

ALLEGED FRAUD.

Peculiar Testimony in the Gray-Weatherby Case.

A Drexel Insurance Policy (with but slightly Little Belated) In Van Weatherby's Story.

The case against Earl D. Gray and C. J. Weatherby, who are charged with fraudulent use of the mails, in connection with the K. A. E., came before Commissioner Pratt yesterday at 2 p. m.

The strongest cramped quarters were contrived to be small to accommodate the audience, a great many of those in attendance being members of the order. Postal Inspector Lawrence was actively engaged, John M. Zane presided and McDevall & Morse defended.

JOHN J. THOMAS was the first witness to tell his story, identifying the package which had been sent to him through the mail, which contained an insurance policy of the K. A. E. Co. The package was received by him in May, 1891. Besides the policy it also contained several circulars in reference to the order. Had shown Weatherby for over a year. The policy was issued by the Supreme Senate. Was a member of the order, which was instituted, as he understood it by Dr. Weatherby. Was initiated in a room over Gray's drug store by Dr. Weatherby. There were several other people present at the time. Later, I was initiated as grand jury sergeant, the ceremony taking place in the office in which I worked. The Supreme Grand Senate was incorporated in February last, and I was one of the incorporators. I recognize my signature to the original articles of incorporation.

At this point Zane asked the attorneys for the defense to produce the original agreement from Weatherby to Gray on the contract entered into by them. The defense claimed that they did not know where the defendant should be called upon to produce his private papers in a criminal proceeding. Zane said he did not care whether the original was produced or not. The defense had been given an opportunity to show up the original document, but if they did not do so, a copy would do equally as well.

Continuing, the witness said he was acquainted with the official organ of the order, known as the Knight's Review. He supposed it was the official organ. The paper had been handed to him by Mr. Webb. To Morse, Thomas said he became a member of the order some weeks before he received the package through the mails, and joined the Supreme Senate a couple of months after that time.

E. L. CARPENTER'S STORY. Have known defendants since last November. I have seen an agreement by which Weatherby transferred to me a certain portion of a contract, and there was also an assignment of a certain interest from Gray to Weatherby. At the time I returned the document from Weatherby I received back notes I had given him for \$100 for the interest in the order.

D. VAN WINKLE. First met Weatherby about the beginning of 1891; became a member of the K. A. E. O. soon after that. Met Weatherby in Waterman's office, in the Dart building, where he presented to me a scheme for the organization of a secret order, and he said the proposition was a good one. Waterman and Weatherby had apparently talked it over before. Weatherby said it could be made a great beneficial order. I told him he would have hard work to make it so, because this was a bad place to start secret orders. The Supreme Grand Senate was instituted in February, 1891, at Earl D. Gray's drug store. There were present Gray, Weatherby, A. J. Varney and myself. We constituted the grand council. Weatherby instituted the council, I remained in the order about four months. The insurance part of the scheme was drawn to my attention early in the year by Weatherby. I questioned the advisability of the scheme at the time, and objected to it on the ground that we were not in a position to go before the public and fulfill the promises we were about to make, because we had no capital. The doctor said that could all be arranged and that the insurance scheme could be opened all over the country. I said it could not be done there was no way to make good our promises. Weatherby, Varney and Gray all opposed me, however, but I finally said that if Weatherby would make the insurance scheme in the east among his friends I should not object. From that time on I was in opposition to the board, and if the matter was not settled I would show my objections made from time to time. Weatherby said he was going east, but at the time appointed he could not go. He then proposed that I should become the insurance scheme in Utah. I again opposed it, saying that the scheme was not feasible, and that it would bring reproach upon every member connected with the order. Weatherby engineered the whole scheme of printing the policies and getting up other stationery. I remember a transfer of a certain portion of the revenue received to Gray. I think this was in April. I drew up the agreement from Weatherby's drawings, that is, he made the original. The transfer was made by the four previously named. We were an organization at that time, with not very much backing. Had purchased several dollars worth of goods on time, with the idea of organizing societies. If they had been organized the societies would have had an interest in the property. Weatherby and Varney proposed that the whole question of funds be turned over to Gray, in order that when other societies were organized they could not come in and demand the property. In order to keep this property, it was deemed best to place it in Gray's hands, as he was our treasurer. I objected both at that time and very strongly. I didn't at that time expect the policy holders would get anything, and I told them that it would not stand the light of day. A resolution was introduced making Weatherby grand organizer, with the idea that he should do no work in Utah. I knew that if the societies were organized they would come to us and demand their share of the property, which we could not give them. I withdrew from the order about May 15. I had several talks with Gray about the matter also. Weatherby deceived me in several times. I asked him if the idea of the order had ever been sprung elsewhere, and he said that it had not.

