GUILTY OR NOT GUILTY ?

An Examination of the I.W.W. Cases

By H. E. BOOTE
(Editor "The Australian Worker")

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AN EXAMINATION OF THE I.W.W. CASES

During the month of November, 1916, there took place in the city of Sydney one of the most remarkable trials of our time.

As a result twelve members of the working class were sentenced to terms of imprisonment with hard labor varying from FIVE TO FIFTEEN YEARS.

A great deal of interest was excited by the proceedings of the Court, but the newspaper reports were miserably inadequate, and the public consequently failed to realise what a tragical travesty of justice the conduct of the prosecution was.

My purpose here is to enlighten them on the subject. I have things to tell them about this trial WHICH THEY DO NOT KNOW, and which it is highly important should be known, for a deliberate and dastardly attempt was made at the time to associate the Labor Movement with criminality, and if such things as I am going to refer to can be done with impunity, then no man and no cause in this country antagonistic to the ruling class is safe.

The twelve men placed in the dock belonged to an organisation called the Industrial Workers of the World, familiarly known as the I.W.W. With some

of the doctrines and methods of that organisation I do not agree. The Unions and Leagues connected with the Australian Labor Party are almost entirely opposed to them. Whatever identity of ideals there may have been, the means of attaining them advocated by the I.W.W. differed so vitally from those of the A.L.P. that the two organisations stood at opposite poles of working-class thought and action.

This divergence, however, is not going to prevent the Labor Movement from taking up the case of these men if it can be shown that there is GRAVE REASON TO SUSPECT THAT THEY ARE UNJUSTLY IMPRISONED, and that they did not receive from the law that impartial trial to which every citizen whose liberty and honor are at stake is entitled.

If I am able to convince the Labor organisations, by an analysis of the evidence tendered in Court, that the guilt of the accused was not proved, that there is on the contrary a strong presumption that they are INNOCENT, I am confident they will brush aside every estranging factor, and throw themselves earnestly into an agitation to have the whole conduct of the prosecution probed to the bottom.

WHAT THE MEN WERE CHARGED WITH.

There were three charges. Stripped of legal verbiage and jargon they may be stated as follows:—

Conspiring to burn down buildings.

Conspiring to release Tom Barker by unlawful means.

Conspiring to incite sedition.

Seven of the accused were found guilty on all three counts (Grant, Beatty, Fagin, Hamilton, McPherson, Glynn, and Teen) and were sentenced to fifteen years' imprisonment with hard labor.

Four were found guilty on two counts (Reeve, Larkin, Besant, and Moore) and received sentences of ten years with hard labor.

One (King) was found guilty on the third count only, and the sentence was five years with hard labor.

Subsequently, on appeal, the sentences on Glynn and McPherson were reduced by five years each.

In my opinion—carefully formed, after a thorough investigation—NONE OF THOSE MEN SHOULD HAVE BEEN CONVICTED ON ANY COUNT AT ALL. The evidence against them was tainted at its very source. Consider who the witnesses were—

POLICE DETECTIVES, who notoriously, by the very nature of their occupation, are more concerned in securing convictions than in elucidating the truth.

H. C. SCULLY, whom the Judge described as undoubtedly, on his own statements, an accomplice.

F. J. McALISTER, a man who joined the I.W.W. to do the work of the police, and throughout the whole affair was in their employ.

LOUIS GOLDSTEIN, who was charged in connection with the forging of £5 notes, but was set at liberty just before some of the accused were arrested, the police tendering no evidence against him.

DAVIS GOLDSTEIN, also charged in connection with the forging of £5 notes, but against whom—AFTER HE HAD HELPED THE POLICE IN THE I.W.W. CASE—no true bill was filed by the authorities.

It will be seen that every one of these witnesses, upon whose testimony the Crown absolutely relied, had or might have had some personal interest in getting the accused convicted. Either they were members of the police or persons with reasons for wishing to propitiate the police.

It by no means follows, of course, that their evidence was influenced by the circumstances in which they stood. They may have spoken the truth, and nothing but the truth. But the fact remains that it

would have been infinitely more convincing had the case for the Crown depended upon the veracity of witnesses whose disinterestedness could not be impeached nor their motives doubted.

AN EASY CASE.

Now let us see how easy the Prosecution made the task for itself. The Judge, in his summing up, said:

"These people are not charged with actually setting fire to places. They are not actually charged with perverting the course of justice, or with actually stirring up sedition. They are charged with CONSPIRING to do these particular things."

It would appear from this that they were not charged with actually doing anything at all! The Prosecution had not to prove a single overt act. It had not to show that any one of the accused was guilty of an unlawful deed. It had only to satisfy the jury that they CONSPIRED to do the crimes alleged.

And in order to prove conspiracy it wasn't necessary to show that they were seen together under circumstances pointing to a criminal agreement. It wasn't necessary to show that they ever communicated with one another in any way, either orally or in writing.

They might never have spoken to one another, nor have written to one another. THEY MIGHT NEVER EVEN HAVE SEEN ONE ANOTHER.

As a matter of fact some of these men never met one another till they were ranged up in the Court.

Conspiracy was held to have been established by the fact that they were members of the same organisation; that they walked in and out of the same door, or made the same sort of speeches in public places, or offered the same sort of literature for sale!

No Prosecution was ever set a simpler job. And to make it still easier, there was a Judge presiding over the Court who was class biassed. I described him as such in an article for which "The Worker" was prosecuted. I have not altered my opinion in the least.

Judge Pring was class biassed. Nearly every Judge is, for that matter. It is one of the consequential evils of our social system. While society is divided into two antagonistic classes, and the Judges are invariably selected from one of those classes, then, in cases arising out of the conflict of the classes, class bias on the Bench is all but a logical certainty.

At a later stage I will give specific instances showing how this pernicious tendency of mind made itself manifest in Judge Pring during the trial of the twelve men.

And I will also show that unscrupulous politicians and papers, in the furtherance of party interests, prejudiced the chances of the accused by attacking their organisation and their doctrines with a slanderous ferocity while the case was pending.

What I want to stress just now is, that the Prosecution started off with every advantage—

It had the question of proof simplified to the last degree.

It had witnesses with personal reasons for desiring convictions.

It had a Judge biassed by education and training and social environment against working-class agitators charged with the destruction of property.

It had a public mind poisoned against the accused, and predisposed to accept the harshest judgment upon them.

So much by way of preliminary.

I now proceed to a consideration of the evidence, as recorded in the official depositions.

TWO SIGNIFICANT CHARACTERISTICS.

When I began to grope my way through the 458 foolscap pages of typewritten matter constituting the authorised report of the case I was bewildered by the seeming complexity of the evidence.

There were really twelve different cases, and as the Prosecution did not take them in any systematic order, but mixed them all up together, and dealt with them haphazard, the threads of evidence crossed and re-crossed one another, and here and there got into a perfect tangle, so that it appeared well-nigh impossible to unravel them.

After a time, however, I saw my way quite clearly. Two outstanding peculiarities emerged from the mass of testimony, and served as a clue by which I was able to straighten out many a knotty point. Here they are—

(1) THE GREAT LUCK OF THE CROWN WITNESSES in always finding exactly what they wanted to find, and hearing exactly what they wanted to hear!

(2) THE OBLIGING NATURE OF THE ACCUSED, who always did what the Crown wanted them to do, and never failed to say what the Crown wanted them to say!

When, in my public addresses, I drew attention to these remarkable characteristics of the evidence, the audiences without exception thought that I was joking and laughed.

They were perhaps right to laugh, but I was certainly in no jocular mood. I made those statements quite seriously. I repeat them here quite seriously. They are in the highest degree important. For they go to the very root of credibility. THEY COVER THE WHOLE CASE FOR THE CROWN WITH SUSPICION.

LEARY'S LUCK.

A brief examination of the evidence of Detective Leary will explain what I mean. On September 7, 1916, he was posted with a number of other detectives in an empty shop in Sussex-street, watching the I.W.W. rooms on the opposite side of the road.

Out came McAlister, the police spy, in company with Moore. They walked along together, and Leary followed them. At a telegraph post at the corner of Liverpool and Elizabeth streets they stood and talked. It was broad daylight, but Leary, whose luck was already beginning to make itself felt, was able to get on the other side of the telegraph post WITHOUT BEING OBSERVED, though Moore was leaning against it, and Leary admitted that NOT MORE THAN TWO FEET SEPARATED THEM!

He only heard scraps of the conversation between Moore and McAlister, though at that short range one would have expected him to get it all. But they happened to be JUST THE SCRAPS HE REQUIRED TO WORK UP HIS CASE.

