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Judge Gerry's Sentence of Alfred Packer

SUBMITTED BY ALBERT L. MOSES*

There has been a great deal said about the death sentence passed upon Packer by Judge Gerry, and he has been credited with telling the prisoner he would sentence him to hell, but the statutes forbade it. This is wrong and does the judge a great injustice. That is part of a burlesque on the real sentence, gotten off by a vagabond miner, and were it not for the gruesomeness of the thing it would, indeed, be laughable. Those who read the sentence will readily see that Judge Gerry is a man of fine, sympathetic, humane feeling, and was weighed down by the responsibility which fell upon him.

"It becomes my duty, as the judge of this court, to enforce the verdict of the jury, rendered in your case, and impose upon you the judgment which the law fixes as the punishment of the crime you have committed. It is a solemn, painful duty to perform. I would to God the cup might pass from me. You have had a fair and impartial trial. You have been faithfully and earnestly defended by able counsel. The presiding judge of this court, upon his oath and his conscience, has labored to be honest and impartial in the trial of your case, and in all doubtful questions you have had the benefit of the doubt.

"A jury of twelve honest citizens of the county have sat in judgment on your case and upon their oaths they find you guilty of wilful and premeditated murder—a murder revolting in all its details.

"In 1874 you, in company with five companions, passed through this beautiful mountain valley where stands the town of Lake City.

"At that time the hand of man had not marred the beauties of nature. The picture was fresh from the hands of the Great Artist who created it. You and your companions camped at the base of a grand old mountain, in sight of the place you now stand, on the banks of a stream as pure and beautiful as was ever traced by the finger of God upon the

*Of the Alamosa bar.

This article submitted by Mr. Moses is intended to supplement *The Legal Experiences of Mr. Alfred Packer*, by Joseph G. Hodges, appearing on page 149 of the June, 1942, issue of DICTA. Mr. Moses wrote that he had received this article a number of years ago from a source which he felt to be reliable. The introductory paragraph, according to Mr. Moses, was written by one closely connected with the case.

Richard Peete, in his column "Anecdotes of the Jealous Mistress," in the June 13, 1942, issue of THE ROCKY MOUNTAIN HERALD, says the burlesqued sentence was an invention of a Larry Dolan, a saloon keeper in Lake City. The actual sentence, according to Mr. Peete, was reported in the SILVER WORLD at Lake City on April 14, 1883. That sentence, as contained in Mr. Peete's column, is substantially the same as submitted by Mr. Moses.

The record filed in the Supreme Court appears not to include the judge's remarks when sentence was pronounced, but the formal sentence included in the record coincides with the last paragraph of the article submitted by Mr. Moses.—ED.

bosom of the earth. Your every surrounding was calculated to impress your heart and nature the omnipotence of Deity and the helplessness of your own feeble life. In this goodly favored spot you conceived your murderous designs.

"You and your victims had had a weary march, and when the shadows of the mountain fell upon your little party and night drew her sable curtain around you, your unsuspecting victims lay down on the ground and were soon lost in the sleep of the weary; and when thus sweetly unconscious of danger from any quarter, and particularly from you, their trusted companion, you cruelly and brutally slew them all. Whether your murderous hand was guided by the misty light of the moon, or the flickering blaze of the campfire, you only can tell. No eye saw the bloody deed performed; no ear save your own caught the groans of your dying victims. You then and there robbed the living of life and then robbed the dead of the reward of honest toil which they had accumulated; at least, so say the jury.

"To other sickening details of your crime I will not refer. Silence is kindness. I do not say things to harrow your soul, for I know you have drunk the cup of bitterness to its very dregs, and wherever you have gone the sting of your conscience and the goadings of remorse have been an avenging Nemesis which have followed your every turn in life and painted afresh for your contemplation the picture of the past.

"I say these things to impress upon your mind the awful solemnity of your situation and the impending doom which you cannot avert. *'Be not deceived, God is not mocked, for whatsoever a man soweth, that shall he also reap.'* You, Alfred Packard, sowed the wind; you must now reap the whirlwind.

"Society cannot forgive you for the crime you have committed. It enforces the old Mosaic law of a life for a life, and your life must be taken as the penalty of your crime. I am but the instrument of society to impose the punishment which the law provides. While society cannot forgive, it will forget. As the days come and go and the years of our pilgrimage roll by, the memory of you and your crime will fade from the minds of men.

