

# RIGHT OF FREE SPEECH VINDICATED

Several men have recently emerged from New Westminster goal after having served sentences of from two to three months for being members of an unlawful assembly in Vancouver upon the 28th day of January last. They had admitted being members of the assembly but denied that it was an unlawfully conducted one. His Honor Judge McInnes held otherwise.

Eight other men, viz., R. P. Pettipiece, Walter Read, William Horne, Wm. H. Coombs, Thos. McClinton, Jas. H. Fisher, Wm. McDowell and Chas. Lestor, charged with the same offense, and who also admitted being at the same meeting as the former offenders, were, on May 29th, found not guilty by a jury before which they had elected to be tried. Thus the same assembly is declared by a judge to be unlawful and by twelve citizens to be perfectly lawful. Such are the ramifications of the law.

Perhaps no trial has ever aroused more widespread interest among the workers of Vancouver than that of the last named nor has any verdict met with more general and enthusiastic approval. It may not be amiss to give here a brief recital of the events leading up to the case.

## The Attack on Free Speech.

For some years up to and including 1911, it had been the custom in Vancouver to allow all labor, political and religious organizations which so desired, the free use of the streets and open places of the city for the purpose of holding meetings and discussing or propagating their various doctrines. During this period no trouble whatever arose from the pursuance of such a policy. But the advent of Jas. Findlay to the mayor's chair at the beginning of the present year brought a drastic change.

On January 21st a meeting of workmen presided over by Socialists, was interrupted and dispersed by police and it was made known that no more outdoor meetings would be allowed in the city. Realizing that freedom of speech in the British Empire is guaranteed by higher authority than any city administration, the Socialist party and the I. W. W. immediately announced a meeting to be held on the Powell street grounds Sunday, January 28. A large number of unemployed then in the city were invited to be present. It should be mentioned that during the week prior to the 28th, a committee from the Vancouver Trades and Labor Council, acting upon which Mr. R. P. Pettipiece, Mr. J. H. McVety and Mr. Jas. McMillan, were in Victoria endeavoring to secure from the Government some substantial aid for the unemployed. They returned to Vancouver on Saturday, the 27th.

On the day appointed a large crowd of workmen, employed and unemployed, gathered on the Powell street grounds. Around the grounds there also gathered a large crowd of citizens who came attracted by the hope that the police would be there to "start something". At the appointed hour a speaker mounted the box and gave out the information that Mr. Pettipiece had that morning consented to appear at the meeting and tell of what had transpired at Victoria. He arrived after several other speakers had spoken briefly.

No sooner had he begun his address, in fact no one is quite sure that he had begun, when he was interrupted by Deputy Chief of Police Mulhern, who called upon him to disperse the meeting, producing a city by-law as his authority. Mr. Pettipiece said that he was unable to disperse the gathering and there was no occasion for any alarm or interruption as the crowd was orderly and peaceable. After a minute or two or such altercation, Mulhern gave an order and a long line of policemen which had been quietly waiting, advanced upon the crowd.

Scatteration and hurried flight became the order of the day. The police used their clubs with ferocious design and savage effect. Defenseless men were knocked senseless and bleeding to the ground. Those who escaped from police on foot had the additional excitement of being hotly pursued by mounted men armed with heavy whips. The affair was carried all over town and occupied most of the after-

addressing the assembly. This man announced R. P. Pettipiece as the next speaker and got down from the box just as he arrived. He (Mulhern) then forced his way to the box and informed Pettipiece that the meeting was unlawful and must be dispersed. Upon being asked his authority he read a section from a city by-law covering assemblies. At this time, he said, there were loud shouts and jeers from the crowd, many of them crying out "to hell with the police; go on with the speech," "to hell with the by-law," "to hell with the city." Asked if he would anticipate a breach of the peace from the character of the meeting, he stated, after considerable hesitation, that he would.

Mr. J. W. de B. Farris, counsel for Mr. Pettipiece, then cross-examined the witness.

Farris—Assuming that you had known that that by-law did not apply to the Powell street grounds would you have gone there to enforce it? In answer to this Mr. Mulhern said that he would not have read the by-law but would have been there to preserve peace. His instructions were to forbid gatherings on streets and public places.