Moore nodded his head towards Mark Foy's when he said, "This one must go!" How very obliging of him, not only to say what the eavesdropping detective wanted him to say, but at the same time, by a significant gesture, give to the words a meaning that otherwise could not have been attached to them.

Four days later Leary followed the spy and his victim again. They stopped at precisely the same spot, and once more the detective was able to plant himself as before without attracting attention. But on this occasion, for some inexplicable reason, though as close as previously, he only overheard one word. His luck, however, did not desert him. IT WAS THE ONE WORD THAT HE WANTED TO HEAR! It was the word "FIRE!" It was just the very word that he needed to make an impression on the jury!

Leary arrested Moore on September 29. When he was searched a small key was found on him. With Detectives Lynch and Hooper the lucky Leary went to the place where Moore stayed, and was shown up into his room by the landlady.

They pounced upon a piece of cotton waste on the washstand. This, however, was of no use to them, for

the landlady explained that it belonged to an engineer who shared the room with Moore.

But Leary's luck was in attendance, and the other detectives had brought theirs with them, too. With Moore's key a box in the room was opened, and after poking around in it for a while Lynch took out a small piece of cotton waste. IT WAS JUST THE INCRIMINATING EVIDENCE THEY WERE LOOKING FOR!

Moore wasn't there to see that he got fair play. And he denied there was cotton waste in his box when he locked it. But in making this denial Moore had evidently forgotten for a moment the complacent character he had up to then displayed. And I fancy he MUST have put that piece of waste in the box—just to oblige the Crown.

Talk about the luck of a Chinaman! Leary's luck is likely to put that old proverb right out of business. It trotted at his heels to the Domain, ready for instant service. On September 10 he heard Reeve speaking there, and produced 92 words of his speech in Court.

He didn't take them down at the time. HE DIDN'T TAKE THEM DOWN AT ALL. He committed them to memory, and wrote them out when he got home at night!

Tested in the Court with a passage of similar length read from a book, HE COULDN'T MEMORISE A DOZEN WORDS. How wonderful, then, to have been able to stow away in his cranium nearly a hundred words rattled out by a fast speaker at a public meeting! Yet not so wonderful as you might imagine, after all, for Reeve, acting up to the high traditions of the I.W.W. for courtesy, had SAID EXACTLY WHAT LEARY WANTED TO BUILD A CASE ON, and, of course, it's not difficult to remember what you're badly in need of.

Reeve was equally accommodating on September 22, at an anti-conscription meeting in York-street. He said this in Leary's hearing:

"Before we have done with them we'll make them bend their knees. OPERATIONS HAVE ALREADY BEGUN. I cannot tell you what they are because the police are here. KEEP YOUR EYES OPEN AND YOU WILL SEE FOR YOURSELVES!"

Fires had then occurred. Members of the I.W.W. knew they were being watched and shadowed. Yet Reeve, with a politeness surely unparalleled in the annals of chivalry, gave himself away like that to the lucky Leary!

Does it seem the sort of thing that happens in real life? Has it got the unmistakable ring of truth about it?

To me it sounds strangely unreal. So indeed does the whole story told by Leary in the witness box. In a work of fiction it would be dismissed as too ridiculously at variance with probability.

But fantastic and incredible as the evidence has proved, thus on the threshold of our inquiry, that which will be disclosed as we proceed will make it appear quite commonplace in comparison, and will serve to illustrate in a still more striking manner the amazing courtesy of the accused men, who seem to have gone deliberately out of their way to help the Prosecution to get them into jail.

On October 1 Leary and a number of other detectives went to the lodging house where Fagin lived. It was 1 o'clock in the morning. Fagin occupied a room with a man named Pope. In a corner of the room was a tin trunk and a Gladstone bag.

LEARY: "Pointing to the trunk, I said to Pope, 'Who own this?' Pope said, 'I do.' I then said, 'Who owns the bag?' He said, 'Fagin.' I said, 'Is that right, Fagin?' and he said, 'Yes.'"

Having thus made sure that the Gladstone bag was Fagin's, Leary and Robson searched it. Robson took out a small paper parcel. IT CONTAINED A BOTTLE OF FIRE-PRODUCING LIQUID.

Robson held up the bottle to Fagin and said, "What is this?"

Fagin was then guilty of the first piece of rudeness we have noted on the part of these accused members of the I.W.W. He answered: "YOU KNOW. YOU BLOODY WELL PUT IT THERE!"

It was a most regrettable lapse from the high standard of politeness on which I have been dwelling To actually accuse the detectives of putting the incriminating evidence in the bag which they had ascertained was his! Nobody, of course, will believe that detectives ever do such things.

TEEN'S POLITENESS.

It is quite a relief to pass on to the case of Teen, for this young man was one of the most obliging of the twelve who are now in jail.

How polite he was to Louis Goldstein, for instance! They were ALMOST STRANGERS to one another, yet when they met in a casual way on September 22, and Goldstein said, "WHAT ABOUT THE RECENT FIRES?" Teen with an effusive courtesy replied:

> "Do you know Stedman's fire? I DID THAT!—and immediately rang up the police and said: 'This is another of Barker's fires! Are you going to release him?'"
>
> Goldstein said: "It's terrible, putting these fires about like this!"

One would have thought that the lack of sympathy displayed in Goldstein's observation would have warned Teen to desist from his confessions, but no!—in the excess of his politeness he went even further, and told Goldstein all about a new explosive the I.W.W. had, with which they would terrorise the Government!

It was ONLY A COUPLE OF DAYS PRIOR TO THIS THAT GOLDSTEIN WAS DISCHARGED FROM THE £5 FORGERY CASE, the police offering

no evidence against him, and it must have been very pleasing to him to be able to render the police a service by giving this evidence against Teen.

How incredibly lucky he was to find a man who would so freely incriminate himself to a mere acquaintance! And how incredibly polite was Teen, to thus PLACE HIS FATE IN THE HANDS OF A PERSON WHOM HE HARDLY KNEW!

Under cross-examination Goldstein said:

> "He (Teen) was not a friend of mine. I had seen him about half a dozen times before that, just casually. We were not on such terms that I would confide my business to him. Before that conversation he had not spoken to me about any of his private business."

Yet although they were only barely acquainted Teen told Goldstein (so Goldstein says) that he had committed an atrocious crime! The wildest fiction of the films has surely nothing to equal this.

It ought to be mentioned at this point that a week earlier, while Goldstein was still involved in the forgery business, he and his brother Davis, both on bail, had communicated with the detectives in connection with the I.W.W. cases.

The police, therefore, when they tendered no evidence against him, and he was discharged, KNEW THAT HE WAS A MAN WHO MIGHT BE OF SERVICE TO THEM.

A QUEER AFFAIR.

The episode a week earlier implicated Hamilton, whom it will be seen maintained at its highest level the character of the I.W.W. for politeness.

On September 15 (according to the evidence of Davis Goldstein) he met Hamilton outside of the I.W.W. rooms, and after a few preliminary words about the forgery case, Hamilton said:

"You know all the fires that have been taking place recently?"

"Yes," said Davis Goldstein.

"Well," said Hamilton with engaging candor, "WE DONE THEM, AND IF YOU ARE GAME I WILL GIVE YOU SOME OF THE STUFF, AND YOU WILL BE ABLE TO DO SOME OF THEM YOURSELF. THERE IS NO RISK ATTACHED TO DOING THEM, AND IT IS EASY ENOUGH. JUST WAIT A MINUTE; I WILL GO INTO THE HALL AND GET SOME OF THE STUFF FOR YOU. BUT BEFORE GOING IN THERE I WILL JUST ILLUSTRATE TO YOU HOW IT IS DONE."

He then went into the hall to get "the stuff," and while he is away let us marvel at the luck of the police. They wanted that statement by Hamilton, and though it was one he could scarcely have been expected to make, he obliged them at once!

But even more marvellous was the luck of Davis Goldstein, TO BE ABLE TO PLEASE THE POLICE IN THIS WAY, when they had him in their clutches on a grave charge.

In about two or three minutes (so Goldstein says) Hamilton came out of the hall again, and HANDED HIM THE PARCEL OF FIRE DOPE wrapped up in newspaper.

This he did ON THE PAVEMENT, where the detectives, watching on the opposite side of the road, could see what he did. And—on the pavement—Goldstein removed the newspaper and revealed "some cotton waste, inside which was a bottle containing liquid."

Now Davis Goldstein was not supposed to be acting in conjunction with the detectives at that time, and he was not supposed to know that they were posted in the empty shop watching what was taking place. Yet

if he HAD been doing their work, and if he HAD been aware they were looking on, things couldn't have happened better than they did.

Did you ever hear of such luck before in all your life?

