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\$700,000.00 FOR COMPANIONSHIP

By OMAR E. GARWOOD, *of the Denver Bar*

COLONEL LANKERSHIM was an old-time and wealthy resident of Los Angeles. After his death one Irene Herbert, alias Mrs. Edres Herbert, made claim against the estate for \$500,000.00 and interest, basing her case upon an extraordinary piece of paper resembling a draft or check, a photographic print of which appears on page 224 of 71 Pacific 2nd. It bore the Colonel's signature, and apparently called for the payment to her of this extraordinary sum of money one month after his death. Payment being refused, the claimant brought suit, and in her quest for a consideration she set up services as companion, assisting in dressing and undressing the old gentleman, consoling and nursing him, and protecting him from designing persons.

A Los Angeles jury awarded her the full amount, which with interest mounted up to \$700,000.00, and when the District Court of Appeal affirmed the judgment, it appeared that Irene's \$700,000.00 was surely in the bag. The Supreme Court of California, however, chose to view the transaction with most scrutinizing jealousy and arrived at the conclusion that it was against a designing Irene that the Colonel most needed protection; in a 37-page opinion it reversed the case under such terms that it will never be retried, and all hope of compensation for these questionable services has evaporated.

The case is of interest to Denver lawyers who remember Edward L. Auslender, a member of the Colorado bar, who moved to Los Angeles in 1930 and became one of the attorneys for the Lankershim Estate, and of special interest is the spectacular testimony of scientists on the subject of inks, dye and ink absorptions, as well as handwriting experts such as Dr. Robert S. Osborne of New York, James Clark Sellers of the University of Southern California, Dr. Hendrikson of the Huntington Library, and Professor Briton of the Depart-

ment of Analytical Chemistry of the University of Southern California. They gave very convincing opinions to the effect that the small checks or draft written by none other than the venturesome Irene herself, was materially altered after the Colonel's signature had been executed; the spreading of ink at the creases disclosed that important words had been written in after the instrument had been folded, and the experts were able to show clear instances where ink on the creases had penetrated through to the back of the instrument. Blotting of words and figures also played an important part in their testimony, and convincingly led to the conclusion that the paper had originally been written for \$500.00, and subsequently raised to \$500,000.

As elsewhere, the appellate courts of California are reluctant to interfere with a judgment entered by a fact-finding body where there is a substantial conflict in the evidence, but in this instance the court followed the rule that a mere conflict of words is not sufficient and as respects appellate review, the contrary evidence must be of a substantial character such as reasonably supports the judgment; that while jurors are the sole judges of facts, the question of there being substantial evidence to support a plaintiff's case is one of law for the court, and in determining such question the credulity of the courts is not to be deemed commensurate with the facility or vehemence with which a witness swears.

The Estate set up numerous defenses, among which were that material alterations were made after execution, that fraud and deceit were practiced by a comely woman upon an old man in failing health at a time when waning faculties had rendered him unable to resist the wiles and importunities of designing persons, tampering and raising the figures in a written instrument, lack of consideration and grossly inadequate consideration. The instrument discloses that the fifth cipher differs quite pronouncedly from the other ciphers in size, pen pressure, formation and color intensity, indicating that the

figures were originally \$500.00, and were raised by adding one new cipher and making the period resemble a comma so as to read \$500,000. The last cipher shows that it was blotted immediately after being written, while the other ciphers show no blotting, indicating that the last cipher was added some time after the original figures were written.

Mrs. Herbert had plenty of friends to testify to numerous conversations with the Colonel during his lifetime, and one of them who claimed to have been present when the instrument was signed and delivered, performed the miraculous economic feat on the witness stand of reproducing word for word an instrument most peculiar in its phraseology which she had heard read but once, and which had not been seen or discussed by her or anyone else in her hearing for the full period of five years. This was too much for the Supreme Court of California; it could not put trust in such remarkable feats of memory.

ENDORSING NAMES OF WITNESSES ON INFORMATIONS

By FRANK SWANCARA, of the Denver Bar

MEMBERS of committees on Criminal Procedure have laboriously searched for defects in the administration of criminal justice in order to have some reform to recommend or "report" to make to a bar association. Yet there is one obvious imperfection in our code that seems to have been ignored. It is the requirement that names of witnesses be endorsed on the information or indictment. The necessity for that practice hampers and burdens the prosecution without giving any substantial benefit to an innocent accused.

If the accused is guilty, he does not deserve the statutory aid or favor. If he is innocent, he derives little, if any, help