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Floyd F. Miles

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FABULARIS QUI ADVOCATO

FLOYD F. MILES

of the Denver Bar

Of the many colorful characters who graced the Colorado Bar in the first quarter of this century, perhaps none was more fabulous than John A. Deweese. A short, chubby, roly-poly man with a keen sense of humor, a booming voice, a fanatic devotion to the cause of his clients, and, though perhaps it did not occur to him, a master psychologist. He came to the Colorado bar in 1882 and forty years later was still going strong. The stories told of him are legion, some of them believable, some wholly incredible. In the early twenties he headed the firm of Deweese & McPhail in the E. & C. Building. The firm was later augmented by the appearance of Buford O. Wheeler and became Deweese, McPhail & Wheeler. After McPhail's death it was known as Deweese & Wheeler. Our contemporary, B. O. Wheeler is presently the sole remaining evidence of the firm.

Deweese's chief interest and activity was in the field of criminal law where he excelled in cross-examination and an ability to try the district attorney and, if need be, the court. It is said that on one occasion, while defending a client accused of a liquor violation in the old West Side Court, he was twitted by the district attorney as being against the enforcement of all liquor laws, and specifically as being an ardent "anti-prohibitionist." This he indignantly denied, retorting that while he would not lay claim to being a patron or sponsor of the W. C. T. U., he would "much rather have prohibition than no liquor at all."

Deweese and McPhail, so it is said, were once defending a client in the criminal court. The case went to the jury about 3 o'clock in the afternoon and as Deweese was obliged to catch a 4 o'clock train for Kansas City on urgent business, and as the outcome of the trial was doubtful and the client an important one, he left in structions with McPhail to wire him on the train as soon as the jury should return a verdict, and hurriedly left for the station. To the surprise of everyone, the jury returned a verdict of "not guilty." McPhail was delighted and immediately telegraphed Deweese, care of the conductor on the train, "Justice has prevailed." Came back an immediate reply, "Take an appeal."

One of the stories told of him concerns the defense of a poor downtrodden, debt ridden tenant farmer of Adams County, charged with burglary, larceny, etc., etc. The complaining witness was a prosperous farmer who owned and operated a large farm near that occupied by the defendant. The prosecuting witness testified that on a cool, clear night in late summer, he was aroused from his slumbers by the barking of dogs and the neighing and snorting of horses. Alarmed at the commotion, he slipped his feet in carpet slippers, snatched a revolver from under his

pillow, and in night cap and gown, set out to investigate. Coming to the granary, hard by the barn, he discovered the defendant with a team and farm wagon backed up to the open door of the granary. In the wagon were seven sacks of wheat; on the floor of the granary, just inside the door, were three sacks of the same grain. The defendant was standing near the tail gate of the wagon at the instant the witness came upon him and ordered him to put up his hands and "march." The sheriff was called and the defendant taken to Brighton and lodged in jail. Throughout this ordeal the defendant had spoken no word, other than incoherent mumblings, which neither the witness nor sheriff could make sense of, his conduct indicating that he was overcome with fright, remorse or disappointment. The team and wagon were identified as the property of defendant and the sacks, which were filled with grain, as the property of the complaining witness.

On cross-examination Dewese reviewed the facts as related above and then asked the complaining witness:

Q. Now Mr. Spivins you have a foreman or head man on your farm by the name of Oscar Ogat, have you not? A. I did have but he ain't with me anymore.

Q. No? Where is he? A. I don't know. He left about a year ago and I ain't seen him since.

Q. Where does he live? A. I don't know that neither.

Q. Did he quit your employ or did you fire him? A. Oh, he quit, but where he is now, I don't know. I ain't seen him since.

Q. Do you know anything about his family, or how he could be located? A. No, I don't know nothing about them.

Q. You don't know very much, do you Mr. Spivins? A. Well maybe I don't, but by George what I do know I know as good as anybody.

Q. Now during the time Ogat worked for you, he had full charge of running the farm didn't he? A. He sure did, he was a good man.

Q. And you trusted him and relied on him completely, didn't you? A. I sure did.

After his motion for a directed verdict was overruled, the defendant took the witness stand. The jury was told of his numerous family; his struggle through the years of poverty and perennial hard luck in trying to grub a living from the soil. He testified that everything the complaining witness said was true; that he was present at the time and place stated; that it was his team and wagon; that there were seven sacks of wheat in the wagon and three on the floor of the granary just inside the door, exactly as the witness had testified.

Q. Now Bill, you just tell the court and jury in your own words what happened and why you were at Mr.

Spivin's farm on that night. A. Well sir, it is about two years ago now, in the early fall it was, I had been having a pretty tough time and I had no money and I had no seed and I had no credit and it looked like I wouldn't put in a crop. Me and Oscar Ogat was pretty good friends, I had helped him out a time or two when he needed help, and he had always been friendly to me. I went to Oscar and told him what I was up against and asked him if he thought the old man, that is Mr. Spivins, would loan me enough seed to put in a crop of wheat, and he said well now Bill you know how the old man is, he wouldn't give you nothing if he was suffering for it, and it ain't no use to ask him, but I'll tell what you do. The old man and the family is going into Brighton tonight to the picture show, so you come over about 9 o'clock and I'll let you have about ten sacks of seed wheat. You put in your crop this fall and next summer when you harvest it, you pick out ten sacks of your best wheat and some night when the old man is away you bring it back and put it in the granary and the old man will never know the difference, he won't know a thing about it.

Q. And just what were you doing that night at Mr. Spivin's farm? A. I thought the old man was away and I was just bringing back the wheat I had borrowed.

It is said that after two days of futile wrangling the jury was unable to agree and was discharged. The case was not tried again.

Author's Note. The facts and circumstances above related, while not guaranteed, were received from sources believed to be unreliable. Moreover, the names have been changed to protect the innocent.

HEIRS FOUND, ESTATE MISSING!

In 1948 a Denver attorney wrote to one John McConville of Lurgan, County Armagh, Northern Ireland, in an effort to locate the heirs of another John McConville who died in 1880 possessed of mining claims at Leadville, Colorado. Heirs of the late Mr. McConville have now been located but the name of the Denver lawyer who was seeking them is not known and the estate cannot be located. Any lawyer having information concerning this matter is urged to contact Aneurin Rees and Davies, Solicitors, 60 Castle Street, Liverpool, England.