With the precious parcel in their possession (so Davis Goldstein says) he and his brother went that same day to the detective office, and handed over the goods to Detective Pauling.

How delighted the police must have been with the two Goldsteins—both on bail on a forgery charge, remember—it is easy to imagine. Nor is it difficult to conceive how glad the Goldsteins must have felt—in the position they occupied—to know that they were giving the police such excellent reason to think kindly of them.

As a matter of fact, there was never a luckier man than Davis Goldstein. He was not on intimate terms with Hamilton. "THERE WAS NO CONFIDENCE BETWEEN US," he said himself. Yet Hamilton placed himself in his power like that!

It is a curious fact that Detective Lynch's evidence with regard to this episode differs from that of Goldstein in a very material particular.

Goldstein said he met Hamilton at the door of the I.W.W. Lynch said that he saw them COME OUT OF THE ROOMS TOGETHER.

Now if Lynch is correct—and he repeated the statement twice—it is strange that Hamilton should say, "Hullo, Dave! I see you have been arrested in connection with the forged note case," as Goldstein says he did, just as if they had only met that moment. And if they were in the room together, as Lynch's evidence shows, how strange that Hamilton should come out in the street to talk fire dope to Goldstein, and then go back to get the stuff, instead of doing it when they were both inside, and safe from observation.

More especially strange since Goldstein, so far as the evidence discloses, was not helping the police at

that time, and had no reason to manoeuvre Hamilton to the door, where the detectives could see what went on and corroborate the story.

Lynch was very explicate.

> "I saw Hamilton COME OUT with one of the Goldsteins," he testified, "and I saw Hamilton RETURN to the I.W.W. rooms. When he returned I saw him hand Goldstein a piece of newspaper rolled up."

This discrepancy between the sworn statements of Goldstein and Lynch—which was not commented on or in any way noticed in Court—is so serious in its implication that it need not be stressed for the intelligent reader.

GOLDSTEIN'S LUCK CONTINUES.

On the 21st Goldstein met Glynn, and GLYNN, like Hamilton, IMMEDIATELY PROCEEDED TO PLACE HIMSELF IN GOLDSTEIN'S POWER, TOO! Said Glynn (according to Goldstein's evidence):

> "One of the boys told me Hamilton gave you some fire dope last Friday night. Never mind; for every arrest that is made we shall make the Government squeal."

Next Goldstein met Fagin (on the 22nd), and he also at once began to talk the sort of stuff the detectives wanted, to this man, who by this time was admittedly in alliance with the police.

How very polite of Glynn and Fagin! How very lucky for the police!

On the 27th Davis Goldstein saw Teen, and like the others HE STARTED TO INCRIMINATE HIMSELF STRAIGHT AWAY.

A number of men had been arrested four days before.

"It is pretty hot," said Teen (according to Goldstein's evidence), "arresting those men on a charge of treason. . . . Never mind; we shall give them some more fire dope."

Goldstein said: "You fellows had better be quiet!" And Teen answered: "It's all right. We shall use our nuts, all right."

Now be it understood that Davis Goldstein declares that THESE MEN KNEW HE WAS OPPOSED TO ALL FORMS OF VIOLENCE. "I have expressed my horror and detestation," he said in Court, "of anything like violence towards life or property. I have never made any secret of my opinions."

Yet (according to his evidence, collected while he was out on bail on a serious charge, and trying to please the police) the accused members of the I.W.W. told him these terrible things, which they were well aware he regarded with "horror and detestation," and which would enable him to put a stop to the whole conspiracy, and deprive them of their liberty for the best years of their life!

It is on testimony such as this, coming from an obviously interested witness, who had a big reason for trying to get in the good graces of the police, that the men were convicted, and are now eating out their hearts in jail.

Am I not justified in saying that Davis Goldstein, in meeting "conspirators" so obliging as to reveal their dreadful secrets to him—almost a stranger to some of them, and a proclaimed hater of violence to them all—just when he badly wanted to stand well with the police, was one of the luckiest men that ever lived?

I have not yet quite finished with this fortunate youth. He figured rather significantly in the arrest of Teen. But I'll deal with that later on. My present purpose is to emphasise the illuminating discovery I made in exploring the depositions—that all the principal witnesses for the Prosecution had the most astounding luck that ever was heard of, and that all

the accused displayed a disposition to put evidence in the way of the police, and help them to secure convictions, such as all the records of crime cannot match.

ENTER DETECTIVE LYNCH.

Detective Lynch was as lucky as his comrade Leary. On September 14, for instance, he was ensconced in the empty shop before referred to, watching the I.W.W. rooms in company with other detectives.

He saw Glynn, Larkin, Reeve, Moore, Hamilton, and Teen passing in and out of the door opposite, some of them in conversation with one another, and incredible as it sounds, this ordinary act of men going in and out of the rooms of an association to which they all belonged, WAS ACCEPTED IN COURT AS EVIDENCE OF GENERAL CONSPIRACY!

It was a crime to stand at the door of their own rooms and talk about the weather!

But the star piece of the day, which was to establish the luck of Lynch on an unassailable eminence, was enacted by Larkin.

About noon he was at the entrance to the I.W.W. in conversation with half a dozen men (according to the evidence of Lynch). What was said to follow I shall let the lucky detective relate in his own words.

> LYNCH: "I saw him beckon three of the men away a few paces. I saw him take a small bottle from his inside coat pocket with his right hand, and hold it up and appear to sprinkle something from the bottle on to his left hand, which he held palm upwards. Almost at the same instant he placed the bottle back in his pocket, and threw both his hands from his waist up over his head, like that" (illustrating).

Larkin, of course, was supposed to be showing the men—(it was not stated who they were, by the way)—HOW TO USE THE FIRE DOPE.

And he was of such a truly accommodating nature that he came out on the public pavement, in one of Sydney's busy streets, and in the full light of day, to give this criminal demonstration!

He could have done it in the seclusion of the I.W.W. rooms. But in that case the detectives in the empty shop on the other side of the way WOULDN'T HAVE BEEN ABLE TO SEE WHAT WAS GOING ON.

So Larkin (according to Lynch) came out into the street to give this dramatic entertainment! And as it was impossible for the watching detectives to hear what was being said at a distance so great, Larkin obligingly went through the whole performance in pantomimic gestures, so that Lynch and the others might understand that he was showing the men how to set fire to buildings with the liquid and waste.

Lynch also (he says) saw Reeve on the evening of the same day DO EXACTLY WHAT LARKIN HAD DONE A LITTLE PREVIOUSLY. He saw him (he says) "walk a few paces away from the door with the accused Moore, point to the buildings on the opposite side of the street, and throw his hands up in a manner similar to what I described in the case of Larkin."

And on the following day he saw Hamilton (he says) come out of the rooms with the newspaper parcel and publicly present it to Davis Goldstein.

COURTEOUS "CONSPIRATORS."

All this happened, it is alleged, on the footpath in Sussex-street, one of the busy thoroughfares of Sydney.

It was a most remarkable stroke of luck for the detectives. If the accused had not been so considerate, they (the detectives) would simply have wasted their time in the vacant shop across the road.

Hamilton, Reeve, Moore and Larkin had the I.W.W. rooms at their disposal. They could have done what they liked there WITHOUT THE LEAST FEAR OF BEING OVERLOOKED.

According to the Prosecution they were engaged in a most atrocious conspiracy. They were believed to have burnt down many fine buildings in the city, and were planning the destruction of others in the same way.

NO MEN HAD EVER GREATER CAUSE FOR SECRECY, if we accept the allegations of the Prosecution. And the means of secrecy were right at hand in the privacy of their own rooms.

But despite this, they stood on the pavement outside (so the detectives assert) and DID IN PUBLIC THAT WHICH THE WATCHING OFFICERS OF THE LAW MOST WANTED THEM TO DO, that which it was necessary for them to do, in order to supply the Prosecution with evidence for their condemnation.

I think, in view of these facts, I am justified in declaring that such unparalleled luck on the part of the police and their witnesses, and such astonishing obligingness on the part of the "conspirators," are circumstances which cannot be left out of account, for they affect the reasonableness of the evidence in a very serious way.

Some of the detectives concerned in these cases did not figure as prominently as Leary and Lynch, but whenever any of them did appear on the scene the same surprising luck dominated the situation, as I shall next proceed to show.

I have already mentioned the incident in Fagin's room, when Detective Robson, on opening a bag which Fagin had admitted to be his, took out of it a bottle containing a liquid. That was a very lucky find, and Fagin's exclamation, "YOU BLOODY WELL PUT IT THERE!" was of course utterly discredited by the jury.

