was struggling to catch her breath. Two girls standing on the sidewalk screeched out, "It is false teeth," as Mrs. Burton's teeth fell out along with the wad of material. The handkerchief "kept coming out and coming," taking a full two minutes for the complainant to "spue [sic] it out," or "gawk it out" as the witnesses described it. Defence counsel Meredith paid little notice to the oversized gag, but made much of the fact that Mrs. Burton's hands were "free" from any rope or binding, demanding of James Ingray:

Q. Her hands were free?
A. Yes.
Q. It didn't occur to you it was a put up job?
A. I could not say.
Q. Woman's hands free and this thing stuffed in her mouth?
A. I could not tell you.
Q. A big stout woman?
A. Yes, Sir.

Of Percy Sullivan, Meredith asked whether Mrs. Burton had "pretended to be moaning" when he got there. Seemingly without reflecting upon the question or his answer very carefully, Sullivan simply replied, "Yes." "Didn't it look to you like a put up job, from first to last?" he demanded. "It looked as if somebody tried to choke her," replied Sullivan. "You thought so?" queried Meredith. "Yes," replied the witness. Neither witness made any effort to explain that Mrs. Burton may have been unable to use her own hands to cut the rope and ungag herself because she was nearly asphyxiated, or half-unconscious from the exhaustion of her struggle.

In the final tally, Meredith had scored some substantial points. He had got Dr. Seaborn to testify that the bruising and swelling on Mrs. Burton's body might have been due to multiple, unknown causes. He had made Harry Wilkinson out to be a bit of a fool, a drunkard who swore to a certain state of affairs one minute, and to the complete opposite the next. The passersby who had rescued Mrs. Burton were no more consistent, confused over who had cut the rope away from the dishevelled woman and how tautly the rope had been tied. "Mr. Edmund Meredith was evidently so well satisfied with the information, and the statements that he elicited in cross-examination of the witnesses for the prosecution," reported the *London Free Press*, "that he will submit no evidence for the defence at all."[48] The standard of proof required at the preliminary inquiry stage was minimal, necessitating evidence simply of a "sufficient case" to send the matter forward for a full trial, and Canadian lay magistrates rarely halted the criminal process at this point.[49] Police Magistrate Love reserved his decision until 27 September, when he committed Joseph Gray for trial at the fall assizes.

The Trial: "The Case Against the Prisoner Gray Is Lamentably Weak"

The trial unfolded much as the preliminary inquiry had, with defence counsel Edmund Meredith securely in the ascendancy from beginning to end. He was clearly in his element as he subjected Mrs. Burton once again to an interminable and blistering cross-examination. The *London Advertiser* made much of the "conflicting evidence and obnoxious details" elicited by the defence lawyer, despite admitting that Mrs. Burton's testimony "did not vary to any material extent" from her evidence at the preliminary inquiry. This consistency seems to have counted for little, however, and the newspaper reporter announced that "it was made painfully apparent before the case had proceeded any length that one side or the other was very much in error ... for prosecution and defence witnesses were in direct contradiction to one another."[50]

The Crown had done little to repair the cracks in its case. Each of the two young boys who had rescued Mrs. Burton continued to claim, contradicting the other, that he had been the one to cut the rope from the semi-conscious woman's neck. Meredith scored additional points during his cross-examination of Dr. Seaborn in this round, managing to get the medical man to admit that "it was possible for a person to sham excitability in such a manner as to deceive a physician." The Crown chose not to call the police officers. Harry Wilkinson had answered the summons to appear, but arrived at the courthouse "hopelessly drunk." When the Crown Attorney apologized to Judge James Vernall Teetzel for the condition of his witness and explained that Wilkinson would be unable to testify, the judge demanded that Wilkinson be brought before him regardless. "But he cannot walk, your lordship," replied the court constable. "Bring him in anyway," responded Judge Teetzel heatedly. Two officers of the court propped up the inebriated man and dragged him into the centre of the courtroom. Taking one look at the would-be witness, Judge Teetzel ordered him dispatched to the cells over night. The incoherent, uncomprehending Wilkinson was unceremoniously removed.

