

Misconduct of Counsel—Jury Influenced by Tears.

The conduct of counsel in argument before a jury has often been such as to work a reversal of his case. But never before has an appeal been taken to the Court of last resort because an attorney in arguing a case excited the sympathies of the jury by opening the cockles of his sympathetic heart and letting out a flood of tears. Such a case has been passed upon in Tennessee. The Court, by Judge Wilkes, in passing upon the question, said:

"It is next assigned as error that counsel for plaintiff, in his closing argument, in the midst of a very eloquent and impassioned appeal to the jury, shed tears and unduly excited the sympathies of the jury in favour of the plaintiff and greatly prejudiced them against the defendant. Bearing upon this assignment of error, we have been cited to no authority, and after diligent search we have been able to find none ourselves.

"The conduct of counsel in presenting their cases to juries is a matter which must be left largely to the ethics of the profession and the discretion of the trial Judge. Perhaps no two counsel observe the same rules in presenting their cases to the jury. Some deal wholly in logic, argument without embellishments of any kind. Others use rhetoric and occasional flights of fancy and imagination. Others employ only noise and gesticulation, relying upon their earnestness and vehemence instead of logic or rhetoric. Others appeal to the sympathies; it may be the passions and peculiarities of the jurors. Others combine all these

with variations and accompaniments of different kinds.

"No cast iron rule can or should be laid down. Tears have always been considered legitimate arguments before a jury, and while the question has never arisen out of any such behaviour in this Court, we know of no rule or jurisdiction in the Court below to check them. It would appear to be one of the natural rights of counsel which no Court or constitution could take away. It is certainly, if no more, a matter of the highest personal privilege.

"Indeed, if counsel has them at command it may be seriously questioned whether it is not his professional duty to shed them whenever proper occasion arises, and the trial Judge would not feel constrained to interfere unless they were indulged in to excess as to impede or delay the business of the Court. This must be left largely to the discretion of the trial Judge, who has all the counsel and parties before him and can see their demeanor as well as the demeanor of the jury.

"In this case the trial Judge was not asked to check the tears, and it was, we think, an eminently proper occasion for their use, and we cannot reverse for this. But for the other errors indicated the judgment must be reversed and the cause remanded for a new trial. Plaintiff will pay the costs of the appeal."

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Humours of the Law.

Lawyer—"John!"

Clerk—"Yes, sir."

Lawyer—"Take this morning's paper, find the marriage list and send one of my cards to each of the persons whose name appears