It was Robson, too, who found the cotton waste in the printing room where Besant was in the habit of producing "Direct Action." Cotton waste is used in all printing rooms, but that doesn't in the least detract

from Robson's luck, for Besant, while being escorted to the lock-up by Robson and Pauling, with a politeness one can only marvel at, gave a guilty appearance to the waste which they had found, and which up to then was a perfectly innocent article, by volunteering the following statement:

> "I hear you have been finding some of this in shops lately, but, by Christ, you will find a b——y lot more before we have done."

Besant denies that he made that statement, and certainly it seems wildly improbable that a man would be so obliging as to NEEDLESSLY INCRIMINATE HIMSELF like that. But the testimony of the two detectives who had him in tow outweighed his denial, and Robson's luck in thus having a commonplace find transformed into a sensational discovery is therefore undoubted.

A rather inexplicable feature of this affair is, that although Besant practically confessed himself to be criminally associated with attempts to burn down buildings (according to the evidence of Detectives Robson and Pauling) he was ONLY CHARGED WITH VAGRANCY in the first place, and was ACTUALLY ADMITTED TO BAIL on that charge! It was not till some days later that the charge of treason was made against him.

If Besant really said what the detectives say he said, this forbearance on the part of the police is hard to understand. Besant's assertion in the Court that the whole story was a pure fabrication would explain well enough why the treason charge was so belated, but the jury preferred to believe the detectives, and there is therefore nothing for us to do but first make a note of Robson's luck in finding Besant so ready to oblige by committing himself unnecessarily, and then wonder at the inscrutable conduct of the police in letting out on bail as a vagrant a man who had CONFESSED (so they said) TO BEING AN INCENDIARY.

ABOUT AN OVERCOAT.

Then how lucky Detective Miller was when h searched Teen at the Police Station! In the pocket o an overcoat that Teen was wearing he says he found small parcel containing a bottle of liquid and som cotton waste. Other detectives who were present cor roborate this statement. Teen denies all knowledge o the packet, and in Court was so discourteous as to sug gest, though he did not actually say so, that it had bee placed in the pocket when the detectives, standing be hind him, were pulling the overcoat from his back t search him.

A suggestion so rude need not be considered here but that Miller was lucky to find the incriminating parcel is beyond question, for it turned out that th overcoat had been lent to Teen—the night being wet— by a man named Pope, who lodged in the same house and as it would have been returned to Pope that night after Teen had got back from the Stadium, to which he was on his way with Davis Goldstein when arrested it was a somewhat unlikely garment for a fire bug t carry his dope in, and it was unquestionably a strok of good fortune to find it there.

Then how lucky Detective Matthews was, to arrest Teen when he happened, contrary to all the probabili ties, to have some of the fire-making materials on his person! And what a remarkable coincidence that Teen should be in the company of Davis Goldstein that night, and that the two of them should chance to walk straight into the detective's arms!

Teen advanced the theory that Goldstein, by arrangement with the police, had led him to the fatal spot, and it is undoubtedly peculiar that in order to get a tram to King-street, Goldstein should walk right past George-street and go right on to Elizabeth-street, where the arrest was effected.

It is also rather queer that Teen's arrest was delayed until that evening, when according to the allegations of the Prosecution the police HAD AMPLE

EVIDENCE AGAINST HIM SEVERAL DAYS BEFORE. They couldn't have been waiting until he had fire dope in his possession, for HOW COULD THEY KNOW HE WOULD HAVE IT that particular night? It was just pure luck that he was carrying it about with him in a borrowed coat.

It is extraordinary, too, that Detective Matthews should have been instructed by his superiors to arrest Teen in the street. Said the detective under cross-examination:

> "Mr. Walker and Mr. Campbell, of the Detective Department, instructed me to arrest him. . . . We knew he was living in Burton-street. I have seen him in and out of the rooms. We could find him at any time. The instructions I received were that HE WAS NOT TO BE ARRESTED AT THE ROOMS OR AT HIS HOME, BUT THAT HE WAS TO BE ARRESTED IN THE STREET, away from there if possible."

No reason was assigned by the Prosecution for this unusual direction to the detective. Teen's sinister suggestion of a frame-up would supply a reason, but as there is no evidence to support such an assumption the whole affair is enveloped in mystery, and tantalises the student of the case with nebulous hints that go no further and illusive clues that lead to dead-ends.

THE POLICE SPY.

And now I come to the story of McAlister, the police spy. A very sensational story it is, and one that exhibits in a glaring light the phenomenal luck of the Prosecution.

Francis Joseph McAlister was a wharf laborer, and in some way appears to have made the acquaintance of Detective Ferguson. Through the influence of the latter, apparently, he was led to that connection with the police which brought him prominently before the public in the I.W.W. trial.

McAlister's testimony was of a nature so astounding, was in such direct violation of what an experience of human nature has taught us to be probable, that SUSPICION IS AWAKENED FROM THE MOMENT THAT HE ENTERS THE BOX, and begins his extraordinary narrative.

On August 30, 1916, he met McPherson, who also was a wharf laborer. They were not on familiar terms yet (according to his evidence) McPherson at once told him the I.W.W. had "an effective way of dealing with the bosses that would make them quake in their boots," and promised to get him some of it on the following Saturday, McAlister on his part undertaking to use it.

He did not see him on the Saturday, but on the Monday they met again, and McPherson HANDED HIM A PARCEL OF FIRE DOPE, and explained how to use it in burning down places. He mentioned five or six fires that had already occurred, including Winn's and Stedman's, and arranged to meet him (McAlister) again on the following Thursday, at the corner of Liverpool and Elizabeth streets. "If I am not there," said he (according to McAlister's evidence), "go to the I.W.W. rooms in Sussex-street and see Mahony."

That same night McAlister says he HANDED THE PARCEL HE HAD RECEIVED TO DETECTIVE FERGUSON.

At this time McAlister WAS NOT EVEN A MEMBER OF THE I.W.W. And the Court was asked to believe, and did believe, that McPherson entrusted him a comparative stranger, and a non-member, with the tremendous secret of the fire dope, and placed in his hands the most damning proof of his (McPherson's) criminality!

But the Court was called upon by McAlister to believe a vast deal more than that, and it swallowed it all like milk.

McPherson not turning up at the appointed time and place, off went McAlister to the I.W.W. rooms to see Mahony.

In the meantime he had joined the organisation; of course with no other object than to do the work of the police.

Mahony was there, and took him into a little room. There were two others in the room whom he did not know. Afterwards he learned they were Moore and Teen.

Mahony introduced him as a "comrade," a form of address members of the I.W.W. never employed, invariably speaking of one another as "fellow workers." Then Mahony added: "YOU THREE HAVE TO DRAW LOTS TO SEE WHO STARTS A FIRE!" McAlister's evidence proceeds:

> "Mahony took from a desk a box about five inches long by two or three inches wide, and took three discs out of it about the size of a shilling—two were black and one red. He put that box on the table, and put the three discs into a cigar-box, saying, 'Now, the one that pulls the red disc out has to start a fire.'"

It was obviously necessary, for the dramatic completeness of his story, that McAlister should draw the red. Had he not been handed the fire materials four days before? The luck of the Crown witnesses stood him in good stead. Teen drew first, and got a black disc. McAlister was the next to put his hand in the box. Need the result be told? HE DREW THE FATAL RED!

WILD AND IMPROBABLE.

I venture to say that the records of the criminal courts, in their wildest passages, have nothing to match this fantastic tale. In the whole range of fiction there is nothing that so severely tries our sense of probability. If its episodes were embodied in a cinema play they would be regarded as an insult to the intelligence.

McAlister meets a man whom he knows so slightly that he gives him the wrong name, and this man, after

a brief conversation, furnishes him with information of a criminal enterprise in which he (the man) is engaged; and a few days later, at their next meeting, hands over tangible proof of his guilt, which is promptly passed on to the police that very night.

Then a couple of days later (September 6) McAlister, to be of further service to the police, joins the I.W.W., and on the 7th is taken into a little room by a mysterious person named Mahony—whom nobody else ever heard of, and who has never been seen since!—to draw with TWO STRANGERS to see who should start a fire! It's a wonder the drawing didn't take place on the pavement outside, where the detectives could see it, in accordance with the usual courteous custom of the accused in this case.

The whole story is permeated with incredibility. It's a yarn that sensible people, under normal circumstances, WOULD REFUSE TO TAKE SERIOUSLY.

Had it not been for the violent prejudice excited against these men for political purposes by politicians outside the Court, no intelligent jury would have accepted such testimony as evidence of any man's guilt.

Or had they been inclined to do so, the subsequent behaviour of the police would certainly have decided them to turn McAlister's testimony down as UTTERLY UNWORTHY OF CREDENCE.

