

ERROR IN WAR TAX LAW

Washington, D. C., July 21.—Every blunder in a statute is a gilt edged invitation to a law suit.

A typical example of one of these invitations, so numerous in practically every important statute passed by the Democratic Congress, occurs in schedule B of the "war tax" law. It threatens to vitiate the effectiveness of the entire schedule.

That provision declares that "perfumery, cosmetics, and other similar articles, shall be taxed. What are 'cosmetics'?" The term is general, not specific. It is not defined in the law, and the question of what shall be termed a 'cosmetic' has been plunged into doubt, which the courts only can finally clear up. A suit is now pending to determine it.

From the earliest days of attempts to enforce this schedule, there has been continual confusion. Many manufacturers of articles of this character resisted the tax declaring that their goods were not 'cosmetics'. Revenue collectors were at sea, and conflicting rulings from Washington as to specific articles merely added to the confusion, delay and expense of administration.

The Internal Revenue office finally tried to settle the difficulty by ruling that manufacturers of certain disputed products would be exempt from taxation if they changed their advertising.

The levying of the tax was thus made to depend, not upon the product itself, but upon the way it was advertised, virtually resolving a portion of schedule B of the 'war tax' law into a special tax upon advertising rather than upon the goods under discussion when congress enacted the statute.

It is elementary in law that "interpretation of a law shall not usurp the function of legislation." This principle has been violated in the administration of the "war tax law. The Democratic congress named two conflicting dates as to the time schedule B should take effect, and the Internal Revenue office by an arbitrary ruling had to determine what congress intended.

The courts may decide that the same thing has happened in the rulings as to the tax on "cosmetics." In any event the history of this portion of the war tax law has served to emphasize the slovenly methods employed by the Democratic congress.

The Call of the Cumberlands

By Charles Neville Buck

With Illustrations
from Photographs of Scenes
in the Play

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SYNOPSIS.

CHAPTER I.—On Misery creek, at the foot of a rock from which he had fallen, Sully Miller finds George Lescott, a landscape painter, unconscious, and after reviving him, goes for assistance.

CHAPTER II.—Samson South and Sully, taking Lescott to Samson's home, are met by Spicer South, head of the family, who tells them that Jesse Purvy has been shot, and that Samson is suspected of the crime. Samson denies it.

CHAPTER III.—The shooting of Jesse Purvy breaks the truce in the Hollman-South feud.

CHAPTER IV.—Samson reproves Tamarack Spicer for telling Sully that Jim Hollman is on the trail with bloodhounds hunting the man who shot Purvy.

CHAPTER V.—The bloodhounds lose the trail at Spicer South's door. Lescott discovers artistic ability in Samson. While sketching with Lescott on the mountain, Tamarack discovers Samson to a jeering crowd of mountaineers. Samson thrashes him and denounces him as the "true-buster" who shot Purvy.

CHAPTER VI.—Lescott tries to persuade Samson to go to New York with him and develop his talent. Sully, loyal but heartbroken, furthurs Lescott's efforts. The dance at Wile McCager's threatens trouble to Samson and Lescott.

CHAPTER VII.—At the dance Samson tells the South clan he is going to leave the mountains. Lescott goes home to New York. Samson bids Spicer and Sully farewell and follows.

CHAPTER VIII.—In New York Samson studies art and learns much of city ways. Drennie Lescott persuades Wilfred Horton, her disreputable lover, to do a man's work in the world.

CHAPTER IX.—Prompted by her love, Sully teaches herself to write. Horton throws himself into the business world and becomes well hated by predatory financiers and politicians. At a Bohemian resort Samson meets William Farlish, a sportsy social parasite, and Horton's enemy.

CHAPTER X.—Farlish sees Samson and Drennie dining together unchaperoned at the Wigwam roadhouse. He conspires with others to make Horton jealous and succeeds.

CHAPTER XI.—Farlish brings Norton and Samson together at the Kenmore club's shooting lodge, and forces an open rupture, expecting Samson to kill Horton and so rid the political and financial thrugs of the crusader. Samson exposes the plot and thrashes the conspirators.

CHAPTER XII.—Samson is advised by his teachers to turn to portrait painting. Drennie commissions him to paint her portrait. Sully goes to school. Samson goes to Paris to study. Drennie finds in his studio pictured evidence of his loyalty to Sully.