Defence counsel Meredith chose to call his own witnesses at the trial, and Joseph Gray was the first to take the stand. According to the *London Advertiser*, the accused man "denied in toto all of Mrs. Burton's story in reference to the alleged assault, and stoutly maintained that he had never seen the complainant before the day in question and that he had never set foot within her house."[51] Gray conceded delivering a load of kindling to his accuser and footing the bill for a round of ale for Wilkinson, Mrs. Burton, and the workmen in the woodshed. In his opinion, Mrs. Burton had been "in a state of intoxication" when he left her place. For his part, he maintained he had downed one lone drink. He swore he left 12 Dundas Street no later than 4:50 P.M., had stopped off at the Britannia House at York and Wellington for "a drink or two," and heard the five o'clock whistle blow as he left the pub

for home. Several other witnesses would take the stand later to record their recollections regarding the timing. A city street inspector testified that Gray had left the Clarence Street job around 4:45 P.M. A fellow teamster put the time closer to 5:00 P.M. Another witness told of having met Gray driving along the road to his home between 5:00 and 5:30 that afternoon.

When it came time to cross-examine Joseph Gray, the Crown attorney seemed at a bit of a loss. The contrast between the cross-examination that Edmund Meredith visited upon Mrs. Burton and the one the Crown utilized for the accused man was remarkable. In both substance and process, the two cross-examinations bore no resemblance. Joseph Gray was not subjected to a lengthy and searching inquisition about his recollection of the events of 8 July. He was not badgered about minute matters of timing. He was not asked about his drinking habits, his sexual proclivities. Other witnesses were not called to testify to the alleged rapist's character and lifestyle. When the Crown ventured to ask Joseph Gray if he could "suggest any reason" why Mrs. Burton would have brought such a serious charge against him if it were totally untrue, the question completely backfired. Joseph Gray declared that he thought the whole affair was a fabrication, a "trumped-up charge" instigated by a man "fairly high up in street contracting matters." He testified that a "certain man" had advised him that this contractor had been out to "even up" the score with Gray, in return for "some trouble the two had had at one time." The same informant had ostensibly quoted Mrs. Burton as saying: "I sent the message and there was no money forthcoming. I shall have to swear Gray's life away." This last must have been a reference to the death penalty that still formally attached to the charge of rape, although such a maximum sentence had not been imposed for decades.[52] Even the judge seems to have been surprised at these allegations, and he instructed the accused man that he had "better bring the man up in court who told you that." No such individual ever took the stand. The Crown attorney never registered any objection to this major omission.

For its final witness, the defence called a young woman who lived in a boarding house just a few doors away from the Burtons. Miss Leon Macpherson testified that she had seen Joseph Gray drive towards the city at 4:30 P.M. This was not a solid beginning, since it underscored the inconsistency of the defence witnesses on the question of timing. Their various estimates for Joseph Gray's departure ranged from 4:30 P.M. through 4:45, 4:50, and 5:00 P.M. Miss Macpherson had more compelling evidence, however, and she appears to have been the "most respectable woman" that Edmund Meredith had described at the preliminary inquiry. She told the court that she had seen Mrs. Burton "shove some dark complexioned man into the rear door of her house" early in the afternoon of 8 July. Macpherson swore that the man was "not the prisoner," but that she would be able to recognize him if she saw him again. Macpherson dealt a devastating blow

to the Crown's case with her final comments. She testified that Mrs. Burton had emerged from her house, quite drunk, a few minutes after five o'clock, and that "Mrs. Burton bore a very unsavory reputation." Indeed, she declared that the Burton home was infamous for the "noise of drunken brawls" that disrupted the neighbourhood all too regularly. With this final damning opinion, the defence closed its case.

When the trial resumed the next morning, Judge Teetzel dispensed with the legal submissions from counsel. "Gentlemen of the jury," he announced, "the case against the prisoner Gray is lamentably weak." The customary division of labour in Canadian criminal trials was to allow judges to rule on questions of law and juries to decide upon questions of fact.[53] However, the judge also maintained a gate-keeping function. He was required to assess the evidence prior to delivering the case to the jury, to ensure that the Crown had adduced a sufficient case – should the jury believe the prosecution's evidence – to warrant a conviction. If this threshold test was not met, the judge could direct the jury to deliver a verdict of "not guilty."[54] That was precisely what Judge Teetzel did in Mrs. Burton's case. "I do not think there is a man on the jury," he declared, "who after hearing the evidence would say, or could say, that this man is guilty of the serious offence that he is charged with." He could see "no reason why the jury should consider it further," but he went through the formality of asking the members of the jury if they were "content that this man should be acquitted." "We are," was the unanimous reply, and the prosecution of Joseph Gray came to an abrupt halt.

