

January 1952

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Recommended Citation

Floyd F. Miles, Double Trouble or Never Sue a Lawyer, 29 Dicta 271 (1952).

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Double Trouble or Never Sue a Lawyer

DOUBLE TROUBLE OR NEVER SUE A LAWYER

FLOYD F. MILES

of the Denver Bar and Supreme Court Librarian

Aaron H. Palmer, Esquire, was a "respectable citizen," counsellor at law and master in chancery. Francis Mezzara was an "eminent artist" from Rome. Mutual friends introduced them. This was a mistake.

The winter of 1816-1817 in New York was cold and dreary. Mezzara was in need of meat and raiment. Palmer, Esquire, (like some lawyers of this day) was fat of purse and stuffed with vanity. Having viewed himself in a mirror with satisfaction, he deemed it fitting and proper that the image he there beheld should be preserved on canvas for future generations to look upon in awe and wonder, he therefore commissioned Mezzara to paint his portrait. When the work was completed, Palmer, probably influenced by convivial friends, who pronounced the picture more of a caricature than a portrait, declined to accept it, and, after hot words had passed, refused to pay for it. Mezzara, wounded in his pride, and considering the rejection a base and unjustified reflection on his skill and talent, vowed he would have satisfaction. He then forged the first link in his chain of disaster. He brought suit against Palmer for the agreed fee.

Upon trial, the jury after comparing the original with the portrait, concluded that Palmer was justified in refusing to accept it and returned a verdict for the defendant. Judgment for costs was entered against the plaintiff. Palmer was not one to forget small sums owing him and in due time procured an execution and placed it in the hands of the sheriff, with instruction to levy upon any property of Mezzara to be found in the county. When the sheriff appeared at his studio and demanded payment, Mezzara denied having or owning any property whatever, except the rejected portrait, which he suggested the sheriff might levy upon if it pleased his fancy. The sheriff, being an honest and conscientious public officer, it being before the days of corruption in New York City, and seeing nothing else of a tangible nature about, decided to do so, whereupon a friend of Mezzara came forward and gave bond for the production of the picture at the execution sale.

On the morning of the sale the following advertisement appeared in the "Republican Chronicle" a nonpartisan newspaper published in New York at the time:

"CURIOUS SHERIFF'S SALE. We have been requested to announce that there will be sold, this afternoon at public vendue, at No. 133 Water Street, a PICTURE intended for the likeness of a gentleman in this city, who ordered it painted. But as the gentleman disclaimed it, it remained the property of the painter, and is now seized in execution. In order to enhance its value, the painter, who is an eminent artist from Rome, has decorated it with a pair of long ears, such as are usually worn by a certain stupid animal. The goods can be inspected previous to the sale."

The sale attracted a large crowd and there was considerable

giggling, as well as some open guffawing. The crowd became so great that the auctioneer had to remove the picture to a back room. Mr. Palmer, hanging about the outskirts of the throng and observing the obvious enjoyment of those present, decided that the best thing to do was bid the picture in and destroy it. To this end he authorized a clerk to bid in his name up to \$30.00. It wasn't enough. The picture went to another bidder for \$40.00. Angered and humiliated by the exhibition of himself in public adorned with ass's ears, Palmer repaired to the state's attorney where he swore out a warrant for criminal libel against Mezzara.

On August 4, 1817 the criminal case came on for trial before the Court of General Sessions and a jury. Impassioned addresses were made to the jury by counsel on both sides. James W. Wilkin, one of the most eloquent of counsel for the state inquired: "Where is this conduct to stop? Should you acquit him, he still continues to hold up this respectable citizen, this counsellor and master in chancery, to public contempt and ridicule. Should you find him guilty, I am not certain but that, to revenge himself, he will draw your pictures with his ass's ears! And I fear their honors on the bench will share the same fate!"

After considering the matter from eleven o'clock in the evening till nine o'clock the next morning, the jury returned a verdict of guilty. The Court sentenced the prisoner to pay a fine of \$100.00.¹

There is no evidence that Mezzara was able to pay his fine, and it may be assumed that he took up quarters in the debtor's goal. There in the quiet comfort of his dungeon, away from the distractions and bustle of city life, he would have leisure (at the expense of the taxpayers) to reflect upon the folly of suing a lawyer.

A PENTECOSTAL DECREE*

It is hereby ORDERED, ADJUDGED and DECREED that L. J. Turner died intestate on the 2nd day of February, 1945, at Harrisburg, Pennsylvania, leaving surviving her as her only heirs at law the persons whose names and relationship to said deceased are as follows:

F. E. Turner, son of Deceased,
3131 East Riverside Drive,
Amarillo, Texas

B. E. Turner, daughter of Deceased,
185 Mountain Drive,
Midland, Texas

and that thereupon the said decedent descended to her heirs at law and is now vested in them, subject to administration, and that said heirs are the only heirs at law of said L. J. Turner, Deceased.

* Contributed by Roscoe Walker, Jr., who uncovered the decree in an abstract examination of certain property in Utah.

¹ People v. Mezzara, 1 Am. St. Tr. 60 (N.Y. 1817).