CHAPTER XIII.—Tamarack kills Jim Asberry, is surprised to the militia and shot from ambush by a Hollman. The feud is on again and the law helpless in the face of murder. Sully sends for Samson.

CHAPTER XIV.—Samson goes home, catches Aaron Hollis in the act of murdering Jesse Purvy and kills him. He goes to Sully. Captain Callomb hears of the killings.

But before he reached the courthouse, where for a half-hour yet the cupola bell would not clang out its summons to veniremen and witnesses, he found fresh fuel for his wrath.

He was not a popular man with these clansmen, though involuntarily he had been useful in leading their victims to the slaughter. There was a cowl in his eyes that they did not like, and an arrogant hint of iron laws in the livery he wore, which their instincts distrusted.

Callomb saw without being told that over the town lay a sense of portentous tidings. Faces were more sullen than usual. Men fell into scowling knots and groups. A clerk at a store where he stopped for tobacco inquired as he made change:

"Heard the news, stranger?"

"What news?"

"This here 'Wildcat' Samson South come back yistiddy, an' last evenin' towards sundown, Jesse Purvy an' Aaron Hollis was shot dead."

For an instant, the soldier stood looking at the young clerk, his eyes kindling into a wrathful blaze. Then, he cursed under his breath. At the door, he turned on his heel:

"Where can Judge Smithers be found at this time of day?" he demanded.

CHAPTER XV.

The Honorable Abe Smithers was not the regular judge of the circuit which numbered Hixon among its county seats. The elected incumbent was ill, and Smithers had been named as his pro-tem. successor. Callomb climbed to the second story of the frame bank building and pounded loudly on a door, which bore the boldly typed shingle:

"Abe Smithers, Attorney-at-Law."

The temporary judge admitted a visitor in uniform, whose countenance was stormy with indignant protest. The judge himself was placid and smiling. The lawyer, who was for the time being exalted to the bench, hoped to ascend it more permanently by the votes of the Hollman faction, since only Hollman votes were counted. He was a young man of powerful physique with a face ruggedly strong and honest.

Callomb stood for a moment inside the door and when he spoke it was to demand crisply:

"Well, what are you going to do about it?"

"About what, captain?" inquired the other, mildly.

"Is it possible you haven't heard? Since yesterday noon two murders have been added to the holocaust. You represent the courts of law. I represent the military arm of the state. Are we going to stand by and see this go on?"

The judge shook his head, and his visage was sternly thoughtful and hypocritical. He did not mention that he had just come from conference with the Hollman leaders. He did not explain that the venire he had drawn from the jury drum had borne a singularly solid Hollman complexion.

"Until the grand jury acts I don't see that we can take any steps."

"And," stormed Captain Callomb, "the grand jury will, like former grand juries, lie down in terror and inactivity. Either there are no courageous men in your county, or these panels are selected to avoid including them."

Judge Smithers' face darkened. If he was a moral coward, he was at least a coward crouching behind a seeming of fearlessness.

"Captain," he said, coolly, but with a dangerous hint of warning, "I don't see that your duties include contempt of court."

"No!" Callomb was now thoroughly angered, and his voice rose. "I am sent down here subject to your orders, and it seems you are also subject to orders. Here are two murders in a day, capping a climax of 20 years of bloodshed. You have information as to the arrival of a man known as a desperado with a grudge against the two dead men, yet you know of no steps to take. Give me the word and I'll go out and bring that man, and any others you name, to your bar of justice."

"If it is a bar of justice! For God's sake, give me something else to do than to bring in prisoners to be shot down in cold blood."

The judge sat balancing a pencil on his extended forefinger, as though it were a scale of justice.

"You have been heated in your language, sir," he said, sternly, "but it is a heat arising from an indignation which I share. Consequently, I pass it over. I cannot instruct you to arrest Samson South before the grand jury has accused him. The law does not contemplate hasty or unadvised action. All men are innocent until proven guilty. If the grand jury wants South, I'll instruct you to go and get him. Until then, you may leave my part of the work to me."

His honor rose from his chair.

"You can at least give this grand jury such instructions on murder as will point out their duty. You can assure them that the militia will protect them. Through your prosecutor you can bring evidence to their attention."

