

The Golden Era
June 26, 1864

The Evidence in the Case of Smith vs. Jones

Reported by Mark Twain

I reported this trial simply for my own amusement, one idle day last week, and without expecting to publish any portion of it—but I have seen the facts in the case so distorted and misrepresented in the daily papers that I feel it my duty to come forward and do what I can to set the plaintiff and the defendant right before the public. This can best be done by submitting the plain, unembellished statements of the witnesses as given under oath before his Honor Judge Shephard, in the Police Court, and leaving the people to form their own judgment of the matters involved, unbiased by argument or suggestion of any kind from me.

There is that nice sense of justice and that ability to discriminate between right and wrong, among the masses, which will enable them, after carefully reading the testimony I am about to set down here, to decide without hesitation which is the innocent party and which the guilty in the remarkable case of Smith vs. Jones, and I have every confidence that before this paper shall have been out of the printing press twenty-four hours, the high court of The People, from whose decision there is no appeal, will have swept from the innocent man all taint of blame or suspicion, and cast upon the guilty one a deathless infamy.

To such as are not used to visiting the Police Court, I will observe that there is nothing inviting about the place, there being no rich carpets, no mirrors, no pictures, no elegant sofa or armchairs to lounge in, no free lunch—and in fact, nothing to make a man who has been there once desire to go again—except in cases where his bail is heavier than his fine is likely to be, under which circumstances he naturally has a tendency in that direction, again, of course, in order to recover the difference.

There is a pulpit at the head of the hall, occupied by a handsome, gray-haired judge, with a faculty of appearing pleasant and impartial to the disinterested spectator, and prejudiced and frosty to the last degree to the prisoner at the bar.

To the left of the pulpit is a long table for reporters; in front of the pulpit the clerks are stationed, and in the centre of the hall a nest of lawyers. On the left again are pine benches behind a railing, occupied by seedy white men, negroes, Chinamen, Kanakas—in a word, by the seedy and dejected of all nations—and in a corner is a box where more can be had when they are wanted.

On the right are more pine benches, for the use of prisoners, and their friends and witnesses.

An officer, in a gray uniform, and with a star upon his breast, guards the door.

A holy calm pervades the scene.

The case of Smith vs. Jones being called, each of these parties (stepping out from among the other seedy ones) gave the Court a particular and circumstantial account of how the whole thing occurred, and then sat down. The two narratives differed from each other.

In reality, I was half persuaded that these men were talking about two separate and distinct affairs altogether, inasmuch as no single circumstance mentioned by one was even remotely hinted at by the other.

Mr. Alfred Sowerby was then called to the witness-stand, and testified as follows:

“I was in the saloon at the time, your Honor, and I see this man Smith come up all of a sudden to Jones, who warn’t saying a word, and split him in the snoot—”

Lawyer—“Did what, Sir?”

Witness—“Busted him in the snoot.”

Lawyer—“What do you mean by such language as that? When you say that the plaintiff suddenly approached the defendant, who was silent at the time, and ‘busted him in the snoot,’ do you mean that the plaintiff struck the defendant?”

Witness—“That’s me—I’m swearing to that very circumstance—yes, your Honor, that was just the way of it. Now, for instance, as if you was Jones and I was Smith. Well, I comes up all of a sudden and says I to your Honor, says I, ‘D__n your old tripe—’” [Suppressed laughter in the lobbies.]

The Court—“Order in the court! Witness, you will confine yourself to a plain statement of the facts in this case, and refrain from the embellishments of metaphor and allegory as far as possible.”

Witness—(Considerably subdued)—“I beg your Honor’s pardon—I didn’t mean to be so brash. Well, Smith comes up to Jones all of a sudden and mashed him in the bugle—”

Lawyer—“Stop! Witness, this kind of language will not do. I will ask you a plain question, and I require you to answer it simply, yes or no. Did—the—plaintiff—strike—the defendant? Did he strike him?”

Witness—“You bet your sweet life he did. Gad! he gave him a paster in the trumpet—”

Lawyer—“Take the witness! take the witness! take the witness! I have no further use for him.”

The lawyer on the other side said he would endeavor to worry along without more assistance from Mr. Sowerby, and the witness retired to a neighboring bench.

