

EXPERT TESTIMONY RULED OUT Judges Are Not Allowed to Examine Lawyers as to the Law

DEFENSE RESTS CASE Judge Montgomery's Lively Testimony PUTS BLAME ON CLARK

Clark to be at the bottom of all this trouble, and that he so stated to all the other members of the court, while in conference, as far back as last fall. Counsel for the prosecution were much pleased when the witness used the word "mandate" while being cross-examined by Mr. Watson—in referring to the issuing of the writ or mandamus by Clerk Kenan—but a little later, on the re-direct examination, when counsel for the defense called his attention to the fact, he appeared to be surprised and at first said he did not think he had used that term.

Upon being assured by counsel on both sides that he had done so, the witness declared that he did it involuntarily and had not intended to do so, except in a general sense (he said that he had not thought the clerk would refuse to obey any order or mandate of the court) and did not mean to imply that any "mandate" of the court had been issued. Clerk Kenan in the issuance of this writ now in question; that on the contrary he had expressly stated in his examination that no such mandate or order was ever given by the court, as a court, and that the clerk had only been advised individually by the majority of the members of the court—because there was then nothing before the court in that case, at that time, to issue an order about it, having gone off the docket, etc.

The expert testimony was ruled out at the afternoon session and the defense rested its case.

The greater part of the session was consumed with argument on the question of admitting the testimony of the lawyers summoned by the defense to give expert testimony as to the decisions of the judges.

After a lengthy discussion of this matter, President Turner ruled that such testimony was incompetent, all precedent being against it.

Ex-Judge W. J. Montgomery, Colonel H. C. Jones and Major J. D. Shaw, then testified to the good character of Chief Justice Furches, when ex-Governor Jarvis announced that the defendants would rest their case.

The prosecution then began the examination of witnesses in rebuttal. Mr. Watson said the examination of these witnesses would not consume more than two hours. Mr. B. R. Lacy was the only witness examined by the prosecution. He testified as to the payment of the warrant to Theophilus White in compliance with the writ of mandamus. President Turner ruled out a question tending to show that the treasurer paid White out of the regular funds of the treasury instead of the oyster funds.

The counsel for the defendants tendered the following gentlemen as expert witnesses "learned in the law": Ex-Judge J. C. Turner, Judge W. J. Montgomery, W. W. Clark, H. C. Jones, T. M. Argo, C. F. Warren, T. W. Bickett, T. N. Hill, I. F. Dorich.

Judge Walter Clark, who has figured prominently in the trial, will be offered as a witness by the prosecution this morning. This was the arrangement last night after a conference among counsel for the managers. Judge Clark's examination, it is said, will result in interesting developments.

THE MORNING SESSION

The roll call at the morning session revealed 48 of the 50 Senators present.

Mr. Pon of counsel for the prosecution arose and asked permission to have Mr. E. C. Whitehurst sworn.

Mr. Whitehurst proved to be a son-in-law of the late Mr. C. C. Allen who was the secretary of the shell fish commission—Mr. Allen now being dead.

The witness was sworn and Mr. Pon examined him.

Q.—"What papers are those you have there?"

A.—"Papers that came out of the desk of Mr. Allen—in the room in which he died in Elizabeth City. He died in October, 1897."

Q.—"Open the bundle and show which of the papers are in the handwriting of Mr. Allen. You are familiar with his handwriting, are you not?"

A.—"Yes, I am familiar with his handwriting. This (holding up one of the papers) is in his writing."

Q.—"Look through all the papers you have there and select those which you can testify are in Mr. Allen's handwriting."

This the witness did, laying aside, and handing to the clerk, the papers he so identified.

Q.—"Which of these papers are in Mr. Allen's handwriting?"

The witness indicated this, and added that others were papers of the shell fish commission.

To this the defense objected, and witness was cautioned about speaking of the shell fish commission.

Q.—"Did you know where Mr. Allen kept his shell fish papers?"

(Objecting: overruled.)

A.—"Yes; in his desk. In the upper part; in the pigeon-holes; these papers were found in that place."

Mr. Pon then asked that the papers identified as having been written or signed by Mr. Allen, and the balance be filed.

Question as to the identity of the Governor was asked.

Mr. Jarvis objected to any parole proof, but withdrew it when it was learned the object of question.