"If you will excuse me," interrupted his honor, dryly, "I'll judge of how I am to charge my grand jury. I have been in communication with the family of Mr. Purvy, and it is not their wish at the present time to bring this case before the panel."

Callomb laughed ironically.

"No, I could have told you that before you conferred with them. I could have told you that they prefer to be their own courts and executioners, except where they need you. They also preferred to have me get a man they couldn't take themselves, and then to assassinate him in my hands. Who is

the hell do you work for, Judge-for-the-moment Smithers? Are you holding a job under the state of Kentucky, or under the Hollman faction of this feud? I am instructed to take my orders from you. Will you kindly tell me my master's real name?"

Smithers turned pale with anger, his fighting face grew as truculent as a bulldog's, while Callomb stood glaring back at him like a second bulldog, but the judge knew that he was being honestly and fearlessly accused. He merely pointed to the door. The captain turned on his heel and stalked out of the place, and the judge came down the steps and crossed the street to the courthouse. Five minutes later he turned to the shirt-sleeved man who was leaning on the bench and said in his most judicial voice:

"Mr. Sheriff, open court."

The next day the mail carrier brought in a note for the temporary judge. His honor read it at recess and hastened across to Hollman's Mammoth Department Store. There, in council with his masters, he asked instructions. This was the note:

"The Hon. Abe Smithers."

"Sir: I arrived in this county yesterday, and am prepared, if called as a witness, to give to the grand jury full and true particulars of the murder of Jesse Purvy and the killing of Aaron Hollis. I am willing to come under the escort of my own kinsmen, or the militia-men, as the court may advise."

"The requirement of any bodyguard I deplore, but in meeting my legal obligations, I do not regard it as necessary or proper to walk into a trap."

"Respectfully,
"SAMSON SOUTH."

Smithers looked perplexedly at Judge Hollman.

"Shall I have him come?" he inquired.

Hollman threw the letter down on his desk with a burst of blasphemy:

"Have him come!" he echoed. "Hell and damnation, no! What do we want him to come here and spill the milk for? When we get ready, we'll indict him. Then, let your damned soldiers go after him—as a criminal, not a witness. After that, we'll continue this case until these outsiders go away, and we can operate to suit ourselves. We don't fall for Samson South's tricks. No, sir; you never got that letter! It miscarried. Do you hear? You never got it."

Smithers nodded grudging acquiescence. Most men would rather be independent officials than collar-wearers.

Out on Misery Samson South had gladdened the soul of his uncle with his return. The old man was mending, and, for a long time, the two had talked. The falling head of the clan looked vainly for signs of degeneration in his nephew, and, failing to find them, was happy.

"Hev ye decided, Samson," he inquired, "that ye was right in yer notion, 'bout goin' away?"

Samson sat reflectively for a while, then replied:

"We were both right, Uncle Spicer—and both wrong. This is my place, but if I'm to take up the leadership it must be in a different fashion. Changes are coming. We can't any longer stand still."

Spicer South lighted his pipe. He, too, in these last years, had seen in the distance the crest of the oncoming wave.

"I reckon there's right smart truth to that," he acknowledged. "I've been studyin' bout hit consid'able myself of late. That's been several fellers through the country talkin' coal an' timber an' railroads—an' sich like."

Sally went to mill that Saturday, and with her rode Samson. There, besides Wile McCager, he met Caleb Wiley and several others. At first, they received him skeptically, but they knew of the visit to Purvy's store, and they were willing to admit that in part at least he had erased the blot from his escutcheon. Then, too, except for cropped hair and a white skin, he had come back as he had gone, in homespun and hickory. There was nothing highfalutin in his manners. In short, the impression was good.

"I reckon now that ye're back, Samson," suggested McCager, "an' seein' how yer Uncle Spicer is gettin' along all right, I've jest let the two of yer things. I've done had enough. It was a simple fashion of resigning a regency, but effectual."

Old Caleb, however, still insurgent and unconvinced, brought in a minority report.

"We wants fightin' men," he grumbled, with the senile reiteration of his age, as he spat tobacco and beat a rattan on the mill floor with his long hickory staff. "We don't want no deserters."