Since the judge gave no reasons for his decision, it is difficult to know precisely what motivated the ruling. The burden of proof was upon the Crown to prove the accused guilty beyond a reasonable doubt. The Crown had presented considerable evidence pointing to Joseph's Gray's sexual assault upon Mary Ann Burton. Mrs. Burton had testified clearly and lucidly to the details of Joseph Gray's uninvited intrusion into her home and the violent rape he had perpetrated upon her. The two boys who had rescued her, bound and gagged, had testified to her physical incapacitation and distressed emotional demeanour. Edmund Meredith had done his best to dismantle the credibility of the Crown's key witness, but he had not shaken Mrs. Burton's fundamental testimony. There was material evidence here, which if believed, could have resulted in a criminal conviction. The judge must have disbelieved Mrs. Burton or else preferred the defence witnesses so substantially that he pre-empted the fact-finding exercise generally relegated to the jury. It is quite possible that the jurors might have come to the same ultimate conclusion. But Judge Teetzel's intervention gave them virtually no chance to do so independently.

Born, bred, and educated in southwestern Ontario, Judge Teetzel was proudly claimed by the *London Advertiser* as a local "Middlesex boy." The

fifty-nine-year-old judge would have been all too familiar with the unsavoury reputation of Mrs. Burton's industrial, working-class neighbourhood just down the street from the London Court House in which he presided.[55] Like many affluent Londoners of the time, he seems to have been contemptuous of the manners and morals of the Burtons and their contemporaries. In fact, the *London Free Press* reported that before releasing the prisoner, Judge Teetzel "severely scored" Joseph Gray "for the company he had been in on the afternoon in question."[56] His near undoing had come from mixing with the rabble who abutted the dump, rather than from the perpetration of the crime of rape. Teetzel wished Joseph Gray to recognize, in no uncertain terms, that he should have kept his attention confined to his respectable haulage business and restricted his drinking partners to a more elevated crowd. As for women such as Mary Ann Burton, whose economic situation confined them to a less rarified echelon of society, they were simply unbelievable when they sought vindication for sexual assault in the courts.

The newspapers of the day left no doubt that the press sided with Judge Teetzel in the disposition of the prosecution. The *London Advertiser* seemed positively jubilant over the outcome, depicting Joseph Gray as a man who had been "honorably acquitted by Mr. Justice Teetzel." This was an odd characterization, since acquittals did not come in categories such as "honourable," "dishonourable," or whatever appellation might have served to define the uncertain ground in between. What was more, the *Advertiser* asserted that the entire prosecution had been a waste of time and resources. It complained that the "taking of the evidence" had "monopolized the entire attention of the assizes." The editorializing epilogue rendered a final, dismissive retort: "And another case which, according to the developments, should never have reached the high court of justice, had gone into the annals of London court history."[57]

"Justice I Want If There Is Justice to Be Had"

Few of Mary Ann Burton's contemporaries appear to have taken her claim of forcible rape as worthy of belief. Passersby and neighbours stood gawking as the semi-conscious woman attempted to dislodge a filthy, oversize handkerchief from her throat while two young boys doused her with a pail of water in a rather draconian effort to revive her. The elderly woman's false teeth, expelled along with the gag, seem to have excited as much interest as her bruises. The neighbours rapidly concocted their own interpretation of the spectacle. They gossiped and shared snide comments about Mrs. Burton's sexual habits, and ridiculed her husband with accusations of cuckoldry. When called to testify regarding the incident, Mrs. Burton's friends and acquaintances gave indifferent or pernicious commentary. Robert Burton, a man accustomed to violent domestic altercations with his wife, seems ultimately to have suspected her of responsibility for the sexual episode

with Gray. The police who were called out to investigate the crime exhibited indifference to the physical evidence, and instead pried curiously into Mrs. Burton's life and affairs. The physician who was supposed to conduct the forensic medical examination botched the job. The Crown attorney presented the case in a barely passable fashion, without conviction or fortitude. The defence lawyer relished his role as a slayer of female credibility, attacking Mrs. Burton's character and testimony from multivariate directions. The judge seized the fact-finding role and seems to have found Mrs. Burton's class more compelling than her evidence. The press departed from its official standard of objectivity and attached demeaning descriptions to Mrs. Burton and her testimony, all the while portraying Joseph Gray as an exemplary specimen of respectable manhood.