Continuing the witness said that he wanted a receipt for the papers—he not being the executor of the estate of Al-

len, etc. Clerk ordered to give him the receipt.

Q.—"Are these the papers of C. C. Allen, and was Allen the acting or attempting to act, secretary of the shell fish commission?"

Witness replied affirmatively and, continuing, said Mr. Allen died about October 1, but that he did not know the exact date.

Judge Douglas' Character Good

The following witnesses, all from Greensboro (the home of Judge Douglas) were sworn and testified to his good character and standing:

President Dred Peacock of the Greensboro Female College.

Capt. J. W. Fry, a banker.

Mr. J. J. Hunter, a manufacturer.

Mr. J. A. Odell, a hardware merchant.

Neither of the witnesses was cross-examined, and they retired after merely answering the formal question put to them by Mr. Brynau.

Judge Montgomery Takes the Stand

After Senator Henderson had introduced a resolution, which was adopted, providing for the payment of per diem and mileage of the character witnesses examined the preceding day, Justice Montgomery of the Supreme Court was called to the witness stand and sworn.

In response to questions by Mr. Cooke of counsel for the respondents, who conducted the examination, the witness said:

"I was licensed to practice law in January, 1867, and since that time, up to November, 1894, when elected Associate Justice of the Supreme Court, I was engaged regularly in the practice of the law."

I took the oath of office as justice of that court in January, 1895, and the first of the office-holding cases tried after I went on the bench was that of Wood vs. Bellamy (129 N. C. Reports).

Q.—"What was the principle involved in that case?"

A.—"That a public office was property in North Carolina, and the decision was based on the case of Hoke vs. Henderson."

Q.—"Coming down to Day's case, what was the principle involved?"

A.—"The same, except that the Legislature delegated the powers to three instead of one person."

Q.—"Any extension of the doctrine after that?"

A.—"Yes—in the western district criminal court case, where the doctrine of in pari materia was involved."

Q.—"How were the cases up to the Day case decided?"

A.—"With perfect unanimity. I was the judge who held out longest, but all the other members of the court, including Justice Clark, held to the Hoke vs. Henderson decision—and I will add that the position and opinion of Justice Clark, in conference, influenced me more than the others."

Continuing, the witness said that the first dissent from the doctrine was in the Day case. Judge Avery was on the bench from 1895 to 1898, while with the witness as judge. More care and attention were given the office-holding cases than any others. The judges in these cases consulted all the authorities and used the utmost diligence and patience in arriving at their decision.

At this point when the witness was asked questions involving the motives of the court, the prosecution interposed repeated objections, and were generally sustained by the President of the court.

Q.—"Was there a free and full discussion of all those cases?"

A.—"Yes; very full. More time, as I said, and attention and research were given them than any line of cases ever brought before the court since I have been on the bench."

Several questions of counsel for the respondents were here objected to and finally withdrawn. Finally this question was admitted, the objections being overruled.

Q.—"What were the acts and conduct of the judges in conference or otherwise?"

Never a Word Reflecting on the Legislature

A.—"In the consideration and discussion of these cases I unhesitatingly say that the respondents in this case approached them with painstaking care, paying diligent attention to the citations of counsel, and with never a word reflecting in any way on the Legislature—never a word said except to arrive at a conclusion based on the law of justice."

The judges may have been a little out of temper at times—as individuals in the conferences—but as justices they made diligent and laborious research of the law, with never a manifestation against the Legislature; as men trying to get at the truth and do right.

(Counsel for the prosecution objected to the latter part of the last sentence, but the objection was overruled.)

Q.—"In the first case in which White's interest was adjudicated (White vs. Hill) what was determined by the Supreme Court there?"

A.—"The judgment was that White was entitled to the office he was appointed to under the act of 1897, and that the distribution of offices by the Legislature of 1896 was void. All concurred in this decision except Justice Clark."

Q.—"Now, who concurred in the next case, White vs. Auditor?"

A.—"The respondents and Chief Justice Faircloth. Dissenting opinions were written by Justice Clark and myself."

Q.—"Were they on the same grounds?"

A.—"Not at all."

The witness then stated the difference, as already testified to and reported the witness adding that he did not desire to approach a conflict between two departments of the State Government when he could avoid it.