Mr. McWilliamson was next called, and deposed as follows:

“I was a standing as close to Mr. Smith as I am to this pulpit, a—chaffing with one of the lager beer girls— Sophronia by name, being from summers in Germany, so she says, but as to that, I—”

Lawyer—“Well, now, never mind the nativity of the lager beer girl, but state, as concisely as possible, what you know of the assault and battery.”

Witness—“Certainly—certainly. Well, German or no German—which I’ll take my oath I don’t believe she is, being of a red-headed disposition, with long, bony fingers, and no more hankering after Limburger cheese than—”

Lawyer—“Stop that driveling nonsense and stick to the assault and battery. Go on with your story.”

Witness—“Well, Sir, she—that is, Jones—he sidled up and drawed his revolver and tried to shoot the top of Smith’s head off, and Smith run, and Sophronia she whalloped herself down in the sawdust and screamed twice, just as loud as she could yell. I never see a poor creature in such distress—and then she sung out: ‘O, H—ll’s fire! what are they up to now? Ah, my poor

dear mother, I shall never see you more!’—saying which, she jerked another yell and fainted away as dead as a wax figger. Thinks I to myself, I’ll be danged if this ain’t gettin’ rather dusty, and I’ll—“

The Court—“We have no desire to know what you thought; we only wish to know what you saw. Are you sure Mr. Jones endeavored to shoot the top of Mr. Smith’s head off?”

Witness—“Yes, your Honor.”

The Court—“How many times did he shoot?”

Witness—“Well, Sir, I couldn’t say exactly as to the number—but I should think—well, say seven or eight times—as many as that, anyway.”

The Court—“Be careful now, and remember you are under oath. What kind of a pistol was it?”

Witness—“It was a Durringer, your Honor.”

The Court—“A Deringer! You must not trifle here, Sir. A Deringer only shoots once—how then could Jones have fired seven or eight times?” [The witness is evidently as stunned by that last proposition as if a brick had struck him.]

Witness—“Well, your Honor—he—that is, she—Jones, I mean—Soph—”

The Court—“Are you sure he fired more than one shot? Are you sure he fired at all?”

Witness—“I—I—well, perhaps he didn’t—and—and your Honor may be right. But you see, that girl, with her dratted yowling—altogether, it might be that he did only shoot once.”

Lawyer—“And about his attempting to shoot the top of Smith’s head off—didn’t he aim at his body, or his legs? Come now.”

Witness—(entirely confused)—“Yes, Sir—I think he did—I—I’m pretty certain of it. Yes, Sir, he must a fired at his legs.”

[Nothing was elicited on the cross—examination, except that the weapon used by Mr. Jones was a bowie knife instead of a deringer, and that he made a number of desperate attempts to scalp the plaintiff instead of trying to shoot him. It also came out that Sophronia, of doubtful nativity, did not faint, and was not present during the affray, she having been discharged from her situation on the previous evening.]

Washington Billings, sworn, said:—“I see the row, and it warn’t in no saloon—it was in the street. Both of ’em was drunk, and one was a comin’ up the street, and ’tother was a goin down. Both of ’em was close to the houses when they fust see each other, and both of ’em made their calculations to miss each other, but the second time they tacked across the pavement—driftin, like diagonal—they come together, down by the curb—almighty soggy, they did—which staggered ’em a moment, and then, over they went, into the gutter. Smith was up fust, and he made a dive for a cobble and fell on Jones; Jones dug out and made a dive for a cobble, and slipped his hold and jammed his head into Smith’s stomach. They each done that over again, twice more, just the same way. After that, neither of ’em could get up any more, and so they just laid there in the slush and clawed mud and cussed each other.”

[On the cross-examination, the witness could not say whether the parties continued the fight afterwards in the saloon or not—he only knew they began it in the gutter, and to the best of his knowledge and belief they were too drunk to get into a saloon, and too drunk to stay in it after they got there if there were any orifice about it that they could fall out of again. As to weapons, he saw none used except the cobblestones, and to the best of his knowledge and belief they missed fire every time while he was present.]

Jeremiah Driscoll came forward, was sworn, and testified as follows:—“I saw the fight, your Honor, and it wasn’t in a saloon, nor in the street, nor in a hotel, nor in—”

The Court—“Was it in the City and County of San Francisco?”