Nearly a century later, there will be some who will review the surviving documentation regarding Mrs. Burton's case and continue to wonder whether she was actually raped at the fork of the Thames on 8 July 1907. There were minor inconsistencies in the complainant's evidence. Several of Mrs. Burton's acquaintances as well as Joseph Gray testified that she had been drinking that afternoon. One neighbour seems to have suggested that Mrs. Burton was sexually promiscuous. Joseph Gray claimed that she was guilty of extortion. But the evidence was not completely one-sided. Although no one at the time seems to have remarked upon it, the defence witnesses were even more inconsistent on the question of timing than Mrs. Burton had been. The spectre of the street contractor who had allegedly prevailed upon Mrs. Burton to fabricate the charge had been dredged up, but never properly introduced by way of concrete evidence. Judge Teetzel seems to have forgotten his admonition to Joseph Gray that such a startling claim must be backed up with a material witness. The Crown attorney did not intervene to remind him. The hearsay allegations were left hanging, weighing down the reputation of the complainant without ever being put to the proper evidentiary tests.

Even more compelling for the prosecution was the testimony offered in the London Court House by Mrs. Burton herself. The transcript that captured her statements for posterity embodies a succinct, straightforward narrative of rape, the commentary of an elderly, working-class woman who described herself as the unwilling victim of an arrogant, foul-mouthed, sexually aggressive teamster. She documented with care the hostile physical attack, her spirited efforts to repulse the rapist, and the sense of disaster that overcame her as the aggressor's superior strength ultimately overcame her resistance. She took the stand to tell her story and withstood a nasty and tenacious cross-examination with fortitude and grace. Her efforts were hindered by friend and foe, by laymen and professionals, by prosecution and defence. Yet in this, she ultimately triumphed, for the official transcript has captured her story with clarity, force, and dignity.

Mary Ann Burton also attested that she came seeking justice, adding poignantly, "and justice I want if there is justice to be had." Her courageous statement reveals that there were multiple understandings of justice in early-twentieth-century Canada. Mrs. Burton's sense of justice incorporated her right to be protected from non-consensual sexual intercourse. Joseph Gray's sense of justice rendered him astonished that legal charges were ever levied against him. The police, the examining physician, and Mrs. Burton's neighbours seem to have understood justice as partial. While some women might have deserved legal protection from sexual assault, others such as Mrs. Burton did not. Edmund Meredith understood his cross-examination of Mrs. Burton, in which he parlayed sexist and classist accusations into a relentless barrage, to be his ethical and professional obligation. Mrs. Burton, on the other hand, believed Meredith's cross-examination to be the actions of a deceptive and malicious bully. Crown Attorney McKillop took a more nuanced perspective. His sense of justice incorporated Mrs. Burton's right to a criminal trial, in which he displayed at least some prosecutorial effort. In the face of defence counsel's onslaught, however, McKillop stood silently by, his passivity a powerful affirmation of the attack on Mrs. Burton's credibility. That the cross-examination of alleged rape victims should encompass gruelling, sexually biased character assassination appears to have been an integral feature of the criminal justice system. The jurors and judge who presided over Mrs. Burton's case accepted such tenets without hesitation. The press applauded the result, according the verdict the title of an "honourable acquittal." The directed verdict for Joseph Gray was a stinging rebuke of Mrs. Burton's dramatic call for justice on her own terms. Almost a century later, as vestiges of these competing notions of justice continue to jockey for position within the criminal justice system, Mrs. Burton might well ask which concept of "justice" will become the most compelling over time.