Q.—"State what occurred after that in respect to issuing of the writ."

A.—"I will do so, though it is not all pleasant to me. Continuing, the witness then said:

"On the day or day after Judge Clark

(Continued on Sixth Page.)

LITTLE TO HOPE Miners Seem to Be in for a Struggle WANT THEIR RIGHTS Recognition Desired for the Purpose of Making Mutual Agreements Between Oper- ators and Workers

Wilkesbarre, Pa., March 20.—The business men in Pennsylvania are more than anxious to avert the proposed strike of the mine workers, but the situation continues unpromising, and unless there are radical changes within a few days it is feared that the struggle with the coal operators will begin at the first of next month.

There is little hope for peace, according to the statement of President T. D. Nichols of the First district of the United Mine Workers.

Mr. Nichols this morning replied to the Board of Trade, which issued an appeal asking him to do what he could to prevent the threatened strike. In his reply Mr. Nichols says:

"Recognition of the union is a purely technical point. As one of the officers of the United Mine Workers I will do everything in my power to avoid a strike by trying to arrange for a joint conference."

"We are not asking for the recognition of the union on purely technical grounds, but are striving to obtain a joint conference so that our interests may be arranged and adopted. At present there is no scale in vogue in the anthracite region, except in one or two places. This leaves the employees at the mercy of bosses."

"I feel that the Board of Trade should direct a communication, or several if necessary, to the operators, so that a systematic plan of procedure arranged. This will avoid strikes and petty differences in the future."

"The operators have the power to avert a strike. Our men have demanded recognition, not for the sole purpose of being recognized, but to arrange for a conference so that they may agree on a definite scale of wages. We are striving to do business on business principles. We desire to meet the operators man to man."

The statement of District President Nichols has given little comfort to the mercantile interests of this section, which would be certain to suffer seriously in the event of another war between the miners and operators. It is understood, however, that the Board of Trade will continue its efforts to have the questions in dispute settled amicably, and that, acting on the suggestion of Mr. Nichols, it will appeal to the operators to meet the men halfway and at least agree to consider the differences that have led up to the existing situation.

AUSTIN LOSES
Ray and Escott Not Guilty on
Indictment for Libel

Asheboro, N. C., March 20.—Special.—The criminal docket of Randolph Superior Court has been disposed of. The case of libel in which J. F. Austin and the State were prosecutors and C. S. Ray and H. C. Escott defendants, wound up the criminal docket with a verdict of acquittal. The case of Asheboro Wood and Iron Works against the Southern Railway will be called Friday.

Miss Bertie H. Ross was married today at Jackson Springs to Mr. Moses McDonald of Moore county. Miss Ross is the daughter of Sheriff R. R. Ross and sister to Representative Charles Ross. They passed through tonight on the "restful train for points North."

Mr. George Hilliard, an attaché of the Southern Railway, was married today to Miss Annie Davis at the home of the bride at Glenola, N. C.

ON CO-OPERATIVE PLAN
New Cotton Mill Enterprise
Projected in Winston

Winston-Salem, N. C., March 20.—Special.—A movement was started here today to build a \$100,000 cotton mill in North Winston on the co-operative and installment plan. Opinions have been secured for a site and the promoters are confident that the enterprise will be established.

It is announced today that Mr. S. F. Vance, chairman of the Republican Executive Committee for this congressional district, is to succeed Mr. W. J. Ellis as assistant postmaster of Winston-Salem. Mr. Vance has strong endorsements and was recommended by the postmaster by Congressman Blackburn. Mr. Ellis may be given another position.

FAILED TO WORK
No Result from Senatorial
Caucus in Nebraska

Lincoln, Neb., March 20.—D. E. Thompson of Lincoln, who was last night nominated for United States Senator for the short term by the Republican ca-

caus, failed to elect in the joint session of the House and Senate today.

The Republican caucus which last night nominated D. E. Thompson for United States Senator for the short term subsequently began balloting for Senator for the long term, and at 2:15 a. m. forty-three ballots had been taken, the forty-third resulting as follows: Rosewater, 27; Meiklejohn, 17; Currie, 8. The seven members who refused to enter the caucus are partisans of Crouse, Martin and Hinshaw. In the balloting for the long-term nomination the Thompson men divided between Rosewater and Meiklejohn.

