Interesting Judgement In Liquor Case

Doaktown Man Accused found Not Guilty of Consuming Liquor Illegally

The following interesting judgment was recently delivered by Thomas Parker, J. P., and being one of the first cases of its kind ever tried in the provnce we reprint the judgment in full, showing why the defendant was found not guilty:

This action laid by Fraser Saunders, of Marysville, in the County of York, a Provential Constable, a defendant from Doaktown, in the County of Northumberland, was commenced by information dated the twenty-third day of December last, and filed in this Court on that day. The information charges that the said defendant between the first day of October, 1918, and the first day of Nov. 1918, at the Parish of Blissfield, in the County of Northumberland, did consume or drink liquor prescribed by a physician under the Intoxicating Liquor Act for a person other than the said defendant, contrary to the provisions of the Intoxicating Liquor Act of 1916. The information is rested on Sec. twenty one of the Act, which reads as follows: "No liquor prescribed by a physician under this Act, shall be consumed or drunk by any person other than the sick person for whom it has been prescribed."

On the hearing of this information witnesses were examined, all of whom were called by the prosecution. The testimony of witnesses is the source from which the Magistrate must gather his knowledge on which to ground a decision. This evidence is the fountain, so to speak, from which he must draw his conclusions. If it were otherwise, if he could draw conclusions from other sources, then where the wisdom of taking sworn testimony at all?' The Magistrate must tabe the evidence, and disabusing his mind of sympathy on the one hand and of prejudice on the other, apply his best judgment to the record betore him. He is sworn to discharge his duty without fear, favor, or malice. If he who so often has reason to complain of the conduct of others under oath, should fail in his own, he would not only set an evil example, but he would turn the Court itself into an engine of corruption and pervert justice at the fountain from which it ought to flow pure and undefiled.

There are certain rules of evidence and rules for the construction of the Statute law which he is bound to follow as ar as he knows them. These rules are often condemned by the thoughtless, and the unread, because it is said that offenders by their operation, are allowed to go unpunished. I want to say a half dozen of words about these rules, so as to explain, if possible why it is that the verdict of the Court often fails to agree with the preconceived notions of the bystanders. In small villages like ours, more than in the cities the Justices of the Peace are often severely criticized for their judgments. Some of these rules originated in Britain more than 1,000 years ago. Some of them were borrowed from the civil law, the law of Rome, and introduced into British common law. These are known to have been in existence for more than 2,000 years. And as Blackstone points out some of our laws have been taken from the law of Moses as we have it in the Old Testament. Moses, skilled in the learning of Egypt, could hardly fail to draw from that source when he gave his code to his people. Now if that is so, some of the principles which govern us today must have existed through a period of more than 5,000 years. These rules must have been founded in wisdom, otherwise they would not have survived through so many ages. Coming down from immemorial times they have acquired an authority which only venerable age can give. They have been approved, sanctioned and upheld by the wisest and best of men as being favorable to liberty, if indeed they are not the foundation of it. There is no doubt that through the application and operation of these principles many persons every year escape the consequences of their acts. Some evil may indeed result from them, just as evil may result from everything else that is good. But if they should be taken away far greater evil would result. If they should be abolished despotic authority would pass into the hands of a class of men no more infallable than other men. The will of the Judge would then be the rule of the law. Courts, Judges and Magistrates would then hold arbitrary power. The line, the square and compass, once taken away, the Judge could trade and traffic on the lives and liberties of the people. No man should hold arbitrary power. Arbitrary power is at eternal enmity with both law and liberty. It works from a bad centre both ways. It demoralizes those who practise it, and it destroys the independence of those who suffer by it. Some evil may indeed result from the present system, but a hundredfold greater wrongs would follow a change. Of two evils we should choose the least for it would be madness to choose the greater.

Bearing in mind then, the rules of evidence, and the rules of Construction to which I have referred, what are the facts in this case. Two facts are set out in the information:—1st, that the defendant drank liquors, and the 2nd, that the liquor he drunk was prescribed by a physician for some person other than himself. The question to be considered is, does the evidence sustain the charge.

Of the ten witnesses examined, two of these, Shaffer and Dixon, were examined on auxiliary matter relating more or less remotely to the charge. The witness Russell, also stands apart as a witness, and his testimony will be considered apart. The remaining seven were shown to have been in the defendant's company for some time on Oct. 12th, the day the offence is alleged to have been comfitted. On that day it appears that the defendant in company with the witnesses Turner and Carr went from Doaktown to Blackville in an auto. It appears that they visited the Liquor Vendor, Shaffer, at Blackville, and that they started homeward, on the same day having with them, in the possession of the said two witnesses, some guantity of prescribed liquor. It does not appear whether the defendant had or had not in his possession the liquor prescribed or otherwise. It is clear that the party on their way homeward called at the home of Chester Connors at Upper Blackville.