"Samson ain't a deserter," defended Sally. "There isn't one of you fit to tie his shoes." Sally and old Spicer South alone knew of her lover's letter to the circuit judge, and they were pledged to secrecy.

"Never mind, Sally!" It was Samson himself who answered her. "I didn't come back because I care what men like old Caleb think. I came back because they needed me. The proof of a fighting man is his fighting. I reckon. I'm willing to let 'em judge me by what I'm going to do."

So, Samson slipped back, tentatively, at least, into his place as clan head, though for a time he found it a post without action. After the fierce outburst of bloodshed, quiet had settled, and it was tacitly understood that, unless the Hollman forces had some coup in mind which they were secreting, this peace would last until the soldiers were withdrawn.

"When the world's a-lookin'," commented Judge Hollman, "it's a right

good idea to crawl under a log—an lay still."

Purvy had been too famous a feudist to pass unsung. Reporters came as far as Hixon, gathered there such news as the Hollmans chose to give them, and went back to write lurid stories and description, from hearsay, of the stockaded seat of tragedy. Nor did they overlook the dramatic coincidence of the return of "Wildcat" Samson South from civilization to savagery. They made no accusation, but they pointed an inference and a moral—as they thought. It was a sermon on the triumph of heredity over the advantages of environment. Adrienne read some of these savoring misrepresentations, and they distressed her.

Meanwhile, it came insistently to the ears of Captain Callomb that some plan was on foot, the intricacies of which he could not fathom, to manufacture a case against a number of the Souths, quite apart from their actual guilt, or likelihood of guilt. Once more, he would be called upon to go out and drag in men too well fortified to be taken by the possses and deputies of the Hollman civil machinery. At this news, he chafed bitterly, and, still rankling with a sense of shame at the loss of his first prisoner, he formed a plan of his own, which he revealed over his pipe to his first lieutenant.

"There's a nigger in the woodpile, Merriweather," he said. "We are simply being used to do the dirty work up here, and I'm going to do a little probing of my own. I guess I'll turn the company over to you for a day or two."

"What idioy are you contemplating now?" inquired the second in command.

"I'm going to ride over on Misery, and hear what the other side has to say. I've usually noticed that one side of any story is pretty good until the other's told."

"You mean you are going to go over there where the Souths are entrenched, where every road is guarded?" The lieutenant spoke wrathfully and with violence. "Don't be an ass, Callomb. You went over there once before and took a man away—and he's dead. You owe them a life, and they collect their dues. You will be supported by no warrant of arrest, and can't take a sufficient detail to protect you."

"No," said Callomb, quietly; "I go on my own responsibility and I go by myself."

"And," stormed Merriweather, "you'll never come back."

"I think," smiled Callomb, "I'll get back. I owe an old man over there an apology, and I want to see this desperado at first hand."

"It's sheer madness. I ought to take you down to this infernal crook of a judge and have you committed to a strait-jacket."

"If," said Callomb, "you are content to play the catpaw to a bunch of assassins, I'm not. The mail-rider went out this morning and he carried a letter to old Spicer South. I told him that I was coming unescorted and unarmed and that my object was to talk with him. I asked him to give me a safe conduct, at least, until I reached his house, and stated my case. I treated him like an officer and a gentleman, and, unless I'm a poor judge of men, he's going to treat me that way."

The lieutenant sought vainly to dissuade Callomb, but the next day the captain rode forth, unaccompanied. Curious stares followed him and Judge Smithers turned narrowing and unpleasant eyes after him, but at the point where the ridge separated the territory of the Hollmans from that of the Souths he saw waiting in the road a mounted figure, sitting his horse straight, and clad in the rough habiliments of the mountaineer.

As Callomb rode up he saluted and the mounted figure with perfect gravity and correctness returned that salute as one officer to another. The captain was surprised. Where had this mountaineer with the steady eyes and the clean-cut jaw learned the niceties of military etiquette?

"I am Captain Callomb of 'F' company," said the officer. "I'm riding over to Spicer South's house. Did you come to meet me?"

"To meet and guide you," replied a pleasant voice. "My name is Samson South."

The militiaman stared. This man whose countenance was calmly thoughtful scarcely comported with the descriptions he had heard of the "Wildcat of the Mountains," the man who had come home straight as a storm-petrel at the first note of the tempest and marked his coming with double murder. Callomb had been too busy to read newspapers of late. He had heard only that Samson had "been away."