To Morse—objected to the insurance scheme because the organization was not in a condition to carry out the promises that were to be made. I objected to the organization on the face of it, unless explained to the people. I proposed to explain it but others thought it not wise to do so. Policies were issued making promises that we could not fulfill. My objection was that we had no money to pay the amount promised in the policy. I also objected to the insurance plan because the people would know that Van Weatherby, Weatherby and Varney were men of limited means—and men who could not make good the promises they had made. At that time we had not more than ten members and the meeting of our promises was not feasible. I was finally induced to take part in the scheme because Weatherby had said he could get great backing among his friends. Weatherby was the general director and we all obeyed his orders. I told the senate that the time was not far distant when the whole doling of the order would get into court, because the methods proposed were not strictly in accordance with legal usage. The agreement was to be kept by Gray and not made secret. I transferred my right, title and interest when I went out. I supposed I received a fourth interest. I contributed about 30 cents or 50 cents—a bottle of ink or something like that to my credit. I signed the constitution and by-law, voluntary, of course, although I protested in the meeting against their adoption.

"Do you mean to say you would have signed them if there had been anything wrong about them?" "Well, I didn't care to do so. I was not forced to do so, but I will say that I was persuaded a little."

"I went to Denver to assist in the institution of a lodge there, but made a very poor job of it after I saw what was in sight."

HELD AS A LIBELLER.

The Tribune's Assaults on Marshal Parsons Malicious.

William Nelson, Managing Editor, to Answer Critically to the Coming Grand Jury.

William Nelson, managing editor of the Tribune, will have to answer to the grand jury for publishing and circulating a criminal libel. Such was the decision of Commissioner Norrell yesterday.

Just after court had convened Mr. Critchlow read the following letter, which appeared in the Tribune yesterday: Hon. Walter Murphy, Salt Lake City.

Sir—This letter which I wrote you is an open letter, and I write you this because you addressed to me a letter as a taxpayer and as an attorney for taxpayers who help to pay your salary, this morning you saw fit to send me a letter and to place your answer in the hands of the grand jury. It is not for me to go to court to justify the feelings of their own and to punish, as far as the law will allow, my citizens. It is for you to justify the feelings of the people, as far as the law will allow, my citizens. I had for you the moment that your answer was published in the Tribune, and I desire to ask your pardon for thinking for one moment that in a case of grave public concern that you would be so unwise as to answer me in this manner.

Ordinarily in public affairs, a letter couched in a proper form is expected to be an answer. In official life we certainly have the right to expect at least a consideration. You have seen fit to withhold this consideration, and to not only ignore your constituents who have addressed you, but to have betrayed the confidence which a private note implies by placing it in the hands of the adversary of the cause to which you were so kind as to answer.

Let me say that I and my clients appreciate your courtesy, and fully comprehend how your position is made for you. We feel grateful that your desire to aid the other side prevented you from answering to our purpose, that you take charge as prosecuting attorney of the case of the People vs. Nelson. A prosecuting attorney is said to be a minister of justice, and it is for you to justify the confidence which a private note implies by placing it in the hands of the adversary of the cause to which you were so kind as to answer.

