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THRASH VS. CIR- CUIT JUDGE LAMB

Supreme Court Sustains Circuit Judge and Prosecuting Attorney.

This was an original proceeding by petition for writ of prohibition against Judge Lamb, prohibiting him from proceeding further in the exercise of jurisdiction in the case against W. A. Thrash, R. P. Carroll and Pat Thrash for running an establishment where intoxicating drinks could be had. The place was called "Thrash's Cafe" and supposed, under its license from the state and town to do only a restaurant business.

Hon. R. W. Rucker, prosecuting attorney, prosecuted the boys under a petition alleging the establishment to be a nuisance and pending the trial secured an order from Circuit Judge Lamb restraining the defendants from doing further business until the case was determined.

Thrash's attorney secured from the supreme court a temporary writ of prohibition against the Circuit Judge, which prevented him from the exercise of further jurisdiction in the particular of abating the alleged nuisance.

After reviewing at great length the history of the office of prosecuting attorney, and noticing the objections raised to the proceeding by Thrash's attorney, wherein the prosecuting attorney was not required to give bond, the supreme court holding that where the prosecuting attorney had the right to act as Prosecuting Attorney Rucker did in this case no bond could be required, the Supreme court says:

"There is no question as to the jurisdiction of the Circuit court to enjoin a public nuisance. We are to consider only whether the facts pleaded justified an action by the state, and further, whether the action of the court was an abuse of or in excess of jurisdiction.

Relators conceded, on this record, for the purpose of this case, that they were conducting a sham restaurant, where, under the guise of a legitimate, licensed business, they were openly selling liquor in violation of law, and they point triumphantly, in oral argument, to the fact that so far they have escaped conviction for such offense in the various criminal prosecutions heretofore instituted by the state. They concede, further, that their place of business, by reason of the illegal practices therein permitted, has become the resort of idlers and dissolute, immoral and dangerous persons, whose continuous disorderly conduct tends to the injury of the public morals, peace and welfare. Such conduct the court found, constituted a continuing public nuisance. The relators, without denying the facts alleged in the bill, or disputing seriously the conclusion that they constitute this nuisance, seek to separate the elements which, together, constitute this nuisance, and insist that the court had no jurisdiction to enjoin either element so segregated.

Relators' propositions are that the court cannot lawfully enjoin (a) the commission of a crime, i. e., the illegal sale of liquor, or (b) the business of conducting a restaurant. The State is seeking by means of injunction to close this place, not primarily because of the illegal sale of liquor, nor because of the operation of a sham restaurant. These things are pleaded on the facts which constitute the nuisance, namely, a

disorderly house. The bill for injunction is bottomed on our ruling in the case of state ex rel. vs. canty, 207 Mo. 489, and seeks to restrain a public nuisance. The fact that this alleged nuisance involved selling liquor in violation of law, an offense that may be prosecuted under the criminal law will not prevent an injunction against the nuisance. We have ruled many times that injunction will not lie to prevent the omission of a crime. We said in the Canty case, speaking thru Woodson, J., that "this court has uniformly held that a court of equity has not jurisdiction to enjoin the commission of a crime." But Judge Woodson said further in that case "the contention of respondents that a court of equity has no jurisdiction to abate a public nuisance, where the offenders are amenable to the criminal laws of the state, is not tenable," and the court, speaking further thru Valliant, J., says: "A court of equity will not undertake to enforce the criminal law; therefore it will not enjoin the commission of a threatened act merely because the act will be a crime, but, upon the other hand, neither will it withhold its equitable relief in a case in which, for other reasons, it has jurisdiction, merely because the act, when committed, would be a crime."

There can be no serious contention that this injunction forbids a legitimate lunch business, in face of the record or admission that the restaurant is a mere sham and subterfuge for the sale of liquor, but we apprehend that a lunch business, whether a genuine or not, operated in connection with a public nuisance, and as one of its elements, would not so leave the whole as to save it from abatement. If this petition states a case at all it states a public nuisance, and we think the facts therein alleged justify the discretion exercised by the states attorney in bringing the suit to abate. Whether the pleading measure up to full legal sufficiency and whether the order made is too broad, are questions which should, in the first instance, be addressed to the Circuit Court. These are matters for correction thereupon proper applications. Relators recognized this rule by filing a motion to so modify the injunction as to allow them to continue their lunch business. This did not challenge the jurisdiction of the court, the sufficiency of the petition, or, otherwise than is sought by the motion to modify the order itself. The order restrained the lunch business only in the building complained of as a public nuisance. There is no restraint so far as the restaurant is concerned as to any other place. The motion to modify was denied on July 6, three days after the original order. Was this refusal to modify oppressive? We think not. The court was acting within its jurisdiction. In the light of the averments in the bill, it is obvious that such modification, if made, would have placed relators where they were before the restraining order was issued—operating a lunch stand as a blind for the illegal sale of liquor. It would effect the restraining order standing against the sale of liquor alone, and consequently, be in defiance of the rule against enjoining the commission of a crime.