While he wondered, Samson went on:

"I'm glad you came. If it had been possible I would have come to you." As he told of the letter he had written the judge, volunteering to present himself as a witness, the officer's wonder grew.

"They said that you had been away," suggested Callomb. "If it's not an impertinent question, what part of the mountains have you been visiting?"

Samson laughed.

"Not any part of the mountains," he said. "I've been living chiefly in New York—and for a time in Paris."

Callomb drew his horse to a dead halt.

"In the name of God," he incredulously asked, "what manner of man are you?"

"I hope," came the instant reply, "it may be summed up by saying that I'm exactly the opposite of the man you've had described for you back there at Hixon."

"I knew it," exclaimed the soldier. "I knew that I was being fed on lies! That's why I came. I wanted to get the straight of it, and I felt that the solution lay over here."

They rode the rest of the way in deep conversation. Samson outlined his ambitions for his people. He told, too, of the scene that had been enacted at Purvy's store. Callomb listened with absorption, feeling that the narrative bore axiomatic truth on its face.

At last he inquired:

"Did you succeed up there—as a painter?"

"That's a long road," Samson told him. "But I think I had a fair start. I was getting commissions when I left."

"Then I am to understand"—the officer met the steady gray eyes and put the question like a cross-examiner, "that you deliberately put behind you a career to come down here and herd these fence-jumping sheep?"

"Hardly that," deprecated the head of the Souths. "They sent for me—that's all. Of course, I had to come."

"Why?"

"Because they had sent. They are my people."

The officer leaned in his saddle.

"South," he said, "would you mind shaking hands with me? Some day I want to brag about it to my grandchildren."

Callomb spent the night at the house of Spicer South. He met and talked with a number of the kinsmen, and, if he read in the eyes of some of them a smoldering and unforgiving remembrance of his unkept pledge, at least they repressed all expression of censure.

With Spicer South and Samson the captain talked long into the night. He made many jottings in a note book. He



"They Are Going to Indict You on Manufactured Evidence."

with Samson abetting him, pointed out to the older and more stubborn man the necessity of a new regime in the mountains, under which the individual could walk in greater personal safety. As for the younger South, the officer felt, when he rode away next morning that he had discovered the one man who combined with the courage and honesty that many of his clansmen shared the mental equipment and local influence to prove a constructive leader.

When he returned to the Bluegrass he meant to have a long and unofficial talk with his relative, the governor.

The grand jury trooped each day to the courthouse and transacted its business. The petty juries went and came, occupied with several minor homicide cases. The captain, from a chair, which Judge Smithers had ordered placed beside him on the bench, was looking on and intently studying. One morning, Smithers confided to him that in a day or two more the grand jury would bring in a true bill against Samson South, charging him with murder. The officer did not show surprise. He merely nodded.

"I suppose I'll be called on to go and get him?"

"I'm afraid we'll have to ask you to do that."

"What caused the change of heart? I thought Purvy's people didn't want it done." It was Callomb's first allusion, except for his apology, to their former altercation.

For an instant only, Smithers was a little confused.

"To be quite frank with you, Callomb," he said, "I got to thinking over the matter in the light of your own viewpoint, and, after due deliberation, I came to see that to the state at large it might bear the same appearance. So, I had the grand jury take the matter up. We must stamp out such lawlessness as Samson South stands for. He is the more dangerous because he has brains."

Callomb nodded, but, at noon, he slipped out on a pretense of sightseeing, and rode by a somewhat circuitous route to the ridge. At nightfall, he came to the house of the clan head.

"South," he said to Samson, when he had led him aside, "they didn't want to hear what you had to tell the grand jury, but they are going ahead to indict you on manufactured evidence."

Samson was for a moment thoughtful, then he nodded.

"That's about what I was expecting."

"Now," went on Callomb, "we understand each other. We are working for the same end, and, by God! I've had one experience in making arrests at the order of that court. I don't want it to happen again."

"I suppose," said Samson, "you know that while I am entirely willing to face any fair court of justice, I don't propose to walk into a packed jury, whose only object is to get me where I can be made way with. Callomb, I hope

we won't have to fight each other. What do you suggest?"

