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J. W. Kelley

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## THE FORGOTTEN LITIGANT

By J. W. KELLEY of the Denver Bar

THE author of "Ten Thousand a Year" found the material for that great legal novel while browsing among the reports of English law cases. They are mistaken who say law reports contain only dry facts. Between their covers are records filled with romantic interest. In quiet court rooms are won victories as inspiring as feats amid the shock of arms. Tales that affect the imagination, test the credulity and fire the heart are hidden in their dust. And over all is the glory of benign Justice.

So much for a statement of what is expected to be proved.

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Yick Wo was a person of pure Mongolian strain conducting a hand laundry in San Francisco. From the shack in which he plied his humble calling he looked out on the roaring metropolis greatly content with his lot. Like Emerson's artificer, to whose door a pathway was worn, Yick Wo found he profits most who attends strictly to business. Then avarice raised its hideous head. White laundrymen got the city council of San Francisco to pass an ordinance denying laundries a license if not conducted in brick buildings. This was in 1885 and only one-tenth of the buildings in San Francisco were of brick. Yick Wo was greatly puzzled by the act making suds brewed in a frame shack unlawful. His perplexity increased when Sheriff Hopkins locked him in jail for unlawful washing. But in Yick Wo's veins ran a trace of the *sangre azul* of his persevering Celestial forebears. The fine was only ten dollars but he, like John Hampden, refused to bow to the yoke. With an exuberance of hope, which is the chief ingredient of the ideal litigant, he obtained a writ of habeas corpus from the California Federal Court on the ground that the Fourteenth Amendment had been violated. His case finally reached the Supreme Court of the United States, where Mr. Justice Matthews, who loved an underdog

of a persistent fighting breed, wrote the opinion in *Yick Wo vs. Hopkins*, 118 U. S. 365, opening the door of his prison. Then the victorious Mongolian knight errant went back to his tubs.

This spectacle of a poor Chinaman prevailing in the highest tribunal of an alien country, whose proceedings he could not read, should inspire all who lead forlorn hopes in court. Lawyers who read Judge Matthews' opinion rejoice that Yick Wo stood on his rights. David has always had a large following in his contests with Goliath. Burke's Peerage would scorn to accord a line to Yick Wo, but Shephard's Citorator gives him nearly a page.

Let us cite another case:

In the spring of 1861 Robert E. Lee accepted the command of the armies of the Confederate States of America. His home was at Arlington, Virginia, just across the Potomac from Washington. The title to the eleven hundred acre estate came from George Washington, the first president, to General Lee's wife, for life, with remainder over to his son, George Washington Custis Lee. In 1862 the Federal Government passed an act providing for "the collection of direct taxes in the insurrectionary districts within the United States." The Lee estate at Arlington was assessed and sold for a tax of less than one hundred dollars.

The taxation act cunningly provided that payment must be by the owners in person. As George Washington Custis Lee wore a Confederate general's gray uniform at the time of the sale he prudently sent the money by messenger, which was refused. For years the right of possession to these broad acres was subject to the ancient wager of battle. General Robert E. Lee with an army at his back considered his home at Arlington his chief objective. The estate was an army camp during the war, the ancestral mansion being General McClellan's headquarters. The title of Mrs. Lee and her son was considered to have been thoroughly stamped out under the hoofs of cavalry horses.

The tumult of war having passed, General George

Washington Custis Lee, then owner of the title, began a suit in the Federal District Court of eastern Virginia, to recover possession of Arlington. The Attorney General of the United States filed a suggestion that Arlington had been taken by the United States for taxes, had been occupied by its troops as an army camp and was now a national cemetery; that Kaufman, the defendant in ejectment, was merely the custodian for the government; that General Lee was actually suing the United States and it, in its sovereign capacity, could not be sued. Upon all the issues General Lee won both in the Federal Circuit Court and the Supreme Court of the United States to which the case was appealed. *United States vs. Lee*, 106 U. S. 196.

Justice is mightier than the sword. What General Robert E. Lee and an army with banners had been unable to do in four years of war, his son easily accomplished in the dull routine of his day in court.\*

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It is a far cry from the hovel in San Francisco's Chinatown to aristocratic Arlington; from the mongrel coolie of the Orient to the cerulean blood of the Old Dominion. Yet the humble laundryman and the knightly general both walked through the same door. There is no servant's entrance at the Temple of Justice. The blind Goddess is no respecter of persons or their degree. Claims of Christian and Confucian each have the same specific gravity in her scales. Fascinating plots, vivid contrasts and fierce human passions pass in review but do not disturb her calm poise.

The great American novel might have been written long ago had writers of historical fiction examined more closely the rich treasures of Corpus Juris, L. R. A. and the pre-digested product of the West Publishing Company. Haply some great singer may yet arise to hymn the saga of the forgotten litigant.

\*Congress appropriated \$150,000 March 3, 1886, to purchase Arlington from George Washington Custis Lee, whose deed therefor is dated the 31st of the same month.