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### *On Jurisprudence*

#### *Filing Off The Rough Edges*

Jurisprudence is eternally at it, conditioning, modifying, mutilating, coloring and obfuscating the laws. When those laws come from the legislative rolling mills they are rough and unlovely, like casts from an iron foundry. Large globules of asininity stand out upon their surfaces: their corners are sharp; they are sprinkled with sand from the mold; they need a lot of filing and polishing. It is the business of the higher courts to do that filing and polishing—to translate all new laws out of the loose, barbarous quasi-English of the legislative donkeys and into the refined and unintelligible jargon of jurisprudence—to fit them, in brief, with a thousand little details and offshoots, a million little sub-meanings and niceties, that their exact purport and bearing, in all conceivable emergencies, may be plain to the legal mind and entirely incomprehensible to the human mind. Upon such labors the learned judges expend their energies.

Naturally enough, in a country of innumerable courts the supply of judicial decisions and pronouncements is practically unlimited. They pour down from the bench, in truth, in such an appalling stream that no single man, nor even any combination or syndicate of men, is ever able to grapple with and master them. They are not only without number, but also without order. The decisions of one court give the lie, perhaps, to the decisions of all other courts; the jurisprudence of one state, or one group of states, is violently antagonistic, upon small matters or great, to the jurisprudence of all other states. It is impossible, in a word, to collate and classify these endless judgments and theories. They come too fast, and too many of them are unearthly and unique. As well try to count the teeth of a revolving buzz-saw.

Fortunately for the layman there is no need for him to breast the flood. It suffices for him to stand upon the bank and cast an idle hook into the waters, drawing forth, from time to time, a fantastic and entertaining fish. Here is one from Texas—a pretty little wriggler with shiny scales.

#### *Gambling in Texas*

In that state it appears, there is a law prohibiting games of chance, but excepting the domestic hearth from its scope and operation. That is to say, a man who plays poker in Texas in a public poker parlor, or on a railroad train, or in church or in a saloon or hospital, or on the highway is a common gambler and may be sent to jail for his crime, but if he plays the same delightful game in his own home or in the bona fide home of a friend he is a law-abiding citizen and the constables have no right to molest him. The law defines a home in plain terms. It is “a private residence occupied by a family.”

Now comes the story. A snooping gendarme roving the Texan steppes in search of human game came upon a house beneath a walnut tree, and on looking in found an engrossing poker game in progress. The participants were four sporting bachelors—the owner of the house and three brother members of the Elks. The gendarme, covering the game with his firearms, arrested all four, and after several years in jail they were finally brought to trial.

Their lawyer in their defense pointed out that they were clearly innocent under the law for their little game had been played in the bona fide home of one of their number—a home occupied by him continuously for a period of 10 years and by no one else. But the learned judge waving away that contention, instructed the jury to bring in a verdict of guilty. The house in which a bachelor lived, he maintained was not a home within the meaning of the law, for no bachelor could have a family.

### *Salvation By Matrimony*

Thus on appeal the case reached the Texas Supreme Court and there the decision of the lower court has been affirmed, with the usual imposition of ruinous costs. The essential thing about a home, say the learned judges, is the marriage certificate hanging upon the wall. A house in which a husband and wife live together, however unwillingly and turbulently, is a home from cellar to garret and in consequence gaming is legal anywhere within its metes and bounds—even beneath the honeysuckle in the back yard or on the front porch in full view of passers-by. But a house occupied by a bachelor is not a home but a public place.

The effect of this decision as the law reviews point out is to license gambling. All a Texan now has to do if he wants to devote his whole time to games of chance is to get some woman to marry him. This of course is an easy matter, for there are always two or three dozen women willing and eager to marry every bachelor. Once the aspiring gambler has gone through the ceremony he is immune to prosecution forever after. Even if he kills his wife or drives her home to her mother, he is still protected by the law. If he wishes to do so, he may throw open his windows and invite the whole police force to observe his flamboyant and incessant gaming and yet no warrant can reach him.

### *The Case is Yet Open*

Some of the legal reviews venture the opinion that the decision of the Texas jurist in violation of the Constitution of the United States for its practical effect will be to drive many free citizens into voluntary and perhaps obnoxious servitude. The point is interesting. Maybe some rebellious victim, balking at the altar, will have courage enough to carry it to the Supreme Court as Washington. If that comes to pass the whole matter will be threshed out anew by the highest authority on earth, and the result no doubt will be a further enrichment of jurisprudence.

Another interesting decision comes from the Supreme Court of Indiana, before which a trembling citizen was recently haled (in the person, of course, of his duly accredited attorney) on the charge of wearing without permission the badge of a secret order to which he did not belong. The culprit submitted in his defense, that the Constitution of the United States guaranteed him the right to adorn his person as he pleased; that the said badge was grateful to his eye and to the eyes of the girls who admired and loved him, and that finally the secret order in question had no legal copyright or patent upon it, but had merely adopted it arbitrarily and without specific warrant in law, as he himself had adopted it.

### *Is a Badge Valuable?*

The learned judges swept all of this elaborate defense into the judicial garbage can. The thing to be determined, they said, was whether or not the wearing of the badge conferred any advantages or rights upon the wearer. Was it in point of fact a valuable thing to belong to a secret order? A study of the question convinced the judges that it was. However much certain persons of delicate sensibilities might shrink from joining such orders and bedizening themselves with badges, it was yet a fact that other persons equally human, at least in the eyes of the law, sought membership eagerly and prized it highly on obtaining it. In other words, a definite value was attached to that membership, for even if it could be shown that a man possessing it was regarded as a childish ignoramus by non-members, it could still be shown with equal certainty that the same man was regarded with affection by his fellow members.

### *The Defendant Pays The Bill*

So the court ordered that the case be sent back to the lower court to be tried upon its merits. If it could be established by competent evidence (a) that the defendant actually wore the said badge as charged and (b) that he was not in point of fact a member of the said fraternal order, then it would be lawful for the lower court to punish him for false personation under a general statute forbidding any persons to obtain valuable things by pretending to be someone else. Respect and veneration, concluded the court, were valuable things and so in consequence was an opportunity to become respected and venerated, which opportunity was always open to even the lowliest member of a fraternal order, for at any moment a fortunate chance might elevate him to the high and noble office of Grand Exalted Archon or Supreme Pontifical Trombone with the right to wear not only one badge but a score or more, and a sash sword and cocked hat besides.

So saying the learned justices adjourned for luncheon after first mulcting the defendant in the customary costs, fees, expenses and damages.

*(Source: Parks Library Media Center, Iowa State University, Microfilm Collection)*