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Notes

Details of the legal proceeding have been drawn from *Rex* v. *Joseph Gray* (1907) Middlesex C.A. and C. Criminal Court Records, D.B. Weldon Library, University of Western Ontario, J.J. Talman Regional Collection, box 559, and the press coverage: *London Free Press* 9, 11, 12, 16, 24, 31 July; 8, 10, 11 October 1907; *London Advertiser* 9, 10, 11, 15, 23, 30 July; 7, 9, 10 October 1907.

The conclusions drawn in this chapter are based on a review of archival records in selected counties and judicial districts in Nova Scotia, Ontario, and Saskatchewan between 1900 and 1950. The case files for prosecutions of rape, attempted rape, indecent assault, seduction, and carnal knowledge have been photocopied and stored in a research collection at

the University of Ottawa Faculty of Law (and are available for further study by other researchers upon request to the author). The case files are not consistent in the type of documentation that survives. Some contain the information, arrest warrants, bail documents, transcripts of magistrates' court proceedings, jurors' lists, grand jury bills of indictment or no bills, verdicts, correspondence from counsel, and occasionally appellate documents. Some files are only partially complete. Where records survive of the testimony of the women alleging rape, it is common that the female witnesses appear to have been intimidated into submission and frequently into complete silence during their court appearances. They answered questions put to them by counsel haltingly, often tearfully, without reference to their own ideas and feelings. They rarely challenged defence counsel either directly or indirectly.

3 Sir Matthew Hale, *Historia Placitorum Coronae,* vol.1 (London: Nutt and Gosling, 1734), 635-36. The full statement read: "[Rape] is an accusation easily to be made, and hard to be proved, and harder to be defended by the party accused, though never so innocent."

4 Seymour F. Harris, *Harris's Principles of the Criminal Law,* 7th ed. (London: Stevens and Haynes, 1896), 164, noted that Hale's opinion was quoted at "almost every trial." For other references adverting to the enshrinement of Hale's views in legal thought and practice see Henry Roscoe, *Roscoe's Digest of the Law of Evidence in Criminal Cases,* 12th ed. (London: Stevens and Sons, 1898), 775; W.M. Russell, *Russell on Crimes,* vol. 3, 6th ed. (London: Sevens and Sons, 1896), 235. Cornelia Dayton Hughes, *Women Before the Bar: Gender, Law and Society in Connecticut* (Chapel Hill: University of North Carolina Press, 1995) describes how Hale's opinions overtook the earlier seventeenth-century Puritan understandings of female credibility, replacing a previous skepticism of the credibility of men accused of rape with a presumption as to the unreliability of women.

5 Carolyn Strange, "The Criminal Prosecution of Rape in York County, Ontario 1880-1930," in Jim Phillips et al., eds., *Essays in the History of Canadian Law: Crime and Criminal Justice,* vol. 5 (Toronto: Osgoode Society, 1994), 207, notes at 212: "For every complaint that resulted in a conviction, countless others never appeared on police records: women believed attackers who threatened to kill them if they talked; girls were afraid that their parents would punish them for bringing shame to the family; or victims weighed the trauma of the trial and its publicity against the option of recovering in private."

6 The term "prosecutrix," the feminine of "prosecutor" was a carry-over from the time when criminal complaints were all laid privately, with the injured victim responsible for the legal prosecution and the costs associated therewith. A more professionalized system was instituted in Canada by the early nineteenth century, when law officers of the Crown conducted proceedings at all assizes: Paul Romney, *Mr. Attorney* (Toronto: Osgoode Society, 1986), 239. The characterization of the rape complainant as the "prosecutrix" was thus incorrect. It was also anomalous, since no witnesses in other criminal proceedings were so labelled.

7 Mary Ann Burton was not personally listed in *Vernon's City of London Directory* (1906), (1907), (1907-08), (1908-09), but her husband, Robert Burton, was. His occupational designation in the later directories as a tanner was of recent duration, since the 1907 directory listed him merely as a "labourer." Mary Ann Burton's lack of education is obvious from the grammatical errors in her speech; reference to her weight is found in the preliminary inquiry transcript; her age is never given in the legal documentation although the press referred to her several times as "elderly." On the nature and location of the rental dwelling at 12 Dundas Street see Fire Insurance Plans for London, Ontario, 1881-1970, J.J. Talman Regional Collection, University of Western Ontario, M720, sheet 4. The couple had been living there only nine months, having boarded previously at 394 Ridout Street. On the wealth and gentrification of turn-of-the-nineteenth-century London see Frederick H. Armstrong, *The Forest City: An Illustrated History of London, Canada* (London, ON: Windsor Publications, 1996); Orlo Miller, *This Was London: The First Two Centuries* (Westport, ON: Butternut, 1988); Wayne Paddon, *"Steam and Petticoats" 1840-1890* (London, ON: Murray Kelly, 1977), 106-25.