It was on the night of Monday, September 4, that McAlister said he delivered to Detective Ferguson the parcel of fire dope which he was supposed to have received from McPherson.

Yet McPherson was not charged with being concerned in a conspiracy to burn down buildings until the 30th of that month—TWENTY-SIX DAYS LATER!

It may be said that the police were waiting for confirmatory evidence. But that reason will not hold in McPherson's case, for on September 23, when a number of the other accused were arrested at the

I.W.W. rooms, McPherson, who was present, was taken on a charge of having in his possession a couple of shirts supposed to have been stolen!

Why did they not charge him then, LIKE THE OTHER MEN WHO WERE ARRESTED? If they had the fire dope, which he was alleged to have given to McAlister for the purpose of burning down buildings, why did they merely arrest him on suspicion of being a thief?

Why did they actually allow this dangerous incendiary to actually GET OUT ON BAIL FOR FOUR DAYS, during which time he might easily have slipped through their fingers? And then, when he came before the Court again, why FOR THE SECOND TIME did they permit bail to accompany a further remand? Two days after that—on the 30th as stated—a week after his arrest as a suspected thief, he was seized while out on bail and charged with treason. The charge of larceny was never gone on with.

The police had not in the interval gathered any additional evidence against him. They STILL RELIED ON THE TESTIMONY OF McALISTER.

Why did they not act upon it earlier, if they had it? I would not like to conjecture that they didn't have it, that it occurred to McAlister in the meantime, while the charge of larceny was pending. But I do want to know why the police, possessing this deadly evidence of McPherson's implication in an atrocious conspiracy to burn Sydney to the ground, REFRAINED FROM ARRESTING HIM, and went on with an abortive charge of stealing a couple of shirts instead.

The entire episode is so unsatisfactory, the testimony of McAlister is so tainted with suspicion from beginning to end, that it is simply marvellous that a jury could be found gullible enough, or prejudiced enough, to accept it.

ENTER SCULLY.

Let us now proceed to examine the evidence of the witness Scully.

He is a chemist, and is alleged to have supplied to some of the men the chemical materials used in preparing the fire dope. He was also a member of the I.W.W., was firmly convinced of the truth of its doctrines, and in the course of his cross-examination gave a highly interesting and philosophical interpretation of "sabotage."

Scully is a man of considerable brain power, and his evidence has to be scrutinised with the closest attention for that reason.

We begin the scrutiny, however, in an attitude of distrust, because Scully was described by the Judge in his summing up as undoubtedly an accomplice, and as such his testimony must be tested at every point, and be confirmed from other sources, before being admitted as proof of the guilt of those against whom it was directed.

His evidence mainly implicated four men—Fagin, Hamilton, Teen, and Beatty.

Fagin was brought in first. Scully and he were familiar, and often talked together. In one conversation of which he told he declared that Fagin, speaking about the efforts to secure the release of Tom Barker, said that they would try and force Senator Pearce's hands through political action. "In the event of that failing, they were to use sabotage in all its forms, mainly to attack Commonwealth Government property, and to create fires, so that it would not pay to keep Barker in jail."

Continuing, Scully deposed:

> "I remember later on a fire occurring at Simpson's Free Stores. At that time I was living at Glebe Point, and going in and out on the tram you could notice a smell from the fire. Fagin asked me if I had heard about the fire, and I said 'Yes,' that I had heard that there had been a fire down at the Haymarket, and that I believed it was a lolly factory that had been burnt. He told me that it was Simpson's Free Stores, and that the smell came from the copra that was burning, that it was Commonwealth property, that damage had been caused to the extent of about £150,000, and that IT WAS SET ALIGHT BY THE I.W.W. He said that was the start of the fires to get Barker out."

Now of that reputed conversation with Fagin there is no corroboration whatever, and because of that lack of support it need not be examined, nor should it have had any weight with the jury whatever.

AN ACCOMPLICE'S EVIDENCE.

As this is an important point in dealing with Scully's evidence, I will here quote what the Judge had to say on the subject. His Honor, directing the jury, said:

> "Another matter which I wish to deal with now is one which has been referred to, in regard to the evidence of accomplices. It has always been the practice of Judges in criminal cases to warn juries that they ought not to convict on the uncorroborated evidence of a witness who is an accomplice—the reasons for that are so obvious that I need not mention them—and that the corroboration required should be not merely as to the existence of a crime, but that it must go further, and must connect the accused person with it. To put it in another way, it must implicate him in the crime. You can see the reason for that, because it is very easy to get corroboration of the fact of a crime having been committed, but corroboration which connects the accused with it is quite a different matter. However, that is the kind of corroboration you will require, if you come to the conclusion that any of the witnesses for the

Crown are accomplices in the crime charged, and that is a matter which you will have to determine; I mean whether they are accomplices or not.

"Two men have been suggested as accomplices. Scully is one, and as I understand the Crown case, the Crown does not dispute that Scully was an accomplice; and I do not see how it can be disputed, because Scully, on his own showing, was a party to the preparation of chemicals wherewith this crime of arson was to be committed. He alleges, no doubt, that he did that because he was afraid of Fagin; but fear is no excuse for crime. It may possibly extenuate it to some extent, but it is not an excuse. So that you will not have very much difficulty, I think, in coming to the conclusion that Scully was an accomplice, and then, of course, it will be very important for you to see whether there is any corroboration, such as I have defined it to you, of his evidence as it affects three particular men—Fagin, Teen, and Beatty."

In the light of this pronouncement from the Bench let us now proceed to pass the rest of Scully's evidence under the microscope.

On July 3, 1916, Scully was met outside the chemist's shop where he worked by Fagin. They went through Hyde Park together, in the direction of Burton-street, where Fagin lodged. On the way Scully stated that Fagin pointed out Winn's fire, and said that it was "a lovely blaze," that they had all watched it from the house, and that it represented "another effort to get Barker out."

Continuing, Scully deposed:

"We went to his room. Fagin, Hamilton, Beatty, and Teen were there that night, and another man—I don't know his name. There was talk of the proposal to bring conscription in—that in the event of conscription being forced upon us we would break shop windows, create rioting, and if necessary BURN SYDNEY DOWN."

Now that, if there were corroboration of it, would be extremely important evidence. There is certainly other evidence against the men concerned (with the exception of Beatty). Such as it is, I have already examined it; but with regard to these particular statements of Scully's there is NO CORROBORATION WHATEVER. Bearing in mind, therefore, the law as laid down by the Judge, that the evidence of an accomplice must be rejected unless it is corroborated in a very special manner, it is obvious that THIS TESTIMONY IS UTTERLY WORTHLESS.

On another occasion (according to Scully) he was in Fagin's room when a discussion took place on a fire-producing preparation they had made. The same four of the accused were alleged to be present. It did not work satisfactorily, and Scully, on being asked how to improve it, told them.

He informed the Court that he was "rather upset on that occasion." He came away with Hamilton, and the latter ordered a chemical liquid from him. Cole's, where the witness worked, had none in stock, and he ordered it from Sayers Allport. Scully didn't deliver it, but said that Fagin told him later that Hamilton got it.

Some time after, in Fagin's room, with Hamilton, Beatty and Fagin present, some more of the chemical was ordered, and about September 23 Scully alleged that he delivered it to Beatty.

Then he testified to supplying some chemical to Fagin, on the last Wednesday or Thursday in September. A number of fires had occurred about that time, and Scully says he told Fagin that it was a mad thing to do, and that if the I.W.W. were doing it it would end up in their getting shot. Fagin answered (so Scully says) that at anyrate it was good practice for the boys.

On September 25 he went to Fagin's room and asked him to return the chemical. Fagin refused, and

informed him that he had prepared the fire dope, and that Hamilton and Beatty had taken fifty bottles of it, with the waste, into the I.W.W. basement.

A FATAL DEFECT.

Let it be at once admitted that Scully's story hangs together well. He is, as I have said, a brainy man, and he indulged in no such silly sensationalism as discredits the evidence of McAlister. Yet the story has one fatal defect. It is that of an accomplice, and there is NO SUCH DIRECT CORROBORATION OF IT AS BOTH COMMONSENSE AND THE LAW REQUIRE.

For this sufficient reason it ought to have been put aside by the jury. It would be perfectly easy for a clever man to fabricate a string of events that would fit into certain other events well known to him, and unless there was other evidence strongly bearing out the truth of his statements they ought to be received with great caution, and IN THE CASE OF AN ADMITTED ACCOMPLICE TURNED DOWN ENTIRELY.

He might be saying nothing that was not strictly true, yet once his position as an accomplice was established only the most conclusive corroboration of his evidence would justify its acceptance. In Scully's case this is ABSOLUTELY LACKING.