"With God it is different. He will not forget, but will forgive. He pardoned the dying thief on the cross. He is the same God today as then—a God of love and of mercy, of long suffering and kind forbearance; a God who tempers the wind to the shorn lamb and promises rest to all the weary and heartbroken children of men; and it is to this God I commend you.

"Close your ears to the blandishments of hope. Listen not to the flattering promises of life, but prepare for the dread certainty of death. Prepare to meet thy God; prepare to meet the spirits of thy murdered

victims; prepare to meet thy aged father and mother, of whom you have spoken and who still love you as their dear boy.

"For nine long years you have been a wanderer upon the face of the earth, bowed and broken in spirit; no home, no loves, no ties to bind you to earth. You have been, indeed, a poor, pitiable waif of humanity. I hope and pray that in the spirit land to which you are so fast and surely drifting, you will find that peace and rest for your weary spirit which this world cannot give.

"Alfred Packer, the judgment of this court is that you be removed from hence to the jail of Hinsdale County and there confined until the 19th day of May, A. D. 1883, and that on said 19th day of May, A. D. 1883, you be taken from thence by the sheriff of Hinsdale County to a place of execution prepared for this purpose, at some point within the corporate limits of the town of Lake City, in the said county of Hinsdale, and between the hours of 10 A. M. and 3 P. M. of said day, you, then and there, by said sheriff, be hung by the neck until you are dead, dead, dead, and may God have mercy upon your soul."

Poor Provider

We are indebted to Fred W. Harding for the following letter taken from the files of one of his cases:

Dear Susie Ann:

Salt LAKE. CITY. UTAH.

I got the divorce papers you served on. If it is a divorce you want I am more then glad to give you one but you havent said any thing about kids I wish you would write to me or call me and let me know what you like to do Susie I dont want any truble I am welling to do the right thing. Susie you stated that I hevent provided to you a sonney but Susie you know its been hard for me and Sissie leve alone trying to send you some money sweethart. You can have your freedom but no money If you want me I will try my best when ever I can Yours Joe

Hopping to hear from you veryvery soon I am sending you a picture from Sissie Please call me after ten turty at nite Phone No. #----- so-----st.

OPA Uses Duke Quarterly

Three thousand copies of the current issue of the Duke Law School quarterly, *Law and Contemporary Problems*, which is devoted to a symposium on the Emergency Price Control Act, have been ordered by the Office of Price Administration. The symposium contains ten articles on the legal and economic problems of price control, Price Administrator Leon Henderson, General Counsel David Ginsburg, and other OPA officials being included among the contributors. It is thought that the symposium will be used in the training of OPA's rapidly expanding staff.

The Clarks — An American Phenomenon

In those moments when an editor has nothing to do, we were asked to review *The Clarks—An American Phenomenon*, by William D. Mangam (Silver Bow Press, New York, 1941). Since we felt it was in the line of duty, we agreed to read the book, and settled down after dinner in the favorite easy chair with a glass of Scotch and soda handy. Shortly before midnight, we had completed the book—and the Scotch and soda.

Here is a cruelly fascinating biography told with utter calmness and with utter detachment. It is not the story of one man, but of a family who took millions of dollars out of Montana and returned to it nothing. It is a story of cunning and avarice of men and women who had no concept of the responsibility of wealth, but who dissipated fortunes in riotous living and social climbing or who hoarded fortunes to feel the power of wealth. It is also the story of the fight between the Clark interests and those of Anaconda Copper Company.

Some reviewers have characterized this book as "social biography." We hesitate to use the phrase for it conjures the picture of a bespectacled and meddlesome social service worker. In the sense that the book portrays social conditions by means of biography—and incidentally gives unconsciously one of the best arguments for socialism—the phrase is an apt one.

However, it is doubtful if the author had either concept in mind. He was general agent for one of the Clark brothers. He had a story to tell and told it superbly and without any editorializing or moralizing.

It is perhaps too bad that more time was not devoted to Clark's early adventures in Colorado, Utah and Montana. We have only a glimpse of those days in the book.

In any event, we recommend the book to those who like biography, western Americana or sociology, or to those who like good reading.

NOTICE

There is missing from the Jefferson County Law Library, Golden, Colorado, 35 L. R. A. N. S. Will the attorneys who have taken books from this library kindly check for this volume, and return it to the library at the earliest convenience.