8 Joseph Gray seems to have been previously employed as a cigar maker, although by the time of the trial he appears to have gravitated to the business of hauling goods on wagons

drawn by horses. The *London Advertiser* described Joseph Gray as a "contracting teamster" who worked his own team of horses. *Vernon's City of London Directory* (1906) and (1907) shows Joseph M. Gray as a cigar maker, homeowner at 444 Hill Street. The same *Directory* (1907-08) and (1908-09) has no listing for Joseph Gray. The paving blocks the men were unloading were probably cedar blocks, used to pave the streets of the central city beginning in 1880. When the blocks proved to be unsatisfactory because they rotted quickly, absorbed horse urine, and smelled, they were slowly replaced by asphalt resting on a concrete foundation; see Armstrong, *The Forest City,* 133.

9 *Vernon's City of London Directory* (1907-08) shows William Mahon as proprietor of the Grand Central Hotel at 361 Ridout Street.

10 The London police force was created in 1855, and was preoccupied with petty infractions of municipal ordinances for the first decades. The city was widely renowned for its lawfulness, and in 1899, the chief constable gave the members of the force a full week's leave "in view of the recent quietness of the city." Historical records reveal that recruits had to be at least five feet ten inches tall, between twenty-one and thirty-five years old, and have a "fair education." The first policewoman was not hired until 1962. Charles Addington, *A History of the London Police Force* (London: Phelps, 1980).

11 Testimony from some of the neighbours of the Burtons during the preliminary inquiry revealed that the couple's quarrels frequently disturbed the Dundas Street area.

12 Detective Nickle had achieved great fame in 1899, when he tracked down Marion "Pegleg" Brown, an escapee from a Texas jail who had murdered London constable Michael Toohey as the officer attempted to arrest him for vagrancy. Nickle had tracked Brown for 12,000 miles across the United States and Canada before he apprehended the suspect. Brown's subsequent hanging at the County Court House, up the street from the Burtons's dwelling, marked the culmination of the most expensive trial ever held in Middlesex County. Addington, *History of the London Police Force,* 11.

13 *London Free Press,* 9 July 1907.

14 Charges were also laid against Charles Burton, the hired hand who had initially helped Joseph Gray unload wood at Mrs. Burton's home. He was charged with being an accomplice to the rape and was alleged to have stood guard at the door while Joseph Gray committed the sexual assault. The proceedings against Charles Burton were treated as secondary to those against Joseph Gray, and it appears that the charges were not pursued after Gray was acquitted. In the interests of brevity, Charles Burton's alleged role will not be discussed further.

15 *London Advertiser,* 10 July 1907.

16 *London Free Press,* 11 July 1907.

17 *London Advertiser,* 10 October 1907.

18 Ibid.

19 *Vernon's City of London Directory* (1907) lists Michael J. Gray as a teamster who owned his home at 446 Hill Street. Patrick Gray was listed as a drayman who owned his home at 198 York Street.

20 There is little biographical detail available on Police Magistrate Love. *Vernon's City Directory* (1907-08) notes that he resided at 562 Wellington Street, along with Miss Irene C. Love, Miss Isabel C. Love, and Miss Mary A. Love.

21 McKillop's appointment as Crown attorney was a part-time one; he also practised law with McKillop & Murphy, his partner being Thomas G. Murphy, at 413 Richmond Street. McKillop resided at 326 St. James Street.

