

MAGISTRATE MYERS' MEMORY MANIFESTLY MUDDY.

What is My Recollection, but I Want to be remembered as a Judge of the County of Rowan.

The following is an examination of H. R. Myers by H. L. Stone, attorney for Hargis, and a searching cross examination by W. P. Larew, attorney for Green:

Q. State your age, residence and occupation? A. I was sixty-nine the 15th day of last August. I live in Rowan county, and I am a farmer.

Q. State whether you were in attendance as a justice of the peace at the May term of the Rowan county court, 1867? If so, what was your business at court? A. It was for about building a courthouse.

Q. What other justices were at court then? A. Well, there was William Ramey, Maria, Ham, E. G. Scott, W. A. Fouch, John Alenton, and I think I forgot some others.

Q. Where was court then held? A. Hold out there in the house where they are now holding it. It is called the old courthouse.

Q. If at that court you saw or heard any transaction concerning the building of a courthouse? A. Well, my best recollection is (I can't be positive, though) that he went and called and was sworn in as an attorney.

Q. What kind of weather was it when Judge Roe and you conferred on this matter? A. It was a fine day. I don't recall the weather.

Q. When did you first communicate to the defendant the facts within your knowledge as to the matters above testified to relating to him? A. Not until to-day, after I was brought up here.

Q. How long a time were you elected? A. I was elected to serve two years the first term. I was elected to serve one year the second term.

Q. How long was he elected for? A. He was elected for four years, but didn't serve his time out.

Q. How long did Hitchcock serve? A. He served four years and may be longer. I know he served four years.

Q. Did you not hear Judge Roe grant defendant his certificate of honesty, probity and good character? A. I don't recall it.

Q. Did you not see that day after the county court in May, 1867? A. I don't recall it.

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A. I think it was about '67 or '68. I am not certain. Whereabouts about that? I am not certain.

Q. How was it there was a gap of that length of time in your term of service?

A. I was beaten by Scott Moody.

Q. How long was he elected for?

A. I was elected for four years, but didn't serve his time out.

Q. Why? and who succeeded him?

A. He give it up, and Jeff. Hitchcock succeeded him.

Q. And how long did Hitchcock serve?

A. He served four years and may be longer. I know he served four years.

Q. Who ran against him?

A. There were several ran against him, major Brain for one, and myself. I was elected in R. G. Scott's place before Hitchcock was elected. R. G. Scott resigned and was elected school commissioner. The time that we three ran I was elected for four years. I had filled R. G. Scott's time out, and that was a regular election.

Q. Then, you were twice elected to fill vacancies?

A. Yes, sir. I think I was to fill judge Roe's time and R. G. Scott's time.

Q. From the time you were elected to fill Scott's vacancy have you held the office continuously up to last?

A. Yes, sir. Until the first day of last June, sir.

Q. When did you first take the oath as magistrate?

A. It was in the latter part of '65 or the first part of '66 when I first got the office. My best recollection is that it was in the latter part of 1865.

Q. In what month and upon what day of the month?

A. I couldn't state, sir.

Q. At what season of the year?

A. I think it was probably in September, 1865. If I am not wrong, it was in 1866 it was probably some time in the spring of 1866. My best recollection is that it was in September, 1865. I won't be positive.

Q. Was it warm or cool weather?

A. I couldn't tell you which, exactly, sir. I couldn't say.

Q. Where was the oath administered, and who did it?

A. It was administered down here in the Hargis house, where judge Carey now lives. Judge Roe administered it.

Q. In what room, and who was present?

A. I think it was in the big room is my recollection of it now. Judge Roe and colonel Hargis, I think, were all present—all that I recollect of. They were present, I know.

Q. What oath or oaths did you take?

A. I took the constitutional oath and the dueling oath.

Q. When and where were you next sworn into office as magistrate?

A. I was sworn in here in the courthouse or at the clerk's office. I am not positive which. I have been sworn in at both places, but I cannot tell what times.

Q. Can you say positively?

A. No, sir. I cannot say positively when. It was whenever my commission came on. As soon as ever it came on I was sworn in.

Q. Can you say what season of the year it was when you were sworn in the second time?

A. I think it was in the summer, I think, sir. That is my recollection about it.

Q. Who was present?

A. Well, I think James Stewart swore me in the second time. I don't recollect who was present. He was the only one I remember.