Asked if there had been any occasion to arrest any one up to the time he ordered the crowd to disperse he stated that there was not.

Farris—When was there any occasion to make an arrest?

Mulhern—When they refused to disperse.

Farris—You arrested them for refusing to disperse when called upon to do so?

Mulhern—I arrested them for being members of an unlawful assembly.

Detective Champion was then called to the box and testified that from the temper of the meeting he was led to anticipate a riot, but couldn't recall that any policemen had been injured during the trouble.

Inspector McLennan's evidence was practically the same as Mulhern's except that he heard some one day, "Here come our natural enemies, the police."

The Rev. Merton Smith was then called, no doubt for the purpose of lending corpulent sanctity to the Crown's extremely unsanctified case. He denied that there had been any unemployed in the city at that time as he had tried to get a man to work in his garden without success. Gardening in January was a common thing with him, he said. He stated that the meeting was noisy and defiant and he thought there would be a breach of the peace. Mr. Bird, counsel for all the accused but Pettipiece asked witness if he hadn't been at the meeting out of idle curiosity like the rest of the unemployed, and the reverend gentleman innocently answered, "yes".

A shining example of the intelligence required in a police officer was the next witness, Sergeant Munro. He said that he saw no damage being done, nor any fighting going on, but that he always anticipated trouble when he saw crowds of any kind. Asked if he knew of anything that had transpired subsequent to the 28th, he replied, "No, not before."

Several more witnesses were called for the prosecution but their lessons were evidently well learned and added nothing of interest. At this point, as no officer appeared to identify accused McClinton, he was allowed to go.

Mr. Jas. H. McVety was the first witness for the defense. His evidence was to the effect that the meeting was orderly and quiet up to the time the police appeared. He stated that he had been in Victoria the week previous, his first intimation of the meeting on Powell street grounds being a phone message he received the morning of the date of the meeting.

Mr. Jas. McMillan gave evidence to the same effect.

Witnesses were asked by the prosecution if they had seen anything of a banner which had been carried through the streets announcing a free speech demonstration to be held on the 28th. Or a number of dodgers to the same effect which had been distributed. The banner and some of the dodgers were exhibited in court. Witnesses stated that they had no knowledge of these things not having been in town

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Scatteration and hurried flight became the order of the day. The police used their clubs with ferocious design and savage effect. Defenseless men were knocked senseless and bleeding to the ground. Those who escaped from police on foot had the additional excitement of being hotly pursued by mounted men armed with heavy whips. The affair was carried all over town and occupied most of the afternoon. The casualties were many—among the citizens generally; the police suffered no injuries other than the mayor's approval of their work. When the fracas was over, Mr. Pettipiece and twenty others, including those mentioned above, were discovered in jail. Prompt action by their friends resulted in all being released on bail except some of the I. W. W. members who preferred to stay in.

The two following Sundays saw repetitions of the occurrence with the crowds of spectators growing each time. Many more were injured but few more arrests were made, it evidently being the intention of the authorities merely to physically assault those whom they selected as their victims. Then something happened, presumably some one "higher up" gently intimated to the mayor that his course resembled that of the ass. Anyhow, the fourth meeting, February 18, saw the greatest multitude of all on the grounds, but no police. When no officers made their appearance, the multitude grew weary of waiting and departed quietly.

All those arrested were subsequently charged with being "members of an unlawful assembly." They all elected to be tried by jury, but a number later changed their minds and took speedy trial before Judge McInnes with the result mentioned above. The others were arraigned before His Honor Judge Gregory and a jury in the assize court on May 28th.

#### The Trial.

Two counts were contained in the indictment. First, that the accused, "with intent to carry out a common purpose, unlawfully did meet and assemble together in such manner as to cause persons in the immediate neighborhood of the assembly, to fear on reasonable grounds that the persons so assembled as aforesaid would disturb the peace tumultuously."

Second, that persons in the immediate neighborhood were led "to fear on reasonable grounds that the persons so assembled as aforesaid would by such assembly needlessly and without any reasonable occasion provoke other persons to disturb the peace tumultuously, and the said (prisoners) were, then and there members of an unlawful assembly contrary to the form of the statute in such cases made and provided and against the peace of our Lord the King, his Crown and Dignity."