22 Edmund Meredith's law partners were Joseph C. Judd, the then mayor of London, and William Ralph Meredith, his younger brother. William Ralph Meredith's views on women and law were publicly disclosed in the late nineteenth century, when he vigorously opposed the admission of women to the profession of law from his position as leader of the provincial opposition party. Edmund resided with his brother William at 504 Colborne Street. For biographical details on Meredith and his brothers see "Meredith, Edmund Allen"; "Meredith, Richard Martin"; "Meredith, William Ralph," in Henry Morgan, *Canadian Men and Women of the Time,* 2nd ed., 796-98; David J. Hughes and T.H. Purdom, *History of the Bar of the County of Middlesex* (London: Middlesex Historical Association, 1912), 33, 50;

Peter Oliver, *"Terror to Evil-Doers": Prisons and Punishments in Nineteenth-Century Ontario* (Toronto: University of Toronto Press, 1998), 285, 295-302. On Meredith's representation of Esther Arscott in 1884-85 see Constance Backhouse, *Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada* (Toronto: Women's Press and Osgoode Society, 1991), 244-59.

23 These conclusions are based on a review of archival records in selected counties and judicial districts in Nova Scotia, Ontario, and Saskatchewan between 1900 and 1950, described above in note 2. The Burton case is particularly interesting, in that the cross-examination covered such a wide range of issues. In other cases, defence counsel tended to pose a somewhat narrower range of questions. However, the themes and lines of argument disclosed in the Burton case are not unique but representative of scores of other cases.

24 Ibid.

25 See, for example, *Rex* v. *Bell*, [1930] 1 W.W.R. 433 (Alta. S.C.), which quashed a conviction because the trial judge had refused to allow an intensive cross-examination of the complainant on her previous life and conduct.

26 This, and the extracts that follow, are all drawn from the court reporter's typed transcript of the preliminary inquiry. In the interest of succinctness, in a very few instances I have made minor changes to the order of the questions for the purpose of combining related queries in a single passage.

27 *London Free Press,* 9 July 1907, indicated that Daniel Rodgers appeared in the "Monday morning assortment of drunks and disorderlies" that showed up at police court. The street railway officials did not pursue the charge, and Rodgers was allowed to go on suspended sentence.

28 Mrs. Burton refers later in her testimony to the fact that the five o'clock whistle had blown, as indicative of the time of an incident.

29 Sharon Anne Cook, *Through Sunshine and Shadow: The Woman's Christian Temperance Union, Evangelicalism, and Reform in Ontario, 1874-1930* (Montreal and Kingston: McGill-Queen's University Press, 1995) describes the strong appeal of temperance for middle-class women in Ontario, who had established 222 unions with 5,521 members by 1900. Cook notes that the Woman's Christian Temperance Union decried wives and mothers who imbibed alcohol, and blamed liquor for all manner of individual and social ills.

30 Canada, *Royal Commission on the Liquor Traffic* (Ottawa: Queen's Printer, 1895), 529, reporting a statement made by J.J. Kelso, the superintendent of the Children's Aid Society in Toronto, and included in Rev. Joseph McLeod's majority report.

31 See, for example, "Pitiable Case of a Ruined Fireside. A Young Woman of Thames Street Has Little Regard for Her Three Children," *London Advertiser,* 23 September 1909. See also Cheryl Krasnick Warsh, "Oh, Lord, Pour a Cordial in her Wounded Heart: The Drinking Woman in Victorian and Edwardian Canada," in Cheryl Krasnick Warsh, ed., *Drink in Canada: Historical Essays* (Montreal and Kingston: McGill-Queen's University Press, 1993), 70.

32 The Criminal Code, S.C. 1906, c.146, s.679 provided: "A justice holding a preliminary inquiry may in his discretion, (a) permit or refuse permission to the prosecutor, his counsel or attorney, to address him in support of the charge, either by way of opening or summing up the case, or by way of reply upon any evidence which may be produced by the person accused; (b) receive further evidence on the part of the prosecutor after hearing any evidence given on behalf of the accused." Section 682(1) provided: "When the accused is before a justice holding [a preliminary] inquiry, such justice shall take the evidence of the witnesses called on the part of the prosecution." Section 686(1) provided that after the prosecution witnesses were called, "the accused shall be asked if he wishes to call any witnesses."

33 *London Advertiser,* 10 October 1907.

34 *London Free Press,* 16 July 1907. Harry Wilkinson's signed statement, the one that alleged that Mrs. Burton had been drunk on the afternoon of July 8, also contained his assertion that she had come to him and said: "That man has money today," referring to Gray. When Wilkinson was asked about this portion of his signed statement during his testimony on the witness stand, he disavowed having said it, just as he had the claim about Mrs. Burton's inebriation.