Q. Tell me when you were sworn into office as magistrate after that, also by whom, and who was present?

A. I was sworn in four years after that by judge Carey here in the house held right out here in the old courthouse. The magistrates were all here, generally, and the county judge.

Q. When was the first of these meetings held, what month and day of the month?

A. The first one that I recollect of was on the first Monday in April, 1866. I won't be positive of this.

Q. The next was held when?

A. The next was held the first Monday in May, I think. I won't be positive about it being the first Monday, but it was on the first or second one in my recollection, but it was in May, though. It was on county court day.

Q. On what Mondays were your county courts held in the year 1866?

A. I don't know you positively on what Mondays, as I stated there.

Q. What is your recollection?

A. Well, sir, I couldn't say; as I told you before, I am not positive what Monday it was in 1866.

Q. Were you present in the county court all day at its May sessions?

A. Well, I think I was most of the time. I couldn't say that I was in the house all the time, but I think I was, generally.

Q. Did all lawyers were present?

A. I don't know whether there was any only colonel Hargis or not. Harry Burns, I reckon, was here, but I won't be positive. There might have been some more here, but I don't recollect them at this time.

Q. Was Clarke there?

A. I couldn't say whether he was or not. I don't recollect.

Q. Who was clerk of the county court?

A. Cyrus Alley, is my best recollection.

Q. I told you positively that he was?

A. I told you positively that he was. I won't say positively anything about it. That's my best recollection, that he was.

Q. Who was deputy clerk?

A. I don't know.

Q. Who was your clerk?

A. Colonel Hargis, I think, is my best recollection about that.

Q. Who was sheriff and deputy?

A. My best recollection is that Jonathan Lewis was sheriff. As to his deputy, I know nothing about it.

A. I don't know whether he was or not. I don't recollect.

Q. Did you not on that occasion say to plaintiff that Taber could not have had no motive for mutilating the record or of the administration to said Taber, and that you did not believe he had done it?

A. As I have said before, I might have said it to him, but I have no recollection of it.

Q. And did you not then assent to the statement made by plaintiff that the said order of administration had been mutilated for the purpose of fixing a place for the false claim asserted in one of the indictments against said Taber, that the said order was defendant's certificate of honesty?

A. I did not, to my recollection, say any such a thing.

Q. Did you not express to him the belief that Andrews, Ringo and Thomas were right, and that defendant did not get his license until August, 1865, and that he was not eligible to the office of circuit judge in 1874?

A. There wasn't a word spoke between me and him concerning that, to my recollection.

Q. Did you not assent to his statement also that the oath of defendant as an attorney in the circuit was his first oath, and that the record order in May, 1866, was not the record of his oath in that court as an attorney?

A. I did not to the best of my recollection.

Q. Did you not say to plaintiff since he first came here to the session of the Carey House, John Ingram being present, that you wished plaintiff the greatest success, and that you believed he, plaintiff, was on the right track?

A. I might have said that, sir, but if I did, I have no recollection of it.

Q. Did you not, in August last, in this place, after plaintiff came here the second time, at the Carey House, did you not tell plaintiff that it was plain that the order book of the Rowan county court, which had then been recently stolen was so stolen in the interest of defendant?

A. I did not, sir, to my recollection.

Q. Did you not have frequent talks with Wm. William H. Wadsworth upon this subject in this town during the month of January and February, and did you not make to him, in one or more of your conversations, statements similar to those I have asked you about in the last ten or a dozen questions, or either of them?

A. I don't remember any statement to Wadsworth at all. I had very little conversation with him about it. I asked him how he was getting along and his answer was "All right, bully! I have got him."

Q. This is your recollection.

Q. Did you not, in 1874, that John R. Taber was indicted for falsifying the certificate of defendant, recorded in the February order of the Rowan county court, and the record of defendant's oath, recorded in the May order of same?

A. I knew that he was indicted for mutilating the record, but I did not know that it was for falsifying these particular records. That is my recollection about it.

Q. As one of the magistrates of Rowan county did you not feel some interest in the matter to inquire into each of your county court records had been mutilated?

A. I made no inquiries, sir. I might have heard but I have no recollection of it. I might have inquired, but I have no recollection of what record was mutilated.