The first witness to be called was Deputy Chief Mulhern. He gave his testimony reluctantly and did not appear to be in love with his own story. He stated that he proceeded under orders to the Powell street grounds about 2 p. m. Sunday, January 28, and found there a large crowd of people on the sidewalks and in the square. There was also a man on a soapbox

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Other witnesses appeared and testified that the meeting was perfectly orderly until disturbed by the police. Mr. Chas. Sayers stated that he did not belong to any labor organization prior to the meeting but the treatment received there so educated him that he afterward joined the Socialist party.

Mr. Farris, in a brilliant address to the jury, summed up the case for the accused.

The question is, said Mr. Farris, are the police to be the arbiters as to whether citizens are criminals or not? It was evident that no unlawful assembly up to the time the police arrived. The deputy chief admitted that there had been no offense. For offenses under the by-law which the chief had read the only course was to summons the offenders and the maximum penalty was a fine of \$100. But the police desired to arrest participants in the meeting and it was clear that they had endeavored to convert it into an unlawful assembly for that purpose.

No evidence had been submitted that there had been inflammatory speeches or preparations for violence of any kind.

It had been stated that some of the accused had shouted "We will fight for free speech." To fight in this instance meant to fight constitutionally in the courts. The men had practically said: "We believe we are right, arrest us if you will, and we will fight it out in a legal way."

It had been demonstrated that the deputy chief had no knowledge of the character of the meeting. His only reasons for apprehension were his instructions which he carried in his head.

One officer had said that whenever he saw a large crowd he feared trouble. If that were the case, Vancouver was to blame for having such a reputation that riots were to be expected from every large congregation.

Referring to the evidence of Mr. Merton Smith, he said that gentleman was clearly biased as he had expressed antagonistic opinions about the unemployed.

There was absolutely nothing in the banner or dodgers to cause any reasonable fear of violence or disorder. They had merely invited all lovers of liberty to a demonstration in favor of free speech. Could there be said to be anything criminal in being a "lover of liberty" or in desiring "free speech"?

Under the indictment there must have been occasion given for "reasonable" people to fear a riot. No evidence had been submitted by the Crown showing there to have been such occasion. No policeman had had a piece of skin knocked off or even received a black eye. None of the crowd had been armed with guns,

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knives or even sticks. All the trouble had emanated from the police.

At any rate Mr. Pettipiece had not gone to the meeting with any unlawful purpose. He had only desired to do his best for the unemployed, a work in which some of the witnesses for the Crown might well have been employed.

With a convincing appeal to the jury to decide the case on its merits as reasonable men and not allow it to be obscured by obtruse technicalities, Mr. Farris closed one of the most able addresses that has even been delivered in this city on behalf of free speech and its advocates.

He was followed by Mr. Bird, who said that the affair had been, no doubt, instigated by interested parties at the city hall. He pointed out that the accused had only desired free speech and had thereby broken no law.

Mr. E. D. Taylor K. C., then spoke on behalf of the Crown, dealing mainly in legal quibbles and making an indifferent attempt to prove the guilt of the prisoners without taking up any of defendant counsels' points.

His Honor Justice Gregory then summed up the case impartially giving a clear exposition of the legal points involved.

The jury retired at 5:05 p. m. At 6:30 they were still out and the anxious crowd in the courtroom began to fear that they would be unable to agree. At 7.05 p. m. they returned and informed the court that they could not reach an agreement.

His Honor inquired if it were not possible to reach an agreement. The foreman said that if they could see some of the evidence they might agree. He was told that they could hear some of the evidence read on the particular points upon which they were confused.

A jurymen then asked if it were legal for meetings to be held in the parks and squares.

His Honor—Yes, providing they are conducted in an orderly and peaceable manner.

Another jurymen—Was it unlawful for Pettipiece to go on speaking after being warned by the chief to desist?

His Honor—Yes, the police are there to protect the interests of society and should be obeyed. Such action would not, however, make Pettipiece or any of the accused guilty of being members of unlawful assembly.

Thereupon the twelve good men and true again filed out and returned in four minutes and a half with the welcome verdict of "not guilty."

Thus ended the good mayor's attempt to make Vancouver a "closed town" in the matter of opinions.