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THE LAW'S DELAY

By WILLIAM B. KING, of the Denver Bar

In the address of Judge Phillips before the Denver Bar Association, printed in January *DICTA*, attention is called to a provision of the original Federal Judiciary Act whereunder writs of error might be brought at any time within five years from the rendering of judgment. The existence of such a provision gives rise to the suspicion that in former times there may occasionally have been some slight lack of celerity in the progress of litigation.

The most protracted legal controversy of which this writer has encountered an authentic record lasted forty-eight years. It began right after the Civil War, and ended after the beginning of the World War. It originally bore the quaint, if meaningful, appellation: "United States against Fifty Barrels of Whiskey." The defendant was lawfully at large on bail for nearly forty years, receiving intermittent judicial consideration from the United States District Court in Louisiana, the old Circuit Court, and the Supreme Court. As an encore, the subject matter (I mean the controversy, not the defendant *in propria persona*) came before the Circuit Court of Appeals (created twenty-four years after the *casus belli* arose) and before the Supreme Court a second time.

The genesis of this unseemly strife between two unevenly matched antagonists, above named, was the commencement by the United States of a forfeiture proceeding *in rem* in the United States District Court in 1867. One Gaspard Theurer came to defendant's aid and procured its release into his cherishing custody by giving a bond therefor. Subsequent chronology is:

April 4, 1868. Trial in District Court; judgment of condemnation and forfeiture.

April 9, 1868. The defendant was saved by the loyalty of its bondsman, who took an appeal to the Circuit Court.

May 2, 1870. Appeal dismissed by the Circuit Court.

May 18, 1870. Although Gaspard Theurer's sympathy for the res defendant had spiritualized sometime since, its fair character was still not without a champion, and the case ascended to the Supreme Court on a writ of error. There it

slumbered for thirty-five years, apparently at peace with the world, the suitors and the respective counsel. There is no record as to the behavior of the *res defendant* during this period, or whether it violated its recognizance by departing the jurisdiction. It must have become in some way opprobrious, for nobody took the trouble to docket the case.

December 4, 1905. Writ of error dismissed by the Supreme Court. 199 U. S. 615.

February 3, 1906. Mandate entered in the District Court, "when, and when only," according to judicial pronouncement, "the original judgment became final and executory." This devoutly to be wished for consummation having been achieved at long last, the judgment of condemnation apparently was not executed—whether out of respect for the age of the *res defendant* does not appear. After a mature consideration of some five years, the government seemingly elected to proceed *in personam*.

August 5, 1911. Ancillary suit brought by the United States to enforce the judgment "against the heirs of his (Gaspard Theurer's) heirs and their heirs, even to the fourth generation." The language is that of the trial judge. Judgment for defendants.

April 9, 1914. Judgment affirmed by the Circuit Court of Appeals. 213 Fed. 964. A dissenting opinion held that the case ought to be remanded for further proceedings.

January 11, 1915. Further proceedings obviated by denial of petition for certiorari. 235 U. S. 706. The Supreme Court no doubt felt that due deliberation had been accorded the controversy, and that no unseemly haste had prejudiced the substantial rights of any of the litigants.

Query: Who got the whiskey?

DENVER DIVORCE RECORDS

Possibly a few sour notes or the "rift in the lute" was responsible for the divorce action of *Piccolo vs. Piccolo*. It looks as though John was too much of an ambler and Henry was a confirmed joker, resulting in *Ambler vs. Ambler* and *Wagster vs. Wagster*, and we'll have to look into this one, because hubby didn't ask for a divorce from wife when the case of *Hubby vs. Hubby* was filed.