Counsel for relators frankly stated in argument that if that modification had been allowed, this proceeding for prohibition would not have been necessary. It

CONGRESSMAN RUCKER OFF FOR WASHINGTON

Some Views of the 2nd District Favorite

Judge W. W. Rucker took his departure yesterday for Washington to assume his legislative duties in the approaching session of Congress. Just before he left a Courier reporter met him and asked what legislation would likely be enacted. Judge Rucker replied:

"The Democrats in the House will again press downward revision of the Payne-Aldrich tariff schedules. We will pass bills through the House making radical reductions in tariff rates on all articles in general use, thus reducing, as far as can be done by law, the cost of living. Now that the Tariff Board is ready to report we will force President Taft to either approve some Democratic tariff measures or to again veto them. The revision will effect all the important schedules—possibly the entire tariff law. Then, too, I am sure the Democrats will amend the Anti-Trust law so as to prevent the Courts hereafter from reading into the law the word

State politics, to which he replied:

"The record of the Democratic party in Missouri is a splendid one. Upon it we should win a decisive victory in 1912, and will do so if we do our duty. 'In union there is strength'—division invites defeat. No man is greater than his party, and the historic old Democratic party, with its long record of glorious achievements must not be wrecked upon the shoals of the personal ambition of any man. I rejoice in the good accomplished at the conference of Missouri Democrats in Kansas City not long ago. After it we won a victory as a result of the good there done. We elected a Democratic Senator, (one of the greatest Senators Missouri ever had), to succeed a Republican Senator. But for my unyielding and unwavering confidence in the wisdom and integrity of Missouri democrats I would feel some alarm, arising from newspaper discussions, on account of the threatened dissensions in our party over Missouri's choice for the Presidential nomination. There will be no division on this question. Every democrat must and does feel a thrill of delight when he reviews the history of his party and finds no act of be-



"unreasonable," thus giving absolute immunity to men who willfully violate law and oppress millions of people. We hope too, that we will be able to induce the Senate to agree to the House resolution relating to the election of Senators by direct vote. This matter is now in conference between the House and the Senate. The Senate insists on the submission of what is known as the Bristow Amendment. I am Chairman of the House conferees and am opposed to the Bristow Amendment. It is so objectionable to many states, especially Southern States that I am sure the Bristow Amendment, if submitted, would never be ratified by the number of States necessary to secure its adoption, and, hence, I think the submission of this amendment would be a victory for those who are opposed to popular election of Senators. Many other matters of national importance will be taken up by the Democrats in the House. We will fully respond to our every duty, legislate for the greatest good to the greatest number and continue to merit and enjoy the confidence of the American people.

Our reporter asked Judge Rucker for an expression on

trayal, no promise violated, no obligations repudiated, no duty neglected in the entire record of his party, and he will insist that this magnificent record shall be maintained. Every democrat in Missouri knew the Jefferson City Convention would be called upon to endorse Ex-Governor Folk as Missouri's choice for President—knew it long before the Convention met—and I do not recall hearing a single remonstrance. The Convention did endorse Folk for President and no democrat, to my recollection, protested. While I do not fully approve the law which authorized the Convention, I assert no more representative body of democrats ever assembled in the State. The delegates knew the sentiment of the people they represented, and they voiced the practically unanimous desire of Missouri democrats when they, without dissent endorsed Folk for President. If the action of a Democratic Convention is assailed by Republicans and not Democrats wage the war which challenges the wisdom and impunes the good faith of our chosen representatives acting within the usage and precedents of our party.

Mr. Clark will not be induced by unscrupulous friends to contest with

Folk for the State Delegation. He is too big a man and too loyal a Democrat. He was a member of the Jefferson City Convention and like all other Democrats he is bound by the action of his party. I did not attend the convention, but the action of a Democratic Convention in Missouri, whether I participate in its deliberations or not, binds me. Folk should have and, in my judgement, will have the support of Missouri's delegation in the next Democratic National Convention without contest. I sorely regret the existence of conditions which seem to make it proper for me to say these things. We have committed ourselves to the doctrine of peace and I appeal for a continuation of the harmony pledged at Kansas City. Let us stand as one man for the fidelity, integrity, honor and glory of the one party which has fought the battles of the common people for more than half a century, and Missouri will again give her approval to the undying principles we advocate by 30,000 majority.