35 See also Paul Craven, "Law and Ideology: The Toronto Police Court 1850-80," in David H. Flaherty, ed., *Essays in the History of Canadian Law,* vol. 2 (Toronto: Osgoode Society, 1983), 248, which describes the descriptive and irreverent newspaper reporting of the proceedings of the mid-nineteenth-century Toronto police court.

36 *London Free Press,* 16 July 1907.

37 *London Advertiser,* 15 July 1907.

38 The *London Advertiser,* 23 July 1907, erroneously reported that Constable Highstead had testified. There is no record of his appearing as a witness in the official transcript or in Police Magistrate Love's handwritten notes. This was not the only error; on 30 July 1907, the paper reported that Gray and Burton had appeared for sentence. Since the trial would not be held until 9 October 1907, this was clearly inaccurate.

39 J. Dixon Mann, *Forensic Medicine and Toxicology,* 2nd ed. (London: Charles Griffin, 1898), 113-14. Clark Bell, *Taylor's Manual of Medical Jurisprudence,* 12th ed. (New York: Lea Brothers, 1897), 693, noted that the detection of dead or motionless spermatozoa in stains could be made at long periods after emission, specifying cases in which this was accomplished from one week to eighteen years.

40 Thomas Romeyn Beck and John B. Beck, *Elements of Medical Jurisprudence,* vol. 1 (Philadelphia: J.B. Lippincott, 1860), 201-3.

41 Beck and Beck, *Elements of Medical Jurisprudence,* 212. See also Mann, *Forensic Medicine and Toxicology,* 107: "The circumstances under which the crime is usually committed are such as to render it easy for a designing person to make a charge of rape, and difficult for the accused to rebut the accusation. The crime is one so thoroughly and so universally detested that the victim, or supposed victim, obtains immediate sympathy. It is unfortunately a fact that accusations of rape are very frequently groundless, and in such cases the accused and innocent person suffers from this proneness on the part of the public to accept without question the statements of the prosecutrix. False accusations are not only made by women, and by girls of responsible age, but cases occur from time to time in which mere children are instructed by their mothers to accuse an individual selected for some special reason – extortion of money, or for the sake of revenge – and are not only taught what tale to tell, but are manipulated in such a way as to produce physical indications resembling those caused by criminal assaults, so as to bear out their statements."

42 Bell, *Taylor's Manual of Medical Jurisprudence,* 670.

43 Fred J. Smith, *Taylor's Principles and Practice of Medical Jurisprudence* (London: Churchill, 1905), 123-26.

44 Beck and Beck, *Elements of Medical Jurisprudence,* 197.

45 Smith, *Taylor's Principles and Practice,* 139.

46 Mann, *Forensic Medicine and Toxicology,* 102.

47 *London Free Press,* 24 July 1907.

48 Ibid.

49 The Criminal Code, S.C. 1906, c.146, s.687 provided: "When all the witnesses on the part of the prosecution and the accused have been heard the justice shall, if upon the whole of the evidence he is of opinion that no sufficient case is made out to put the accused upon his trial, discharge him." Section 690 provided: "If a justice holding a preliminary inquiry thinks that the evidence is sufficient to put the accused on his trial, he shall commit him for trial." The English jurisprudence articulated what appears to have been a somewhat more fulsome standard. Sir James Fitzjames Stephen, *A History of the Criminal Law of England* (London: Macmillan and Co., 1883) vol. 1, noted at 220 that the justices were to commit an accused for trial if they thought that the evidence raised "a strong or probable presumption of his guilt." See also Seymour F. Harris, *Harris's Principles of the Criminal Law* (London: Stevens and Haynes, 1901), 9th ed., 326: "If, when all the evidence against the accused has been heard, the magistrate does not think that it is sufficient to put the accused on his trial for an indictable offence, he is forthwith discharged. But if he thinks otherwise, or the evidence raises a strong or probable presumption against the accused, he commits him for trial." Douglas Hay, "Controlling the English Prosecutor," *Osgoode Hall Law Journal* 21 (1983): 165 discusses at 169 the low frequency with which nineteenth-century English magistrates dismissed charges at preliminary hearings.