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OUT OF COURT

Judge Takes Charge of Fosburgh Case

ORDERS AN ACQUITTAL

The Trial Conducted Like a Coroner's Inquest—No Evidence of the Prisoner's Guilt

Pittsfield, Mass., July 26.—By direction of Judge William E. Stevens, this morning acquitted Robert S. Fosburgh of the charge of killing his sister, May 10, August 20 last. The verdict was received with applause.

After all the turmoil in the Berkshires, this year-long mystery of a provincial police chief, "more silent than sphinx," and the protracted torture of a family that has at least proved itself brave, the Fosburgh case was practically thrown out of court. Judge Stevens, before whom Fosburgh was placed on trial a week ago yesterday on an indictment charging him with manslaughter in causing the death of his sister, granted the motion of the defense and directed the jury to acquit the defendant, and the mild-looking Berkshire farmers, carpenters and merchants who had heard the evidence went cheerfully through the formalities of obeying the court's instructions.

When Judge Stevens had ascended to the bench and the court clerk had spoken, there was an expectant stillness that emphasized the clear, vibrating voice in which the court delivered its instructions. The judge said:

"Mr. Foreman and Gentlemen—During six days we have listened to the recital of one of the most painful tragedies that was ever presented to a jury. A young and beautiful girl was shot down in her home and her brother was accused of the crime. It was necessary for the government to prove three things—first, that she was shot down; second, that she was shot down by this defendant to the exclusion of the possibility that she was shot by any other member of the family; third, that her death was caused by a criminal act. The trial has proceeded somewhat in the form of an inquest and has been tried with great pains on the part of the government and the defense. There has been an evident desire to obtain proofs, and so a great deal of evidence has been introduced and admitted without objection which might have been excluded under the strict rule of the law. I think I ought also to say to you that it is due to the chief of police, who has stood behind this prosecution, that in the view of the court, he has tried to do his duty with a single eye to ascertaining the truth."

"Now, Mr. Foreman and gentlemen, a motion has been made that this case be taken from the jury, and it becomes my duty to say to you that in the opinion of the court the government has not furnished proof sufficient to sustain a verdict of guilty against the defendant, and, therefore, under the direction of the court, in the indictment against Robert S. Fosburgh for killing his sister you will return a verdict of not guilty."

As he took his seat the judge half arose again and rapped for order, the everlasting feminine buzz that had been heard so often in the court room for over a week having broken out again. The female clerk arose and the jurors, and even the rather pathetic figure with bowed head stood up, too. The clerk said, in hard, formal, routine tones:

"Gentlemen of the jury, you have heard the court's instructions. How say you? Guilty or not guilty?"

As the foreman replied, "Not guilty," and the other jurors nodded, there was a wild burst of handclapping. Judge Stevens was on his feet in an instant.

"Mr. Sheriff," he said sharply, "you will see that that demonstration does not occur again."

Once more the clerk polled the jurors; then the court thanked them graciously and they filed out followed in a minute or two by the Fosburgh family and their intimate friends, who had been sitting with them, nearly all of whom were smiling through tears.

The jurors went to their room, and N. B. Baker of Savoy, one of the number, said afterward: "We had a little talk and we found shortly that we would not have been out fifteen minutes if we had had to consider the evidence. Only one man had any doubt, and he said that he was satisfied that the verdict ordered by the court was the right one. We could have acquitted instantly."

All the grinding of the legal mill this week had produced no more profit than there was a year ago tending to show that the young man accused had held the revolver with which his sister was killed. Not only had that been shown, but it had been shown that any other member of the family could have held the weapon, and moreover, several of the Fosburghs had gone on the stand and sworn stoutly that there were intruders—whitecaps or burglars—in the house the night in question, and that the eldest daughter came to her death at the hands of one of them. There was nothing for the court to do under the law but withdraw the case from the jury's consideration.

That the fact that the judge decided so tremendous a slap in the face of the prosecution was a circumstance not reckoned here by a considerable number of persons native and foreign to this exclusive region.

When court convened at 9:15 o'clock there was the same scene that had been presented every day since the trial began—the scene that has caused friends of the distressed family to say that the Fosburghs had been "butchered to make a Berkshire holiday." There has never been such a court room full of women of such social standing as to be termed the "smart set" of any place. At every brief rest in the proceedings there has been a buzz of excited conversation that was suggestive only of teas or matines or church after court is out. Light laughter at trivial occurrences in the court room has been frequent.

titter has every now and then swept over the crowd for causes which the masculine mind could not understand.

Among the few persons about the court house outside of those engaged in the case, who took things seriously, the talk was all about the court's probable action on the motion to direct acquittal. This motion was made when the commonwealth rested Tuesday, and then the judge replied only by asking the defense if it would rest. The defense was unwilling to do that, but renewed the motion last night, before Judge Stevens in chambers. The judge reserved his decision, and no inkling of what was forthcoming had been given before the court opened.

Lost All in Wheat

New York, July 26.—Samuel S. Cramer, who lives in the village of Impyland, in the town of Junction, N. J., and who is a member of the New York Produce Exchange, has lost his fortune and that of his mother and sisters in wheat speculation and has left his home, never to return, according to a letter received from him by his family.

Cramer is a son of the late Peter Cramer, a former representative from New Jersey, and a nephew of P. W. Skinner, a member of the Produce Exchange and head of the commission house of Skinner, Bloom & Co. He owned the largest flouring mill in Hunterdon county and kept a large country store in addition.

