoner, whom appeared to be much affected.

The court then adjourned till Monday morning at 10 o'clock

13 DAYS LATER

West Australian, 20 January 1882

Most people will be disposed to approve of the action of the Executive in commuting the death sentence passed upon Charles Hamilton for one of imprisonment for life; but there are many who have strong doubts as to the wisdom of taking the same course in regard to the natives who so brutally murdered Joshua Woods.

7 YEARS LATER

West Australian, 17 January 1895, p2, c2

Police Intelligence:

Serious Offence:- Charles Hamilton, an elderly ticket of leave man, was charged with having attempted to assault a young girl under 12 years. Accused protested that he was a free man, but the Bench telephoned to the clerk of records, Fremantle, and found that he was still the holder of a ticket of leave with two life sentences recorded against him. The testimony of Dr Hitch went so far as to show that the child, who was aged 5 years and 10 months, had been tampered with, but there was only the uncorroborated evidence of the child against the accused, which was of an unsatisfactory character. The accused was given the benefit, and discharged.

Shortly after the trial of Charles Hamilton, Henry Gray left Western Australia.

References and Notes:

Slightly different account of the trial appears in the Geraldton Express.

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