The caucus, under the rules of which Thompson was nominated, adjourned without nominating a candidate for the long term, thereby invalidating the nomination it already had made. The caucus called provided that both Senators should be nominated at the same session.

Dismissed Officer's Revenge

Buda-Pest, March 20.—Field Marshal Jablanoye De Cenzyory, chief of the gendarmes department of the ministry of national defense, was shot at in the street this afternoon by a man who offered him a letter which the field marshal declined to accept. Two passers by seized the would-be assassin, who the name of Johan Gal, a former lieutenant of the gendarmes department. The prisoner said he had been dismissed for no reason and wished to kill the field marshal out of revenge.

Marriage Nullified

Columbia, S. C., March 20.—In the Court of Common Pleas for Spartanburg the marriage contract of Charles Deomon and Ida Padgett has been declared null and void, despite the fact that the Legislature has repeatedly refused to legalize divorces for any cause. The proceedings were brought to prevent both man and woman being prosecuted for bigamy. Both subsequent to their marriage married other individuals. The woman did not appear in the case. Deamon declared that he had married Ida Padgett when under the influence of liquor and was not in a condition to make a binding contract.

LOVED NOT WISELY
A Clothesline Helped Fanny
Out of Her Misery

New York, March 20.—Fanny Chanin, a young Russian of 234 Cherry street, was found dead early this morning, hanging by a clothes line from a transom, only a few feet away from where her six-year-old son was asleep in bed. She had killed herself because she thought her husband did not love her as much as she loved him, and she left him a letter saying that by her death she had set him free. Her husband and wife were born in the same village in Russia, and after they had grown up they married and came here to seek their fortunes. He was a tailor and she a dressmaker. She was the sort of a woman who continually faulted her husband and fussed with his clothes and brought his slippers, and Chanin did not put her rooms in order, even to scrubbing the floor. Her neighbors heard her sing her child to sleep; then, when the boy could no longer hear her, she hanged herself from the transom. The door was locked when the husband got back, but he tried it open with a knife. He found his dead wife waiting for him.

MAKING A SLATE
Hanna and McKinley Fix
Things for Ohio Republicans

Washington, March 20.—More than two hours this morning Senator Hanna, Representative Grosvenor and Representative Dick were in conference at the White House with the president regarding political affairs in Ohio. The entire situation in the Buckeye State was thoroughly canvassed and the slate for this year's State nominations was practically agreed upon. Plans were also laid for retaining control of the Legislature by the Republicans.

It was decided that all the State officers from Governor Nash down should be renominated, with the exception of Lieutenant Governor Caldwell. He will not be on the ticket this fall. The reason for this is found in the fact that Mr. Caldwell is attorney for the State Liquor Dealers Association of Ohio, and in consequence all the temperance element of the State is strongly arrayed against him. In the campaign two years ago he had about 25,000 votes behind Governor Nash by reason of the opposition of the Prohibitionists.

The Republicans realize that with Tom L. Johnson as the probable head of the Democratic ticket this fall they will have a hard fight on their hands, and as Lieutenant Governor Caldwell would, it is believed, injure their chances, he will be dropped.

Senator Hanna has decided to join forces with the McKinley men in Cleveland in an effort to beat Johnson for mayor of the city.

Senator Foraker went to the White House while the conference was on and remained with the quartette for a short time, but left long before the consultation ended. While discussion between the Hanna and the Foraker factions still continues and there is said to be a plan on hand to defeat Senator Foraker, it was stated at the conclusion of the conference that the State convention would undoubtedly endorse him for the Senate.

TRAITORS SHOT Death Sentence Executed on Three Boers

Miners on a Strike,
Summit, Pa., March 20.—The miners at Colliery No. 12, went on a strike this morning, owing to a disappointment in wages. Three hundred men and boys are affected.

Strikers Fight Soldiers

Marseilles, March 20.—A conflict here today, owing to strikers endeavoring to break through the cordon of the troops protecting men working on the docks, resulted in three gendarmes and a soldier being injured with stones. A revolver was also fired on the side of the strikers, of whom fifteen were arrested.

Annoyed by Spies

Constantinople, March 20.—Much annoyance is felt in diplomatic circles here at the presence of Turkish spies in the vicinity of each embassy during the last few days. The foreign ambassadors are making representations to the Turkish authorities on the matter.