Witness— Yes, your Honor, I—I think it was.”

The Court—“Well, then, go on.”

Witness—“It was up in the Square. Jones meets Smith, and they both go at it—that is, blackguarding each other. One called the other a thief, and the other said he was a liar, and then they got to swearing backwards and forwards pretty generally, as you might say, and finally one struck the other over the head with a cane, and then they closed and fell, and after that they made such a dust and the gravel flew so thick that I couldn’t rightly tell which was getting the best of it. When it cleared away, one of them was after the other with a pine bench, and the other was prospecting for rocks, and—”

Lawyer—“There, there, there—that will do—that—will—do! How in the world is anyone to make head or tail out of such a string of nonsense as that? Who struck the first blow?”

Witness—“I cannot rightly say, sir, but I think—”

Lawyer—“You think!—don’t you know?”

Witness— “No, sir, it was all so sudden, and—”

Lawyer—“Well, then, state, if you can, who struck the last.”

Witness—“I can’t, sir, because—”

Lawyer—“Because what?”

Witness— Because, sir, you see toward the last, they clinched and went down, and got to kicking up the gravel again, and—”

Lawyer— (resignedly)—“Take the witness—take the witness.”

[The testimony on the cross-examination went to show that during the fight, one of the parties drew a slingshot and cocked it, but to the best of the witness’ knowledge and belief, he did not fire; and at the same time, the other discharged a hand-grenade at his antagonist, which missed him and did no damage, except blowing up a bonnet store on the other side of the street, and creating a momentary diversion among the milliners. He could not say, however, which drew the slingshot or which threw the grenade. (It was generally remarked by those in the court room, that the evidence of the witness was obscure and unsatisfactory.) Upon questioning him further, and confronting him with the parties to the case before the court, it transpired that the faces of Jones and Smith were unknown to him, and that he had been talking about an entirely different fight all the time.]

Other witnesses were examined, some of whom swore that Smith was the aggressor, and others that Jones began the row; some said they fought with their fists, others that they fought with knives, others tomahawks, others revolvers, others clubs, others axes, others beer mugs and chairs, and others swore there had been no fight at all. However, fight or no fight, the testimony was straightforward and uniform on one point, at any rate, and that was, that the fuss was about two dollars and forty cents, which one party owed the other, but after all, it was impossible to find out which was the debtor and which the creditor.

After the witnesses had all been heard, his Honor, Judge Shephard, observed that the evidence in this case resembled, in a great many points, the evidence before him in some thirty-five cases every day, on an average. He then said he would continue the case, to afford the parties an opportunity of procuring more testimony.

[I have been keeping an eye on the Police Court for the last few days. Two friends of mine had business there, on account of assault and battery concerning Washoe stocks, and I felt interested, of course. I never knew their names were James Johnson and John Ward, though, until I heard them answer to them in that Court. When James Johnson was called, one of these

young men said to the other: "That's you, my boy." "No," was the reply, "it's you—my name's John Ward—see, I've got it written here on a card." Consequently, the first speaker sung out, "Here!" and it was all right. As I was saying, I have been keeping an eye on that Court, and I have arrived at the conclusion that the office of Police Judge is a profitable and a comfortable thing to have, but then, as the English hunter said about fighting tigers in India under a shortness of ammunition, "it has its little drawbacks." Hearing testimony must be worrying to a Police Judge sometimes, when he is in his right mind. I would rather be Secretary to a wealthy mining company, and have nothing to do but advertise the assessments and collect them in carefully, and go along quiet and upright, and be one of the noblest works of God, and never gobble a dollar that didn't belong to me—all just as those fellows do, you know. (Oh, I have no talent for sarcasm, it isn't likely.) But I trespass.]

Now, with every confidence in the instinctive candor and fair dealing of my race, I submit the testimony in the case of Smith vs. Jones, to the People, without comment or argument, well satisfied that after a perusal of it, their judgment will be as righteous as it is final and impartial, and that whether Smith be cast out and Jones exalted, or Jones cast out and Smith exalted, the decision will be a holy and a just one.

I leave the accused and the accuser before the bar of the world—let their fate be pronounced.

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