Another feature of Scully's testimony that should not be overlooked is the fact that NONE OF THE CHEMICALS WHICH HE SAYS HE SOLD TO FAGIN, BEATTY AND HAMILTON CAN POSSIBLY HAVE BEEN USED TO START ANY FIRE OF WHICH EVIDENCE WAS GIVEN IN COURT, for the reason that the first lot was handed over not earlier than September 16 and the latest fire or attempted fire dealt with by the Prosecution was Brown's, which occurred on September 12.

Scully says that Fagin told him that, prior to getting the stuff from him, they had been buying it at a

certain chemist's shop, but no evidence was given to show that any of the accused had ever visited the shop referred to.

I repeat that the whole of this evidence should have been rejected by the jury. It was not denied by the Prosecution that Scully, if his own statements were true, was an accomplice, and therefore his testimony, wanting the specific confirmation that is rightly insisted upon by all legal authorities in such cases, ought not to have been thrown into the scales against the accused.

THE JUDGE AND SOME ALIBIS.

I have now reviewed the whole of the material evidence submitted to the Court by the Prosecution, with the exception of a few scraps of speeches alleged to have been delivered by some of the men in the Sydney Domain and other places.

Before dealing briefly with them, I want to refer to the peculiar attitude of the Judge towards the alibis set up by McPherson, Glynn, Larkin, and Reeve. The alibi is a time-honored form of defence, and when complete THE MOST EFFECTIVE OF ALL. It then proves that the accused was in another place at the time of the commission of the crime, and therefore cannot be guilty.

His Honor, however, in his summing up wiped out the alibi defence with half a dozen words. In the case of Larkin and McPherson evidence was called to show that they were elsewhere at the hours when the Prosecution sought to connect them with the alleged criminal conspiracy.

Mrs. Larkin deposed that her husband did not leave home till after twelve on September 14, when the detectives swore that they saw him going through that fire-dope demonstration on the footpath outside the I.W.W. rooms, a fantastical story with which I have already dealt.

Mrs. Larkin easily fixed the day, because they were counting the tickets sold for a lecture which her husband was to deliver the next evening in the Town Hall.

The Judge did not attempt to discredit the truthfulness of Mrs. Larkin's testimony. He simply waved it aside with these words: "I have not much doubt that Mrs. Larkin is correct that on some occasion they were counting the tickets as she says, but it may not have been the 14th."

No great exception can be taken to that summary dismissal of the alibi, however, for it was the recollection of one witness (and a deeply interested one at that) against the positive assertions of several other witnesses whose duty it was to make a careful note of the date and hour.

In the case of McPherson, who brought evidence to show that he was in the company of other persons at the times when McAlister alleges that he (McPherson) had a criminal conversation with him, and handed over a parcel of fire dope, his Honor said: "Again I make the same remark as I made before, that all the incidents related may be perfectly correct—there may be just a mistake about the date."

In this case he had much less justification for sweeping the alibi aside so lightly, for here he seemingly preferred the testimony of an interested witness to the independent evidence given in rebuttal. Even if we accept the statement that that same night McAlister gave a parcel of fire dope to Detective Ferguson, IT DOES NOT IN ANY WAY PROVE THAT McALISTER OBTAINED IT FROM McPHERSON. In other words, Ferguson's evidence in no wise corroborates McAlister's allegation that McPherson gave him the fire dope between 12 and 1 o'clock p.m. in King-street, on September 4.

As regards this sensational incident we have to decide between the evidence of a police agent on

the one hand and that of the accused and his independent witnesses on the other. It is accordingly somewhat significant that the Judge should seek to give support to the uncorroborated story of McAlister by casting a doubt upon the memory of the opposing side, where there was ample confirmation.

SAVING THE DETECTIVES.

But the position of the Judge is much worse when we come to the alibis of Reeve and Glynn.

On the 14th of September several detectives swore that they saw Reeve outside the I.W.W. rooms. One detective said he saw him in the morning and early in the afternoon. Another detective said that he, too, had seen Reeve at that spot early in the afternoon.

But it so happened that Reeve was in Long Bay Jail that day, and the Magistrate was called, and deposed that the accused was not released on bail till a little after 3 that afternoon. Then there would have to be some formalities gone through with regard to the changing of clothes, and so forth, and it is absolutely certain that Reeve could not have reached Darlinghurst by tram any sooner than was stated for the defence, namely, "about 5 or 8 minutes to 4."

The man who went bail for him (George Jago) was then with him, and did not part from him till very nearly six o'clock. They did not go anywhere in the vicinity of the I.W.W. rooms.

The Judge's comment on that very clear evidence was as follows:

> "Of course, if that be right, then the two detectives must be wrong when they say they saw him down at the I.W.W. rooms before 6 o'clock on that day. BUT THERE AGAIN, OF COURSE, IT MAY BE SIMPLY A MISTAKE AS TO THE DATE."

Now in this instance, if there was a mistake as to the date, it was not on the side of the defence. The

official records of Long Bay prison are final on that point. IT MUST THEREFORE HAVE BEEN A BLUNDER ON THE PART OF THE DETECTIVES.

And the question arises: Ought officers of the law, working up a case against men which, if proved, will involve the loss of their liberty for the best years of their life, to be excused by the presiding Judge in that way, when the demonstrated facts conflict with their testimony? Is it in accord with the judicial spirit to wave away an alibi with the explanation that the detectives may be mistaken as to the date?

DETECTIVES HAVE NO RIGHT TO BE MISTAKEN IN SUCH MATTERS. The first thing they should do is carefully make a note of the date and hour of the incriminating circumstances on which they rely to prove the guilt of those whom they accuse.

And if it should transpire that their sworn statements as to time are flatly contradicted by the facts of the case, then their testimony ought to be entirely discredited and disregarded. And this applies with all the greater force when there is more than one detective involved in the "mistake."

Glynn's alibi was up against Davis Goldstein's declaration that he had had a conversation with Glynn in Goulburn-street, about 8 or 9 o'clock on the evening of September 21, when Glynn is alleged to have said, "Hullo, Dave! I see you are one of the firebugs now. One of the boys told me that Hamilton gave you some of the fire dope last Friday night. Never mind, for every arrest that is made we shall make the Government squeal!"

In reply to this Glynn produced a number of witnesses to prove that he was at the I.W.W. rooms from a little before 7 o'clock until about half-past 9 on that evening.

What had the Judge to say on an alibi so convincingly established? Listen:

> "It may be that all these people are really telling the truth, only there is some little difference as to the time again. . . . GOLDSTEIN MAY BE WRONG AS TO THE DATE."

Well, Goldstein had no business to be wrong on such a vital matter, and his testimony should not have been given a feather's weight when it so completely broke down before the evidence opposed to it.

However, that was the attitude of the Judge towards the alibis put forward. Prove that, at the times mentioned by the Prosecution, the accused were somewhere else, confront them with a decisive refutation of their evidence, and the Judge would get them out of their difficulty with the suave suggestion, "It may be simply a mistake as to the date"!

Nothing could more significantly illustrate the mentality of the Court than the leaning towards the side of the Prosecution thus disclosed.

PECULIAR REPORTING.

It is not necessary here to enter into a detailed consideration of the evidence given by police reporters as to the speeches made by certain of the accused. In the series of articles, "The Case for Grant," I went very fully into the methods of reporting practised by the police, and showed up, I am satisfied, the utterly unreliable character of the scrappy reports they submitted to the Court.

Suffice it to say, now, that the striking features on which I have dwelt—with regard to the rest of the evidence—the surprising luck of the Crown witnesses and the even more astonishing politeness of the accused —*are just as strongly manifest in the speeches.*

The police always seemed to hear exactly the sort of stuff they wanted to hear. And the accused always seemed willing to say the things the police required to work up their case.

Yet all these speeches were not only made in public, but actually with the police, to the knowledge of the speakers, present and taking notes. One of the chief reporters (Constable Mackay) said:

> "These men spoke quite openly in front of me. THEY KNEW I WAS THERE. I have heard them pass a joke in the crowd to me. Reeve said, 'Hullo, Mack! You have got your notebook with you. I hope you are in good fettle.' Passing into the crowd he would say, 'Hullo, Mack!' when he saw me there. HE KNEW I WAS REPORTING."

Under these conditions, with the officers of the law present and visibly taking down their words, it is hardly conceivable that men would give utterance to statements and sentiments likely to implicate them in a horrible conspiracy, and earn them long years of imprisonment.

Only a degree of obligeness carried to the verge of insanity would account for men behaving in that way. I don't believe that there is any really authentic record of conspirators publicly exposing their plots to the police in such a fashion.

