

Judge's Decision Admits Conley Testimony in Full

At the continuation of the argument on the subject of Judge Roan's reserved decision, Solicitor Dorsey cited extracts from many legal volumes, many of which pertained to the untimeliness of objections in just such cases as the one which he argued.

"It makes no difference if the act in question was a separate or distinct crime," he said, "just so it shows a course of conduct, and has sufficient probity value to the case on trial. It is absolutely admissible.

"We contend that the defense has stopped at this late hour, after examining extensively and minutely along the point, and have attempted to do something which is deplorably irrelevant. We object to the ruling out of this testimony because we propose to substantiate the truth of Conley's statement by other witnesses, including C. B. Dalton, George Epps and others.

"We intend to introduce Epps to show that Mary Phagan, fifteen minutes before she went to her death, expressed fear of Leo Frank because he had been flirting with her and making continued advances."

At this, the solicitor cited the case of a trial in which the deceased, a woman, stated, upon leaving home, that there were two persons in a nearby alley, and that she thought one was her husband—the other his sweetheart, and that she would go see. She went into the alley never to return alive. Her body was found there later.

Law Plain, Declares Hooper.

Upon the conclusion of Solicitor Dorsey's statement, Attorney Hooper had to say:

"The law of Georgia, I understand,

controls this court, and not the supreme court of Minnesota, or California, as my friends Rosser and Arnold have striven to show.

"There is no necessity for argument. The law stands plainly for itself. It says that objections shall not be ruled out unless the objection is made at the time the question is propounded.

"If this evidence was not admissible at the time it was offered by the state and cross-examined upon by the defense, why the only motion to which they would be entitled was to rule out their own cross-examination and nothing else.

"Your honor has admitted that this testimony was admissible by ruling against the state while the cross-examination was in progress. Before they have any right to ask that it be ruled out they must dissect the volumes of evidence they have also introduced which has a bearing on this place, and point out exactly the evidence they want to extract."

The attorney then proceeded to recite cases from various law authorities, in the course of which he recited one of Judge Roan's own decisions.

"Now," he said, "is your honor going back on his own ruling? If the objection is to be made legally, it should have been made the instant the question was asked. There is no impartial lawyer in town who will dispute that fact."

Reuben Arnold arose to say:

"These authorities, from which my friends are reading, have no bearing on the case. The twenty-eighth Georgia says that illegal testimony is always subject to withdrawal. If the evidence is illegal, a move can always be made to withdraw it, whether it has been permitted as an experiment or otherwise. The time for withdrawal always exists."

Roan Makes Decision.

In making his decision, Judge Roan stated:

"I have serious doubts as to the admissibility of this testimony as an original proposition. As it has been cross examined you may expunge it from the records, but you can't disassociate the original from the cross examination. I am going to allow it to remain in the record. It may be extracted from the record, but it is an impossibility to withdraw it from the jury's minds."

As the judge announced his decision there arose a spontaneous riot of applause from the audience. Court attaches, lawyers and judge looked up astonished. Attorney Arnold said:

"I will ask for a mistrial if such a demonstration as this again arises. Also, I will ask that the court be cleared if it continues. Mistrials can easily be caused by just such actions."

In continuation, Judge Roan said:

"I am ruling just whatever I deem fit and proper, whether it pleases or displeases. On the question of the Epps boy's testimony, I rule that it is inadmissible."

"I want your honor to rule positively, now, on this first question," said Mr. Rosser.

"I am going to let it remain," calmly declared the judge.

"In regard to Dalton," spoke up Mr. Arnold, "we object to his testimony on anything relating to affairs and happenings previous to the day of the murder."

"I will rule that Dalton's testimony will be inadmissible in anything except in support of the negro Conley."