"If the court orders the militia to make an arrest, the militia has no option. In the long run, resistance would only alienate the sympathy of the world at large. There is just one thing to be done, South. It's a thing I don't like to suggest." He paused, then added emphatically: "When my detail arrives here, which will probably be in three or four days, you must not be here. You must not be in any place where we can find you."

For a little while, Samson looked at the other man with a slow smile of amusement, but soon it died, and his face grew hard and determined.

"I'm obliged to you, Callomb," he said, seriously. "It was more than I had the right to expect—this warning. I understand the cost of giving it. But it's no use. I can't cut and run. No, by God, you wouldn't do it! You can't ask me to do it."

"By God, you can and will!" Callomb spoke with determination. "This isn't a time for quibbling. You've got work to do. We both have work to do. We can't stand on a matter of vainglorious pride, and let big issues of humanity go to pot. We haven't the right to spend men's lives in fighting each other, when we are the only two men in this entanglement who are in perfect accord—and honest."

The mountaineer spent some minutes in silent self-debate. The working of his face under the play of alternating doubt, resolution, hatred and insurgency, told the militiaman what a struggle was progressing. At last, Samson's eyes cleared with an expression of discovered solution.

"All right, Callomb," he said, briefly, "you won't find me!" He smiled, as he added: "Make as thorough a search as your duty demands. It needn't be perfunctory or superficial. Every South cabin will stand open to you. I shall be extremely busy, to ends which you approve. I can't tell you what I shall be doing, because to do that, I should have to tell where I mean to be."

In two days, the grand jury, with much secrecy, returned a true bill, and a day later a considerable detachment of infantry started on a dusty hike up Misery. Furtive and inscrutable Hollman eyes along the way watched them from cabin doors, and counted them. They meant also to count them coming back, and they did not expect the totals to tally.

Back of an iron spiked fence, and a dusty sunburned lawn, the barrack-like facades of the old administration building and Kentucky state capitol frowned on the street and railroad track. About it, on two sides of the Kentucky river, sprawled the town of Frankfort; sleepy, more or less disheveled at the center, and stretching to shaded environs of colonial houses set in lawns of rich bluegrass, amid the shade of forest trees. Circling the town in an embrace of quiet beauty rose the Kentucky river hills.

Turning in to the gate of the state-house enclosure, a man, who seemed to be an easterner by the cut of his clothes, walked slowly up the brick walk, and passed around the fountain at the front of the capitol. His steps carried him direct to the main entrance of the administration building, and, having paused a moment in the rotunda, he entered the secretary's office of the executive suite, and asked for an interview with the governor.

"Have you an appointment?" the secretary asked.

The visitor shook his head. Scribbling a brief note on a slip of paper, he inclosed it in an envelope and handed it to his questioner.

"You must pardon my seeming mysteriousness," he said, "but if you let me send in that note I think the governor will see me."

Once more the secretary studied his man with a slightly puzzled air, then nodded and went through the door that gave admission to the executive's office.

His excellency opened the envelope and his face showed an expression of surprise. He raised his brows questioningly.

"Rough-looking sort?" he inquired, "Mountaineer?"

"No, sir. New Yorker would be my guess. Is there anything suspicious?"

"I guess not." The governor laughed, "Rather extraordinary note, but send him in."

Through his eastern window the governor gazed off across the hills of South Frankfort, to the ribbon of river that came down from the troublesome hills. Then, hearing a movement at his back, he turned, and his eyes took in a well-dressed figure with confidence inspiring features.

He picked up the slip from his desk and, for a moment, stood comparing the name and the message with the man who had sent them in. There seemed to be in his mind some irreconcilable contradiction between the two. With a slightly frowning seriousness the executive suggested:

"This note says that you are Samson South and that you want to see me with reference to a pardon. Whose pardon is it, Mr. South?"

"My own, sir."

The governor raised his brows slightly.

"Your pardon for what? The newspapers do not even report that you have yet been indicted." He shaded the word "yet" with a slight emphasis.

"I think I have been indicted within the past day or two. I'm not sure myself."

The governor continued to stare. The impression he had formed of the "Wildcat" from press dispatches was warring with the pleasing personal presence of this visitor. Then his fore-

(TO BE CONTINUED)