When he had finished reading the above, Mr. Critchlow appeared to be angry, and his remarks did not belie his looks. He said the production was so low, vile and degraded as anything he had ever seen in public print, and that he was saying a good deal for the Tribune. He said that the Tribune's aid was unduly sought in the case for the purpose of stifling a just and righteous prosecution, and because this had failed the grand jury was made by Powers. It assumed to be a private open letter to Mr. Murphy furnished to a newspaper for publication. It made imputations upon a friendly letter between a citizen and myself which has existed since boyhood's college days. It comes, too, from a man who has no conception of friendship except that which can be bought and paid for. Mr. Murphy was too much of a gentleman to bandy words with a man who attacked him in this manner. Mr. Murphy had used his own words and asked him to give the letter previously spoken of to Judge Powers. Believing this reply would never see the light of day if he handed it to Powers, he read it to the court openly before giving it to him.

Judge Powers said he was ready to proceed with the case. He had no reply to make. George McErlain was the first witness of the day. Had been arrested for embezzlement, and was surrendered into the hands of Marshal Parsons, and he was placed in charge of William Goodsell, and paid \$10 per day to keep out of the penitentiary. This amount was reduced to \$7 later. Afterwards he was put in charge of Van Winkle, and they both lived at Elsie St. Onor's house for a time. Never paid any money to the marshal.

G. C. Goodell said that the editorial headed "To E. H. Parsons" was printed on the page over which Mr. Nelson had no control, but the proof of the article had been read by him. D. L. Van Winkle said McErlain was in his charge for a time; was paid by Will Goodsell; received no money from the government. Eugene Traugber, the Tribune reporter who wrote the article on which the action was brought, said the information mostly came from McErlain.

Deputy Marshal Will Goodsell said the deputies were paid by fees, 60 per cent, going to them and 40 per cent, to the marshal's office; received no money over any money received from McErlain to the marshal. A recess was taken until 2 o'clock and Judge Powers stated he was through with a number of witnesses, and the court decided he could not prove the character of the St. Onor woman's house. Eugene Traugber said when he wrote the article he believed it to be true. He had received information from Louis Lacon. Judge Powers corroborated Traugber. Judge Goodell testified regarding the statement made by Van Winkle at the Palmer-St. Onor trial. Elsie St. Onor, in a blue skirt and a red waist, then took the chair. She knew McErlain; he had roomed at her house about three weeks while in charge of Van Winkle. Colonel Nelson said the reporter handed him the copy and he thought it was true, as he was a careful reporter; didn't attach any great importance to the article when it was handed to him; published it as a matter of news and not as a matter of malice; personally he didn't like Parsons; he himself had been United States marshal; didn't know Parsons took steps to procure his removal; he was very sorry; might have had some feeling at that time toward Parsons; never had a talk with James regarding a release gambling house in Elsinore; he had never run on property belonging to Parsons.

The testimony was cited by Charles Goodsell testifying in regard to dates and amounts of money received for services. Mr. Critchlow discussed the law bearing on the subject, and said there was no denial made by the defendant of the publication of the article of E. H. Parsons. He had been sleeping in Nelson's breast since he was forced out of the marshal's office, and that the original law had not rigorously been enforced. He had been proven to be not above the law. The libel sprung from a lying, malicious heart. Judge Powers said the question was narrowed down to whether or not Parsons received money corruptly, and argued that the article charged no corruption in office. It was the duty of a journalist to keep the public posted in the doing of public officers. The press is something better than a mere disseminator of news. Parsons' good is done through the criticism of public officers than through their praise. The money dropped into the pocket of the marshal or some one under him, and the editor should be released. Arthur Brown made a brief closing argument.

Judge Norrell, in giving his decision, said the investigation had been confined to what the court found. He said the fact—that the United States marshal had received double pay; whether he had received \$5 a day from an individual while the grand jury was sitting; whether he had received money from the government. The court is clearly of the opinion that the article was libelous. Another question is if they were justifiable in publishing it. If so, there is no libel. The court is in doubt as to what a jury would do. There has not been enough proof shown to justify its publication. He said when a man was on trial before a jury he was given the benefit of a doubt. In a preliminary hearing the question was whether there was probable cause for holding, and said he thought the grand jury should investigate the matter. The bond was placed at \$250.

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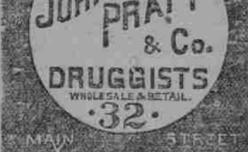
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