Surrendering in Batches

London, March 20.—The Exchange Telegram Company says it is understood at Cape Town that the negotiations between Lord Kitchener and Gen. Botha for the surrender of the burghers were broken off through the attitude of irconcilables among the Boers. General Botha, however, is inducing his men to surrender in batches. They are encamped at Middleburg, Transvaal, which place is dominated by the British.

Furnace Men to Strike

Youngstown, O., March 20.—The furnace men of the valley, who organized after the reduction of 10 per cent in their wages, which took place about a month ago, announce that they will go on a strike unless the manufacturers agree to put back the amount taken off their wages. Since that time the price of pig iron has increased \$2 or more, and as yet there is no sign of a corresponding increase in wages. The furnace men are all thoroughly organized and a strike will throw out every furnace in the valley. A mass meeting will be held Friday night to take final action.

Must Be Turned Back

Washington, March 20.—The comptroller of the treasury has decided that the unexpended balance June 30 next of the \$50,000,000 emergency war appropriation made by congress immediately before the Spanish war, must be carried back into the treasury without regard to any outstanding obligations on account of that fund. This will have the effect of depriving war department contractors of nearly \$1,000,000 in payment for ordnance and ordnance stores until Congress makes a special appropriation to meet their claims.

Mary's Name a Burden

Chicago, March 20.—Mary Wotowawiet attempted suicide because her name had proved a drawback in the social circle in which she mingled. For some time her friends, who were unable to pronounce her name, have called her Mary Walsh, and the fact that she had an alias preyed on her mind to such an extent that she became despondent. Then her lover ceased his attentions, and she ascribed this to her name. She swallowed a dose of carbolic acid, but will recover.

BACK IN THEIR CELLS
Mutinuous Convicts Subdued
and Two of Them Shot

Leavenworth, Kan., March 20.—Two convicts of the Lansing penitentiary were wounded last night by the guards who went down into the penitentiary mine to subdue 284 prisoners who entered the colliery Monday and refused to come out until their demands for better food were granted.

All the convicts were run down in various parts of the workings by a heavy detail of guards who descended the shaft shortly before midnight. A volley was fired when the bottom was reached, with the intention of intimidating the mutineers. It is supposed that stray bullets hit two of the convicts. Neither was seriously hurt, however, and the volley effectually subdued the others, who were almost famished out and apparently glad to get off so easily. They scattered through the workings, leaving the fifteen guards they had overpowered and held as hostages. The latter were quickly hoisted to the surface and the work of rounding up the convicts began. As fast as they were caught they were taken up, and before morning all were securely locked in their cells at the penitentiary. They had been "practically without food for twenty-four hours, and at daybreak were given only a cup of coffee and a few slices of bread. Warden Tomlinson announced that he will severely punish the leaders.

The wounded men are Ralph Clark, under a twenty year sentence for highway robbery, who will lose an arm, and Alfred Hatfield, serving ten years for manslaughter. Hatfield received a flesh wound in the leg.

POLICE PUZZLED
Mystery of a Bottle of Poisoned
Whiskey

San Francisco, March 20.—The case of Mrs. George Kent, arrested for sending a bottle of poisoned whiskey through the mails to her husband, is puzzling the police. The woman recently began a suit for divorce from her husband who is an ignorant longshoreman, because of excessive cruelty, and since she filed the suit she declares she has met her in the street and threatened her. She claims she sent the bottle to herself and used her handwriting to get her into trouble. He cannot write himself, and some time ago he had his wife write his local address, and it is this address that is on the package. She says the postoffice officials warned Kent that an unmailable package was awaiting him and when he called for it they warned him the bottle looked as though it had been tampered with. In the bottom was a white sediment, and when analyzed there was found strychnine enough to kill ten men. Kent says his wife threatened to poison him before she left him, but the police are inclined to believe he fixed up the liquor to cause his wife trouble and called her from securing a divorce. Late this afternoon they released Mrs. Kent from custody.

Civilizing the Filipinos

Washington, March 20.—The following cablegram from Judge Taft at Manila was received today at the War Department:

"Have organized Tayaba, Romblon (including Tablas), Sibuyan and smaller islands, and Masbate (including Ticao