Q. Do you recollect that any record was mutilated?

A. No, sir. I am not positive about it. I never saw them and don't know. I never saw them that I recollect of.

Q. Have you ever heard what they were?

A. I have never said anything about it, but I could not say what they were.

Q. What is your recollection about it?

A. I recollect just what I have put down there. I have heard about the mutilation, but do not recollect in what way.

Q. Did you not know, in 1874, and have you not ever since known, that it was denied that the erased May order was the record of defendant's oath as an attorney in that court?

A. I don't recollect that I did. I didn't know it then, and I don't know it now, because I never saw it.

Q. Did you not know, in 1874, that there were grave doubts entertained by many good citizens as to when defendant was first admitted to the bar?

A. I have heard it spoken of, sir.

Q. I couldn't state, sir. I don't think I heard it spoken of until he made the race for circuit judge against judge Thomas.

Q. What did you then hear, state please?

A. I don't know what I heard was that he was not eligible to the office, that he had not been practicing long enough.

Q. When did they say he had been sworn in as a lawyer?

A. I don't recollect that they told me when, or said anything about it.

Q. How long did they say he would have to practice in order to be eligible?

A. I disagree now. I couldn't say now, but my best recollection is that he was not eligible to the office, and was, therefore, eligible, why did you not, in justice to the defendant, come forward and so state, and thus contribute toward settling at rest the doubts of so many people?

A. Well, it wasn't my business to do it. I hardly ever meddle with anybody's business but my own, and that was none of my business.

Q. Did you, on last Saturday, upon invitation of the plaintiffs, go to the presence of W. P. Larew, one of the attorneys, say to him that you had been summoned as a witness for defendant, and when asked him what you knew, did you not say he would learn when you came to the test?

A. Colonel Hargis asked me to his room and asked me what I knew and I told him I was brought here by defendant as a witness and he would learn what I knew when I testified, and he told me to "go on," and I said he would find out when I was on oath.

Q. Did you not, at the same time and place, and in the same presence, further say that you knew nothing about this case that would do either side any good or harm?

A. If I did, I have no recollection of it, but I always said I did not want anything to do with this case, as I said the other day. I always tried to keep out of it.

Q. Did you not, on the same day, at the Carey House, in this place, in the presence of Steve. Short and a colored man who works at the Carey House, tell Mrs. James Carey that defendant had you summoned as a witness, but that you knew nothing about the case?

A. No, sir, I did not, to my recollection about it. I never said I was called being summoned. That is my recollection about it. She, Mrs. Carey, came out and reared on us. She said that the penitentiary

where also. We all had right to go home.

Q. Did you not recollect of what you yourself said on that occasion?

A. My recollection is that I either stayed here or went home. I don't know which. I can't tell.

Q. Was it at one of those meetings of the magistrates to arrange for building the courthouse that you were sworn in as an attorney?

A. Yes, sir, that one in May, as I have said before, is my best recollection. I can't be positive, but that is my recollection.

Q. Did you not, when you were sitting as a member of the committee to build the courthouse at the time?

A. I was that day, sir.

Q. Which of the magistrates do you think objected to defendant's being sworn in?

A. As I don't know who, I don't recollect.

Q. In answer to question No. 6, by Mr. Stone, you say "Defendant went and called, and was sworn in as an attorney." Please say what you mean by "Went and called?"

A. Well, I mean by "went" was, that he came and stood up, by the stand by the judge, and as I stated before, my recollection is that Cyrus Alley said to the judge: "Here is Tom, who wants to be qualified as a lawyer."

Q. And you mean by "called"?

A. I just meant that he came and called to be sworn in. I suppose that the way the thing went was, that he named it to the clerk, and the clerk said: "Here is Tom, who wants to be sworn in as a lawyer." The judge said: "Clerk, swear him in," and the clerk done it. That is my best recollection. As I have stated herebefore, I am not positive of it.

Q. But you say defendant "called." Whom did he "call"?

A. Well, as I have told you before, I don't know who he called to the judge or the clerk, but the clerk applied to the judge for him. That's my recollection about it.

Q. James E. Clark was the then county attorney of Rowan county in the attendance upon the session of your committee, which was held on county court day in May, and at which you say defendant was sworn in as an attorney?

A. Well, I stated the other day that colonel Hargis was the county attorney at that time, but I rather think that you are right. Whoever was the county attorney was present at that meeting, but whether he was present at the time the defendant was sworn, I can't tell. I don't know who was present besides judge Roe, Cyrus Alley, Thomas Hargis and myself. That is my recollection.

