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Judicial Vilification of a Blameless Juror

BY FRANK SWANCARA*

There are legal remedies against the private malefactor who commits an injury by libel or slander, but when judicial fangs make poisonous thrusts the victim has no relief and a protest might be contempt. This is "sound public policy."¹ A judge was safe in saying to a lady witness: ". . . the place you are operating down there is such a dirty, low-down, and disorderly place . . ."²

All this is freshman knowledge, but who would expect an unprovoked judicial aspersion against the character of one juror who had acted exactly as his eleven associates?

Mr. Neild was a venireman in a homicide case, and was sworn in as a juror without objection or challenge. He was well known, previously having "been a candidate for county trustee, a circumstance well known to elicit and give publicity to every flaw and defect of character."³ He voted "guilty." So did all his associates in the box. The appellate court said the "evidence . . . establishes a clear case of murder," and one judge said it was "a case of clear and aggravated murder."⁴

The motion for new trial was "upon the ground that (Mr. Neild) one of the traverse jury was an atheist." This juror, because he served as such, was put upon trial. The defenders of the killer, for the killer's sake, became the prosecutors of the juror, and depended on the testimony of the Reverend SIRR. He testified that once "for the good of Neild" he talked with him, and that ". . . Neild did not in terms deny that there was a God, but from what he said, he (Rev. SIRR) took up the belief that he (Neild) was an atheist. . . ."⁵ The juror was defended by the witness Mason, who "said that he would have confidence in his honesty and integrity."⁶

On review, Judge Peck held that "the evidence is full upon the point" that Mr. Neild was "an atheist," and said: "By our constitution such a person could not hold a civil office; . . . Why, it may be asked. It is answered, because he cannot take an oath—he cannot be trusted."

If in Russia the tables were turned, and the "constitution" were to disqualify *non*-atheists to be witnesses or jurors, on the pretext that

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¹Note, L.R.A. 1915E 1051.

²Young v. Moore, 29 Ga. App. 73, 113 S. E. 701 (1922).

³McClure v. State, 1 Yerger (Tenn.) 206, 213 (1829).

⁴*Ibid.* p. 220.

⁵*Ibid.* p. 212.

⁶*Ibid.* p. 215.

they "cannot be trusted," it is easy to guess what would be said about it. The Tennessee constitution, to which Judge Peck referred, has this clause:

"No person who denies the being of a God, or a *future* state of rewards and *punishments*, shall hold any office in the civil department of this state."

It would not be difficult to make up a list of eminent men who could not be Tennessee jurors, if residing in that state, because of private denial of, or non-belief in, "a future state of punishments."

Judge Peck said that "the constitution has pointed her artillery against" atheists. True, but the "artillery" aims against non-believers in "a future state of punishments" also. The judge in question exhibited no regret for his judicial conclusions. Evidently he rejoiced, for like Brutus, not satisfied with one stab, he added:

"This person called as a juror had no moral capacity to be bound by the obligation of an oath. . . . *He was an evil genius*, in a sacred place."

Larimer County Bar Meets

The Larimer County Bar Association met at Fort Collins, March 3 to hold its annual meeting and elect officers. Winton M. Ault of Fort Collins was selected president; Hatfield Chilson of Loveland, vice-president, and Jerome Smith of Fort Collins, secretary-treasurer. The first member of the Larimer County association to be called to the army was Robert McCreary of Loveland, who was presented by the association with an engraved rabbit's foot.

Tough Break

Among the defendants charged with violating the Volstead act were a husband and wife, both Italians. The wife insisted that she alone was guilty and that her husband, who had suffered other convictions of like nature, was innocent. The husband pleaded not guilty, and since the evidence against the husband was very weak, Judge Symes discharged the husband, and sentenced the wife to thirty days in jail.

As soon as the court adjourned, the husband was out in the hall cursing Judge Symes. One of the district attorneys went over to the man and told him that he had better cease, and moreover the fellow should feel lucky that the judge had not given his wife a stiffer sentence.

"That's just the trouble!" complained the man bitterly. "I had it all fixed up with my sweetie to come up to the house while my wife was in jail. And that . . . judge only sentenced her to thirty days!"