And my scepticism in this particular case is increased by the discovery that the police reporters only professed to take down SCRAPS of the speeches made, and in some instances didn't even do that, but carried passages away in their heads, and WROTE THEM OUT FROM MEMORY HOURS AFTERWARDS!

I have not enough faith in the memory of detectives working up a case to accept from them reports of speeches fixed up in that way, more especially when their memory FAILED TO ANSWER TO TESTS APPLIED IN COURT.

But even accepting the reports as accurate, and placing upon them the construction suggested by the Crown, they were insufficient to warrant any jury in convicting upon them. This weakness was realised by the Judge. Several times he stigmatised the language

alleged to have been used as foolish, but scarcely criminal.

In order, therefore, to impart to the scraps of speeches a sinister meaning they did not in themselves convey, the Prosecution harped upon the fact that the speakers generally finished their addresses by urging their hearers to buy a pamphlet called "Sabotage," and study it closely.

The Judge in his summing up also emphasised this point, and went so far as to instruct the jury that an invitation to buy this pamphlet, in the course of a public address,

> "WOULD TEND TO SHOW THAT HE WAS, AT THAT TIME, IN HIS SPEECH ADVOCATING THE USE OF CRIMINAL AND IMPROPER MEANS."

That was a most amazing direction to give the jury. It meant that, although nothing in the speech itself might indicate a criminal intention, if the police could prove that a book WHICH HAD NEVER BEEN PLACED ON THE PROHIBITED LIST, which for years had been openly sold with the knowledge and tacit consent of the police, was recommended to the audience, the speech would thereby become tainted with criminality!

To make the advice to purchase a lawful book evidence of an unlawful purpose was surely not only illogical, but unjust and immoral.

But it was all of a piece with the Judge's attitude of mind towards the accused, as I shall now go on to show, and then bring this analysis to a close.

His Honor failed to point out to the jury the entirely unsatisfactory character of the Crown witnesses. He did not draw their attention to the fact that those who were not detectives, professionally anxious for convictions, were so circumstanced that they might have strong reasons for desiring to gratify those detectives.

He even spoke of them as though they were quite independent witnesses, whose evidence it was not necessary to subject to a more than usually searching examination.

When, for instance, the lawyers for the defence suggested that there had been a "frame up," the Judge said that, if that was correct,

> "Then there has undoubtedly been one of the most terrible conspiracies to take away men's liberties that one ever heard of. Because you cannot escape from it; McAlister must be in it, the two Goldsteins and Scully must all be in a foul and wicked conspiracy to convict these men—AND FOR NO REASON THAT ONE CAN POSSIBLY SEE."

That final sentence, "For no reason that one can possibly see," would convey the suggestion that the witnesses referred to were beyond all question impartial and independent in the giving of their testimony.

It is not my business here to impeach either their impartiality or their independence, but when his Honor declares that it is impossible to perceive any reason for placing their testimony in a different category from that of ordinary witnesses, I am bound to call attention to the following facts, which were clearly brought out at the trial:

> Two days before Louis Goldstein obtained evidence for the police he was discharged on a forgery indictment, THE POLICE TENDERING NO EVIDENCE AGAINST HIM.
>
> While on bail in the same forgery affair Davis Goldstein obtained evidence for the police against the I.W.W. men, and a little while afterwards was discharged, THE CROWN LETTING THE CASE DROP AS FAR AS HE WAS CONCERNED.

> McAlister was EMPLOYED BY THE POLICE to get evidence for them.
>
> Scully was admitted by the Crown to be AN ACCOMPLICE, and the jury had to be warned against accepting his evidence without a very special kind of corroboration.

Yet instead of pointing out these indubitable facts, and stressing them as circumstances demanding the carefullest consideration, the Judge went so far in the opposite direction as to say that, if the evidence was of the nature suggested by the defence, it was "for no possible reason that one could see"!

A DISTORTED DEFINITION.

Take now his definition of sedition. He went lengthily into this subject, quoting English authorities; and much of what he said was perfectly fair and relevant.

But before he had gone far THE CLOVEN HOOF OF CLASS BIAS WAS SHOWN.

He quoted Mr. Justice Stephen, a great authority on criminal law, as defining one form of sedition as follows:

> "To raise discontent or disaffection amongst His Majesty's subjects, or to promote feelings of ill-will or hostility between different classes of such subjects."

Obviously Mr. Justice Stephen meant by this that it was seditious to incite different classes of the community in such a way as would probably lead to armed conflicts between them, or other serious violations of the law.

But that was not nearly sweeping enough for Judge Pring. IT DID NOT FIX THE ACCUSED. So he proceeded to give it an extension totally unwarranted by the text. Said he to the jury, who looked to him for instruction:

"You will note particularly that last part, because it seems to be admitted here that one of the doctrines of the accused is to promote ill-will and hostility between two different classes; THAT IS TO SAY, THE EMPLOYERS AND THE EMPLOYEES."

By adding the words which I have printed in capitals he gave to the definition of the English authority a meaning that it did not indicate. If such an interpretation of sedition were generally accepted in the Courts, and acted upon by the civil powers, the jails would not be big enough to hold the prisoners who would be convicted under it.

The English authority plainly intended his definition to cover such a case as that of Carson's raising of an armed force in Ireland to resist the Home Rulers, or of a one-time Queensland Premier's threat to raise the flag of revolt against Federation. To apply it to the preaching of discontent with the industrial conditions that exist under Capitalism was a flagrant distortion of the text, and furnished one of the many proofs that Judge Pring gave in the course of this trial of a class bias that utterly unfitted him to preside in a Court where working-class agitators were charged with offences against property.

Workers of Australia! make a note of this! According to the Judge who sent the twelve I.W.W. men to jail it is sedition to promote ill-will and hostility between two different classes; that is to say, the employers and the employees!

After that, with a jury as class biassed as himself, it was impossible for the accused to escape on this count in the indictment.

AN INCAPABLE JUDGE.

Another example of the Judge's inability to be fair to these working men occurred while he was referring to the evidence against Moore.

Moore's landlady was called, and told the Court about the visit of the detectives to his room after they had arrested him. She described how the room was searched, and how a box which she had informed them belonged to Moore was opened by one of the detectives. She continued:

"That was Mr. Moore's box; there was no doubt about that. After they had been rooting about in the box for a while I saw them take a very small piece of waste out of this box that I knew belonged to Moore."

The Judge could actually comment on that clear, unambiguous statement in these terms:

"I don't know whether that means that she knew the piece of waste belonged to Moore."

A most unpardonable interpretation to give the landlady's words. She began by saying, "That was Mr. Moore's box; there was no doubt about that." And she concluded by saying that a small piece of waste was taken by the detectives out of "THIS BOX THAT I KNEW BELONGED TO MOORE."

Nothing could be more definite than that. Only a Judge incapacitated by class prejudice could have deliberately thrown doubt upon it, as Judge Pring did, and conveyed the suggestion to the jury that the witness knew that the piece of incriminating waste was Moore's property.

And now I come to an even more shocking instance of his Honor's unfairness to the accused. In the course of his summing up he observed:

"Some of the accused have said, 'Oh, we never set fire to these places.' Perhaps they did not—we do not know who did. With just one or two exceptions we do not know who set fire to these places. I am referring now to those particular ones of the accused who MADE A BOAST THAT

THEY HAD SET FIRE TO SOME PARTICULAR PLACES; beyond that we do not know who set fire to these places."

He actually went so far, in those words, as to make it appear that some of the men had confessed. A more outrageous piece of misrepresentation has never disgraced the judicial bench.

Witnesses for the Prosecution had alleged that some of the accused had told them they had set fire to places, but this was FLATLY DENIED by the men concerned, and his Honor had no right whatever to assume the truth of what Scully, McAlister and the Goldsteins had asserted, as though their statements had not been controverted.

He told the jury, "SOME of the accused have said, 'Oh, we never set fire to these places.'" That was false. ALL of the accused had said so. Here are the most explicit and emphatic denials, made in addressing the jury, just before his Honor summed up:

REEVE: "There has not been one iota of truth brought forward by the Crown to prove that I have ever mentioned anything in connection with these fires."

GLYNN: "I know absolutely nothing of the fires that have been mentioned in this Court, or of any conspiracy to commit arson."

LARKIN: "I never knew there was a fire in Sydney until I heard the evidence in the lower Court.

HAMILTON: "I contradict the statements of Goldstein and Scully" (who had said he told them he had started fires).

BESANT: "I have had absolutely nothing at all to do with these fires."

MOORE: "As far as these fires are concerned, I know absolutely nothing about them."

McPHERSON: "I did not associate myself with any of these men in the committing of any act, as alleged here in the Court."

TEEN: "I am here charged to-day with a crime I know absolutely nothing about. As to making a statement about setting fire to any particular building—I say that it is a pure invention."