Q. Do you know that all or either of these gentlemen were present?

A. I told you that that was my best recollection, and I say so yet.

Q. How long has that been your "best recollection"?

A. Ever since May, 1866.

Q. To whom have you so stated it in all these years?

A. I never stated it to anybody until here last Saturday, when Thomas Hargis asked me the question, and I answered it just as I have stated it here.

Q. State all that was said between you and defendant on that occasion.

A. He just asked me if I recollect about his being sworn in the first time as I remembered about it. Judge Roe giving him his certificate. I told him that judge Roe told me that he had. He asked me what time that was, and I told him that it was before May a month or two, and maybe three months—that I couldn't tell about it. He was cool whether when judge Roe told me so. Then he asked me if I recollect of him being sworn in here in May, and about Cyrus Alley saying to the judge: "Here is Tom, who wants to be sworn in as a lawyer." He asked me when I did that the judge told Cyrus Alley, the clerk, to swear him in. I told him I wasn't positive, but that was my very best recollection. That's all of it.

Q. Did he ask you if you recollect his taking the constitutional oath and the dueling oath, and that Cyrus Alley administered it to him?

A. Well, I believe he did, sir. I forgot that before. My recollection is that he did.

Q. When you told him you were not positive about it did he not tell you that he remembered you were present, and that you ought to remember it?

A. I don't recollect whether he did or did not. I don't think he told me that I ought to recollect it. He just asked me if I did recollect it.

Q. Did he say he recollect that you and Cyrus Alley and judge Roe and himself were all that were present?

A. He didn't say whether they were or not. I have told you all that I recollect. He didn't tell me that I know. He just asked me if I recollect it, about his being sworn in.

Q. Did he say to you if you recollect that the four above named were all that were present?

A. No, sir.

Q. Did he say anything on that subject? If so, what did he say?

A. No, sir. He said no more than what I have told you. I have told you all he said on that subject that I recollect of at this time.

Q. Is judge Roe living or dead? If not living, where did he die?

A. He has been dead either three or four years this November. I ain't certain which.

Q. Did he ever say anything about when defendant was sworn in in his court?

A. Not that I recollect of, sir.

Q. Have you seen defendant frequently or infrequently since 1874?

A. I have seen him seldom, sir. Only once and awhile.

Q. About how often do you suppose?

A. I couldn't tell. Sometimes I see him two or three times a year, and sometimes once a year, or maybe a whole year before I see him. I hardly ever see him only when he is at Morehead here, and I haven't seen him since last Saturday.

Q. Did you see him much of him in 1874?

A. Well, sir, I don't recollect whether I saw him much that year or not. I don't recollect of seeing him only once while he was on that case, as I said before. I might have seen him oftener. I don't recollect.

Q. When and where was that?

A. Well, I couldn't tell you that, exactly where. My recollection is that it was at this place. I don't know, but I couldn't tell you when it was. I don't recollect.

Q. Did you talk with him?

A. No, sir, only to speak to him.

Q. Have you had any talks with him since then, and before last Saturday?

A. Well, I had a little talk while he was criminal judge with him. I went over here to Jim Johnson's to dinner, and then we had a little chat. Nothing private, though.

Q. And after that since 1874?

A. No, sir, nothing; only to meet him, nod to him and pass him.

Q. You say he took the dueling oath and the constitutional oath. Please tell me the difference between these oaths.

Q. State whether you would sign a certificate, like the one inquired of in the plaintiff's last question, now.

A. No, sir, I wouldn't.

Q. Do you recollect whether judge Roe told you that he had granted defendant's certificate to obtain license at a regular or special term of the court?

A. My recollection is that he told me it was granted at a regular term.

Q. But of this are you positive?

A. No, sir, I can't. It is my best recollection.

Q. Can't you state whether he told you about it on a court day or not?

A. No, sir. As I stated before, I can't.

Q. The letter you took to Taber from Scott was sealed up, was it not?

A. Yes, sir. Sealed up and backed to Taber.

Q. Do you know what its contents were, or what it was about?

A. I didn't then, and never did know.

Q. Did you come to Morehead expressly to bring that letter, or were you coming on other business, when Scott gave it to you?

A. I was coming on other business. Come by the Cross Roads, and Scott handed me the letter and told me to give it to Taber.