Finis Beattie

Henry Clay Beattie was electrocuted Nov. 24th, 1911 for murdering his wife July 18. His confession was not made public until after his death, and Governor Mann of Virginia was thoroughly relieved by it, for while thoroughly convinced of the guilt of the condemned, the Governor was not unmindful of the number that would believe there was a reasonable doubt, so long as Beattie himself did not admit the act. In fact, Beattie's brother Douglas, who was with the condemned but a short while before he was executed, said that his brother Clay was sure his innocence would eventually be established, tho perhaps not early enough to relieve his old father's distress over the disgrace, and this in the face of the fact that H. C. Beattie Jr., written confession was in the possession of Rev. Dr. Fix, who claims to have secured the complete conversion of the criminal and the written confession thereafter. Beattie declared after he had written his confession, that "I am not afraid to die. Sooner or later the murderer of my wife will be captured and the family honor vindicated." How a statement of this kind could be made under the circumstances, let each decide for himself. Two days before the day for his execution, Beattie gave out thru Rev. J. J. Fix the following statement, the first and only one authorized to be made public except the one to his brother Douglas: "I am ready to die. I would just as soon die Friday morning as 30 days from now, because it will end the agony of my father. I don't know but what it is better to die now than to have him suffer 30 days longer. I have accepted religion and I am prepared for the end." Governor Mann denies emphatically that he offered a stay of execution for 30 days if Beattie would confess, but evidently he refers to the story in his statement. It was a singular statement considering that Rev. Fix had already got him to make written confession of the crime.

H. Clay Beattie Jr., had a sweetheart, Beulah Binford, by whom he had a child which died. There was not sufficient room in his life for his wife and sweetheart, and preferring the latter, he invited his wife to take an automobile ride with him on the night of July 18, and on a dark road in the woods, shot her to death with a shot gun. His explanation was that a highwayman had shot her. But for the

knowledge, general in the community, of his connection with Beulah Binford, he might have escaped, and judging from his actions during his trial, no compunction, aye, no thought of the awful crime, no haunting spectre of the better looking woman, the mother of his 5 weeks old boy, would have risen to disturb him in his relations with Beulah Binford or the business world. The confession seems a mockery. "I, Henry Clay Beattie Jr., desirous of standing right before God and man, do on this, the 23 day of November, 1911, confess my guilt of the crime charged against me. Much that was published concerning the details was not true, but the awful fact, without the harrowing circumstances, remains. For this action I am truly sorry and, believing that I am at peace with God and am soon to pass into his presence, this statement is made." It was signed in the presence of two ministers on the 23rd day of November, tho made after the conversion on the 21st and before the statement to his brother Douglas or to Rev. Fix to be made public.

Beattie maintained stoical composure if not good spirits to the moment of death, smiling as he came to the chair to be bound for the death shock. After a time his body was taken charge of by relatives and on Sunday morning at sunrise, with 12 of his college chums as pall-bearers, his father and brothers and Rev. Fix who offered up a short prayer, he was buried in Maury Cemetery, South Richmond, by the side of his slain wife. The baby will be reared by its maternal grandparents who kept aloof from the trial or any connection with the case, and from whom no expression has been drawn further than that they were glad Beattie confessed. The loyal old father suffers alone.

Tar Party Escapade Closed

All of those indicted for the tarring outrage at Shady Bend, Kas., have been convicted except one Simms, and he is disgraced by his connection tho it was not sufficient in the minds of the jury to convict.

Miss Chamberlain, after the trials and convictions, said she sincerely hoped no woman would ever again be subjected to the humiliation she had undergone, and while she felt sorry for the community on account of the disgrace brot on it by the cowardly action of a few of its supposed best citizens, she was somewhat disappointed at the leniency of the law applying to such crimes. Some 2 or 3 of the convicted have appealed their cases, but it is generally understood that the main efforts of all the accused as well as others have been to shield the women who inspired the unprecedented outrage.

Marriage Licenses

Lon Heisel and Grace Wilson, Mendon.
S. Robertson, Keytesville, and Julia Atterbury, Marcoline.
Lloyd Neighbors, Marcoline and Vita Ringer, Mendon.
Lloyd Colyer and Jennie L. Cupp, Clark township.
Roy Burnett and Jennie Spencer, Brunswick.

A new kind of excitement growing out of foot ball games has manifested itself, and one of our most popular county officials was afflicted with it last Saturday. His was a mild form, however, as it only led to his stalking off with the wrong grip instead of with the wrong girl.

Conductor Bud Shannon of Sharon, Neb. is here on a few days visit to relatives.

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