BEATTY: "I am charged with a crime of which I know nothing at all—the crime of arson."

FAGIN: "I know nothing of the crime I am charged with."

GRANT: "Let me say at the outset that I know nothing of any of these crimes."

KING: "There has been no evidence submitted here that would in any way connect me, directly or indirectly, with the conspiracy."

Yet in the face of these unanimous affirmations of innocence, the Judge so far forgot the impartiality and the exactitude that should distinguish his office as to say that "SOME of the accused have said, 'Oh, we never set fire to these places,'" and to refer to "particular ones of the accused who made a boast that they had set fire to some particular places"!

After such an exhibition of unfairness we need not be surprised at anything Judge Pring either said or did in this travesty of a trial.

"THE CLASS WAR."

He would not allow Grant to explain to the jury what he meant by the class war, though IT WAS VERY IMPORTANT THAT THE JURY SHOULD UNDERSTAND THE VIEWS OF THE ACCUSED ON THIS SUBJECT, because all through the case the Prosecution harped on the allegation that the accused had promoted industrial strife, and had sown dissension between the workers and those for whom they worked. And, as we have seen, the Judge himself, in his sum-

ming up, defined sedition as the creating of enmity between employers and employed.

That he would not allow the accused to enlighten the jury on this matter was therefore a most glaring abuse of judicial power, since it prevented them from defending themselves against a serious charge, involving for each of them five years' imprisonment with hard labor.

"You have fostered class hatred by the speeches you have made and the pernicious literature you have been scattering about," said his Honor, when he was delivering sentence, thus himself dragging in the class war which he prohibited Grant from elucidating.

He went on to say:

> "You are members of an association that I do not hesitate to state, after the revelations in this case, is an association of criminals of the very worst type, and a hotbed of crime."

That statement is right in the teeth of the evidence given by the Crown's own witnesses, whose testimony went to show that, whatever other accusation could be made against the I.W.W. as an association—and as I have said before, there are some of its doctrines with which I absolutely disagree—at anyrate membership of it did not imply that one was an advocate of violence.

This can be demonstrated by the evidence of the principal witnesses for the Prosecution.

Scully said: "The way the I.W.W. men looked on sabotage was a means of bringing pressure to bear on unfair industrial conditions. . . . Sabotage does not involve the destruction of property at all, or interference with human life. . . . The men I conversed with at the I.W.W. rooms had no sympathy with the destruction of property or life."

Louis Goldstein said: "I got to know a good many of the I.W.W. men, and met a lot of decent chaps."

Davis Goldstein said: "I was well known to be a peaceable type of man, and I met many a man down there (the I.W.W. rooms) who was of a similar state of mind to myself—in fact, the ordinary man I met there was a man of that type. . . . When I was an active member of the I.W.W., as a law-abiding citizen I found nothing in it to object to."

Police Constable Mackay said: "I never heard Grant advocate personal violence." . . . To King: "I never heard you advocate what I considered violence; nor the other speakers."

Detective Leary said: "There was never any difficulty in getting in the I.W.W. rooms. Anyone could walk in. There was no secrecy or anything of that sort that I saw."

Detective Pauling said: "I have been to the I.W.W. rooms three times altogether, and never had to knock before entering the hall. I thought I was welcome down there. No one attempted to block me, and everything was open as far as I could see."

And yet, this organisation, to which officers of the law had FREE ACCESS AT ANY MOMENT, no obstacle ever being placed in their way, to which they even considered that they were WELCOME, was described by the Judge, in the bitterness of his class bias, as "an association of criminals" and "a hotbed of crime"!

So much for the man who sat upon the Bench, and passed savage sentences upon these representatives of the working class.

I have said nothing up to the present as to the competency of the jury that found them guilty, and by doing so flung them to the tender mercies of this notorious hater of Labor agitators. One specimen will suffice to enable the public to assess the value of its verdicts.

Referring to the case of Beatty, his Honor told the jury:

> "With regard to Beatty, as far as I can see the only evidence to connect him with these alleged conspiracies is the evidence of Scully, and you will remember the warning I gave you with regard to accomplices—which undoubtedly applies to Scully—that is, that you ought to have some corroboration as to the evidence of an accomplice before you convict. I don't say you must not convict, but you OUGHT NOT to convict."

In spite of that pointed warning, which was in accordance with a well-known principle of law and justice alike, the jury found Beatty guilty on ALL THREE COUNTS, and the Judge, complimenting it on the care and attention it had given to the case, sentenced the poor fellow whom he said it ought not to convict to FIFTEEN YEARS' HARD LABOR.

NEARING THE END.

And now I approach the end of my task. I have confined myself strictly to the evidence, as reported in the official depositions. I have shirked no difficulties, avoided no awkward facts.

In this examination of the case submitted by the Crown I have been at pains to present the strongest testimony that was given against the men, and have not picked out the weak spots and overlooked the rest.

But at the same time, instead of confusing your attention with the minutiae of the evidence, I have asked you to consider some outstanding aspects of it.

I have enlarged on the astounding luck of the Crown witnesses in always hearing what they wanted to hear, and always finding what they set out to find.

I have dwelt upon the no less astonishing courtesy of the accused, who helped the police to get them into jail by openly talking about their crimes when they knew detectives were present; by confiding their plans to strangers who happened to be working for the police; and by holding fire-dope drill on the public pavements of the city.

I have shown that among the material witnesses for the Prosecution THERE WAS NOT ONE WHO WAS IN A POSITION TO GIVE A PERFECTLY INDEPENDENT TESTIMONY; that they were all of them interested in some way in securing the conviction of the accused, and that their evidence teemed with the wildest improbabilities and the most palpable inconsistencies.

I have shown that the Judge was biassed by his class antipathies, and that both he and the jury were psychologically INCAPABLE OF GIVING THE ACCUSED A FAIR TRIAL.

And I now ask you, in view of all these circumstances, in view of the unvarnished presentation of the facts of the case which I have given—DO YOU BELIEVE THAT THE EVIDENCE JUSTIFIED THE VERDICTS?

Remember, in the words of the Judge: "The Crown has to satisfy you, BEYOND A REASONABLE DOUBT, that the accused are guilty, because under our law every person who is charged with a crime is presumed to be innocent UNTIL HIS GUILT IS ESTABLISHED BEYOND A REASONABLE DOUBT."

Has the Crown established the guilt of the accused with this certainty? IT HAS NOT. The case it presented had all the crude and unconvincing sensationalism *of the cheapest trash in moving pictures. In the* places where it should have conveyed a conviction of unshakable truth, it was palpably and even ludicrously false.

I do not know any of the men in jail. Personally they are all complete strangers to me. I cannot say of my own knowledge of them that they are innocent. But I CAN say, and I DO say, that the evidence brought forward by the Crown does not prove them to be guilty,

that it was absolutely unsatisfactory from start to finish, and that in many parts it awakens not only doubts but dark suspicions.

I say, moreover, that these men were not given a fair trial by the Judge and jury; and that it is notorious that while the charges were hanging over their heads, while they were before the Court, or in prison waiting to be tried, certain politicians went up and down the country—backed by the whole vituperative powers of the paid press—talking in a way that inflamed the public mind against them, and rendered an unprejudiced hearing of their case next to impossible.

And I say, too, that the real object of the Prosecution was not to get these men in jail, but through them to DEFAME AND DAMAGE THE LABOR MOVEMENT, and secure in office a pack of political crooks utterly devoid of scruples or any sense of public honor.

OUR DUTY.

The feeling is now growing amongst the organised workers that the matter cannot rest where it is. THERE MUST BE A THOROUGH PROBE OF THE WHOLE BUSINESS.

There must be an investigation freed from the restrictions of legal forms, one that will ensure the searching of every by-path in the case, and will push to finality the many lines of inquiry that branch out in different directions from the evidence, lines of which the Courts, from the limitations of their constitution, could take no cognisance.

If these men are guilty, LET THEIR GUILT BE ESTABLISHED IN A MANNER THAT WILL SATISFY THE INTELLIGENCE, AND DO NO VIOLENCE TO THE INSTINCT OF FAIRPLAY.

That has not been done up to the present, and until it IS done we cannot, we dare not, let the matter drop.

As members of a Movement that is founded on JUSTICE, that has no meaning unless it DEMANDS

justice for every man who wrongfully suffers, it is our bounden duty to do what in us lies, either to have the guilt of the twelve men demonstrated, and wash our hands of them, or—as I believe, from my study of the depositions, we can—prove their innocence of the foul crimes charged against them, release them from the grave that is called prison, and restore them to the living world and those they love, and to that liberty which is the most cherished of all the possessions of mankind.

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