Q. Do you know whether the letter you brought in was sealed with R. G. Scott's deposition in this case, or that it was sealed with a name never to be accomplished, and relates to the defendant's oath in the county court?

A. I know nothing at all about it.

Q. What was judge Roe's age, older or younger than you?

A. He was older than me. I think he was about seventy when he died. I never knew his age exactly.

Q. What relation are you to James Carey?

A. I married his sister.

Q. In the several interviews between you and plaintiff, Green, this summer and fall, did he ever tell you he had given notice to take your deposition in this case, or that he wanted you as a witness?

A. No, sir.

Q. He gave me notice to give anything to drink out of that bottle of whiskey he kept in his room.

A. He gave me one dram of brandy the first time I was here after he came—that's all.

Q. Examine exhibits A, B, C and D, here shown you, and say if they are copies of your commissions as justice of the peace of this county.

A. I reckon they are all right, and I refer to them and make them a part of my deposition as marked indicated.

Q. Examine the originals of your first commission and the certificate dated 15th September, 1865, on the back of it, and state if the certificate of your qualification is not in colonel Hargis's handwriting, and if the signature thereto is not that of Stevens Roe.

A. I have examined it, and I think it is in colonel Hargis's hand write, and the signature is that of Stevens Roe.

Q. Had you ever seen that certificate or its date till to-day, since you were sworn in?

A. No, sir. I never have.

RE-CROSS EXAMINED.

Q. I believe you said you were positive as to your interview with judge Roe concerning defendant's certificate, and as to its details. Am I correct?

A. Yes, sir.

Q. He said it is that you are not positive that he told you he had granted that certificate at a regular term of the court?

A. Because my recollection don't serve me whether it was or was not.

Q. Did you tell Mr. Stone that your best recollection was that it was at a regular term?

A. Well, it was only my best recollection. I was not positive whether it was or was not.

Q. Upon reflection have you now any doubt that it was?

A. No, sir. I have no doubt about it. What I mean is the best of my recollection. I am not positive about it.

Q. Mr. Stone asked you if you had drank of plaintiff's whiskey when you and he were having your interviews on the subject of this controversy. You said that you had drank of his brandy. I now ask you if you knew he had any brandy or whiskey?

A. He was the man who gave it to me. I don't know whether it was his or not, but he is the man who handed it to me.

Q. Have you drank any of defendant's whiskey or brandy within the last week?

A. I have drank one dram—that's all.

Q. I saw you drink with John Scott or A. J. McKenzie, didn't you?

A. Yes, sir. I have drank with both of them.

Q. Are they the gentlemen who brought you here?

A. McKenzie is. John Scott had nothing to do with it. I saw McKenzie come after me, and I came up here with him.

Q. When did you drink with defendant, and where? State the facts.

A. I drank with him yesterday, at the Cross Roads, or he didn't drink any, but he called for it for me, and I suppose he paid for it. I didn't see him drink any.

Q. Where did you find the "critter"?

A. At judge Krings.

Q. In how many miles did you put it for me, and I suppose he paid for it. I didn't see him drink any.

Q. What day was yesterday?

A. Yesterday, I reckon, was Sunday.

RE-EXAMINED.

Q. The plaintiff, Green, rode from Morehead ten miles horseback with Mat. Carey, son of James Carey, and to the Cross Roads, and put in yesterday, Sunday, looking up witnesses, did he not?

A. I heard he did, but did not see him.

Q. Now, do you not recollect that it was Dr. McMillan who got you a dram in the Cross Roads yesterday?

A. Well, I did not see anybody pay for it. I think me and judge Hargis and Dr. McMillan all started over that way together.

H. R. MYERS.

Mrs. Sherman's Religion.

New York Herald.

This item appeared in the Herald a few days ago:

"The favorite daughter of general Sherman is engaged to be married to a Lieutenant in the navy. She is a very liberal Catholic, and so good a horsewoman is she that in a jaunt of thirty-two miles she has the time to get back fresh, while the half-dozen young officers that escorted her were entirely used up."

In regard to this we have received a letter from Mrs. general Sherman, which says:

"I have read in the Herald, this statement, which, although seemingly unimportant, is really a slander. To be a 'liberal Catholic' is to be an object of pity or contempt, and my children are all up to this day, as true and loyal as the angels in heaven, and exemplary in their lives. Very respectfully, yours,

ELLEN E. SHERMAN."