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An 18th Century Graft

By Hon. James H. Teller of the Denver Bar

IF anyone thinks that the public officials of today have greater ability in devising means of extracting money from the people than such officials had in the eighteenth century, he will know better if he will refer to the case of Chamberlain of London vs. Evans, decided in the House of Lords in 1767.

It appears that in 1747 it was desired to build, in London, a Mansion House,—the official residence of the Mayor,—and to provide funds for it a novel scheme was devised. There were in London at that time many wealthy dissenters, who were looked upon, because of their non-conformity, with disfavor by the ruling powers in the corporation of London. So a by-law or ordinance was passed providing that any person nominated by the Lord Mayor for the office of sheriff who declined to stand for election should be subject to a fine of four hundred pounds and twenty marks; and anyone elected to that office who refused to serve should be subject to a fine of six hundred pounds. The fines were placed in this building fund. No one was eligible to the office of sheriff unless worth at least fifteen thousand pounds.

The Corporation Act (13 Car. II. Stat. 2 C. 1). prohibited the election to any corporation office of any person who had not, during the year next preceding his election, taken the sacrament of the Church of England. Severe penalties were prescribed for violations of the act. The purpose of this law was said to be to secure the services in corporation offices of able men, well affected to the government and the established church.

The conscientious, well-to-do dissenter was in a sad plight. If he escaped the Scylla of the by-law by standing for election, if elected he was caught in the whirlpool of Charybdis, and must suffer the prescribed penalties for the violation of the law which prohibited him from holding office.

In this situation it was deemed best by many nominees to pay the fines, but, when fifteen thousand pounds had been thus contributed to the building fund, one Allen Evans had the courage to test the law in the case by refusing either to be a candidate or to pay the fine.

The city thereupon brought suit in the Sheriff's Court, a local court, and had judgment in 1757. Evans then took the case to the Court of Hustings, another city court, and the judgment was affirmed. Defendant Evans by writ of error brought the case before the Court of Judges Delegates, called the Court of St. Martins, in which sat several eminent judges; including the Lord Chief Justice, and the Lord Chief Baron. In that court, the judgments of the lower courts were reversed. The city then took the cause on error to the House of Lords where the judges who had heard the cause in St. Martins Court gave their opinions *seriatim*. Lord Mansfield, who sat in the cause as a peer, closed the discussion in a review of the cause, which, as might be expected, was replete with sound reason, common sense, and legal learning.

The cause was said to be one of "great expectation," and deep interest to other cities, as it was evident that if the by-law was upheld, not only would the dissenters of London be victims of the scheme, but other cities would adopt similar by-laws and plunder their dissenting citizens. The decision turned principally on the con-

struction of the Toleration Act (1 W. and M. sess. 1. C. 18), which Evans had plead, it being claimed by the city that the Act while relieving dissenters of the penalty for non-conformity, left dissent a crime. It was contended, that being so, Evans could not set up in defense that he was a dissenter, and therefore a criminal. Upon that theory, he had and could have no defense at all.

Evans, by his plea, brought himself within the Toleration Act, and that was held to relieve him from the obligation to take the sacrament according to the rules of the established church. Hence, inasmuch as Evans was under no obligation to take the sacrament in the English Church, he could not be punished for declining an office which required that he should have thus taken the sacrament.

On February 4, 1767, the judgment under review was affirmed "*nemine contradicente*," and a serious menace to the dissenters was removed.

Lord Mansfield in his remarks expressed some ideas which are valuable today. He said: "Conscience is not controllable by human laws, nor amenable to human tribunals. Persecution, or attempts to force a conscience, will never produce conviction, and are only calculated to make hypocrites or martyrs."

It is interesting to note that Sir William Blackstone appears not to have been aware of this decision of the House of Lords, that under the Toleration Act dissent was not a crime, since two years later, in an epistolary controversy with Dr. Priestly—an eminent dissenting divine—he maintained the correctness of his statement in his Commentaries that the act in question only suspended the penalty for non-conformity, dissent being still a crime.

The Case of Don P. Blackwood

DON P. BLACKWOOD, formerly a member of the Denver Bar, was committed to the State Insane Asylum, where he died last November, penniless and without relatives or friends to give him a decent burial.

The members of the Pueblo Bar in a fine spirit of fraternalism, arranged for a burial in the Roselawn Cemetery at Pueblo, and guaranteed the expenses of burial to the United Davis-Vories Undertaking Co. of Pueblo, the total expense being $85.00.

Thereafter Todd C. Storrer, President of the Pueblo Bar Association, wrote the President of the Denver Bar Association desiring to know whether the lawyers of Denver cared to take over the expense named, inasmuch as Blackwood was formerly a member of the Denver Bar.

The Executive Committee of the Denver Bar Association does not feel that it is a proper expense to be charged against the treasury of the Denver Bar Association, but at the same time feel that the members of the Denver Bar individually may well desire to manifest their appreciation of this fine spirit of the Pueblo Bar, and would be glad to have the members of the Denver Bar who feel they can, make contributions for the purpose of making up this fund so that the amount can be sent to the President of the Pueblo Bar Association. Remittances of any amount should be made to Albert J. Gould, Treasurer, Symes Building.

He Said a Mouthful

Teacher "Robert, give me a sentence using the word 'satiate.'"

Bobby. "I took Mamie Jones to a picnic last summer and I'll satiate quite a lot."—*The Open Road.*