Fell from a Car

Durham, N. C., July 26.—Special.—This morning there came near being a serious accident near the Southern depot. Mr. J. C. Barbee, section foreman fell from his car while it was running at full speed. His face was badly lacerated, and while he was not seriously hurt, his bruises were very painful. He will be able to resume work in a few days.

CHARTER FOR MANILA

It is Closely Patterned After Government of Washington

Manila, July 26.—The charter for Manila was up before the commission on its third reading today. There was a larger and more representative audience present than at previous hearings.

The charter provides for a government which is closely patterned after that of the city of Washington. There is to be a board of three commissioners, appointed by and subject to the authority of the central government, with legislative and executive authority. There will be municipal departments and an advisory board representing various districts. This latter will be appointed by the general board and will act as an intermediary between the main body and the general public.

Romero Salas, the editor representing the Spanish chamber of commerce, opposed the bill generally, claiming that it was a deprivation of popular representation and shocked the public as being un-American. Governor Taft forced the admission from the editor that there was practically no innovation in the proposed charter as compared with the former status of Manila under the Spanish regime.

Judge Taft went on to explain the success of the government of the city of Washington and the relative conditions obtaining there and Manila, and declared that the people would not be shorn of any other rights.

The attack of Señor Salas was not surprising, as the Spanish Filipinos, who predominate, naturally desire the control of the municipality and dislike any diversion from their rooted prejudice.

Third, the circumstances attending the reasons controlling and the propriety of the movements of the said squadron in proceeding from Cienfuegos to Santiago.

Fourth, the circumstances attending the arrival of the "flying squadron" off Santiago, the reasons for its retrograde turn westward and departure from off Santiago, and the propriety thereof.

Fifth, the circumstances attending and the reasons for the disobedience by Commodore Schley of the orders of the department contained in its dispatch dated May 25, 1898, and the propriety of his conduct in the premises.

Sixth, the condition of the coal supply of the "flying squadron" on and about May 27, 1898; its coaling facilities; the necessity, if any, or advisability of, the return of the squadron to Key West to coal; and the accuracy and propriety of the official reports made by Commodore Schley with respect to the matter.

Seventh, whether or not every effort incumbent upon the commanding officer of a fleet under such circumstances was made to capture or destroy the Spanish cruiser Colon as she lay at anchor in the entrance to Santiago harbor, May 27 to 31, inclusive, and the necessity for, or advisability of, engaging the batteries at the entrance to Santiago harbor and the Spanish vessels at anchor within the entrance to said harbor, at the ranges used, and the propriety of Commodore Schley's conduct in the premises.

Eighth, the necessity, if any, for, and advisability of withdrawing the "flying squadron" from the entrance to Santiago harbor to a distance at sea, if such shall be found to have been the case; the extent and character of such withdrawals; and whether or not a close or adequate blockade of said harbor to prevent the escape of the enemy's vessels therefrom, was established, and the propriety of Commodore Schley's conduct in the premises.

Ninth—The position of the Brooklyn on the morning of July 3, 1898, at the time of the exit of the Spanish vessels from the harbor of Santiago. The circumstances attending, the reasons for, and the incidents resulting from the turning of the Brooklyn in the direction in which she turned at or about the beginning of the action with said Spanish vessels and the possibility of thereby colliding with or endangering any other of the vessels of the United States fleet and the propriety of Commodore Schley's conduct in the premises.

Tenth—The circumstances leading to, and the incidents and results of, a controversy with Lieut. Albion C. Hodgson, U. S. N., who, on July 3, 1898, during the battle of Santiago, was navigator of the Brooklyn in relation to the turning of the Brooklyn; also the colloquy

THE SCHLEY COURT OF INQUIRY

Order Issued to Convene in Washington the 12th of September

SESSIONS TO BE HELD WITH OPEN DOORS

Admiral Kimberley Has Not Asked to Be Relieved—Captain Lemly Designated as Judge Advocate—Ten Matters Indicated to Which the Court Will Direct Its Investigations—Disobedience of Orders at Cienfuegos is Taken as Already Proved

Washington, July 26.—The precept which to govern the court of inquiry in its investigation of the charges against Rear Admiral Schley was made public late this afternoon, and follows: To Admiral Dewey, Washington, D. C.: D. C.

Upon the request of Rear Admiral Winfield Schley, U. S. N., in a letter dated July 22, 1901, copy herewith, a court of inquiry, of which you are hereby appointed president, Rear Admirals Lewis A. Kimberley and Andrew E. Benham, U. S. N., members, Capt. S. C. Lemly, U. S. N., judge advocate general, judge advocate, is hereby ordered to convene at the Navy Department, Washington, D. C., at 1 o'clock p.m. on Tuesday the 12th day of September, 1901, or as soon thereafter as may be practicable, for the purpose of inquiring into the conduct of the said Schley, commodore in the navy during the war with Spain and in connection with the events thereof.

The court will thoroughly inquire into all the circumstances bearing upon the subject of the investigation hereby ordered, and to this end, besides examining orally all proper witnesses whose attendance can be secured, will call upon the department for all documentary evidence in relation thereto on its files.

Upon the conclusion of the investigation the court will report its proceedings and the testimony taken, with a full and detailed statement of all the pertinent facts which it may deem to be established, together with its opinion and recommendations in the premises. While the department relies upon the discretion of the court to make its examination into this matter full and complete, as requested by the officer at whose instance it is convened, the report should state that time between Commodore Schley and Lieutenant Hodgson and the ensuing correspondence between them on the subject thereof, and the propriety of the conduct of Admiral Schley in

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