It appears that they went into the Connors house, that hey met Chester Connors and one Elmir Arbeau, both witnesses in this case. It was shown by the testimony of both Connors and Arbeau that James Turner had a bottle of whiskey, for Connors on his oath said "Turner had the whiskey." Certain of these people drank from a bottle produced by the said Turner, but it was not shown that the defendant drank. Both Connors and Arbeau swore they did not see him drink. It also appears that the defendant and the witnesses Carr and Turner on their way westward called at the home of Angus McDonald at Blissfield. Here again a bottle was produced on a table in McDonald's woodshed. But there is no evidence that the defendant drank, though the witness did. Somewhere on that road on the same day, the party fell in with Arthur R. Williams, of Chatham. This witness after explaining that he met the defendant and the parties with him admitted they were taking a drink. I think it fair to assume that the defendant was one of the "they" who were taking a drink. He, Williams, however, would not swear that the liquor in question was intoxicating. He waived the question by saying that it looked like some kind of a syrup or other decoction. There is no evidence at all that the bottle or bottles produced on these three different occasions had any prescriptions on them Probably the parties who saw them were more interested in what was in the bottle than what was on it. It is true that testimony of an adverse witness mrst be given full weight as far as it goes, because like most of the others, he volunteered nothing of a damaging nature. Whatever he disclosed of that kind was drawn from him reluctantly and with some reserve. And it is generally held that testimony wrung from an adverse witness ought to bear more weight than if fully volunteered. Nevertheless, if I should found a conviction on this testimony I would have to assume without a particle of testimony, first that the liquor, whatever it was, was intoxicating, and second that it had been prescribed or set apart for some person other than the defendant.

I have now only to consider the testimony of Russell, for Dixon and Shaffer from their situation can furnish no clue at least as far as the drinking is concerned. The evidence of Russell is clear of all doubt as to what he discloses, but it does not appear that he saw the defendant on the day in question, had he been of the auto party on that day the result migh have been different. This witness stands out in sharp contrast with some who hesitated, with others who prevaricated and yet others who stultified themselves. Some of these witnesses had the temerity to take the oath, and then depose to things that no sane man could believe.

Granted that this is no place to moralize, still I may say in passing that it is regrettable, even melancholy, to see young men, some of them not more than boys, dritting, as one may say, from the church and the Sunday School, to a Police Court, there in my opinion, undoubtedly to perjure themselves, in order to screen off the truth, and throw a haze over the mind of the Magistrate who had to deal with their testimony. In this respect the defendant himself, though accused of an offence, stands head and shoulders above some of the crown witnesses, for he, though interested, prudently refrained from such conduct.

Russell's evidence shows that he saw the defendant on Oct. 13th, the day after the defendant's visit to Blackville. I tshows that the defendant admitted to Russell that he and his party on the day before had probably been drunk. The language of the defendant at Russell's barn was "I guess we were all drunk."

Now, if the charge in this information had been drunkenness, and the defendant had made this admission in Court under oath, or not under oath, it might have convicted him, if drunkenness were an offence in the Statute on which the information was based. But this is not the case. The information does not charge drunkenness, nor is it rested on a Statute that makes drunkenness an offence. Therefore the admission of drunkenness cannot in my opinion convict of or for consuming liquor prescribed or separate for some other sick person than the defendant. In other words, the admission does not go to the root of the matter. The wager is lost because the bullet does not pierce the bull's eye. Besides this, the admission was expressed in the form of a doubt. "I guess we were all drunk" A guess involves doubt. The accused must in all cases get the benefit of the doubt. Moreover, the admission was made neither under oath nor to the Court, by the defendant, circumstances which I think weaken its force, for, though the witness is above suspicion, his memory might be defective, or his powers of expressing and reproducing conversation might be at fault. so that whatever way we look at this admission the difficulties for conviction thicken. It may indeed well be held that if the defendant was drunk he must have been drinking, but his drinking goes only to one of the particulars of the charge. Where is the evidence that what he may have drunk was prescribed liquor? The two particulars in the charge—the drinking, and the fact that the liquor so drunk was prescribed or set apart to another's use and diverted from that use by the defendant. these two particulars are inseparable, joined together. Framed together and built on one foundation they must stand or fall together. There is evidence that some of the defendant's party on the day in question got drunk on prescribed lijuor. The witness Carr was overtaken apparently with some complaint and liquor prescribed for him at Blackville. On his return with the defendant he admits that he go so drunk that he could not remember what happened. No enquiry was made about the nature of his complaint, but it must have been bad if it were worse than the remedy. But this was Carr. not the defendant. There is some evidence of drinking but nothing conclusive. The whole mass of testimony is clouded with uncertainty. The Judge is not bound to give weight to any testimony which he does not believe. If I should throw all away that is doubtful then there is little left. There are damaging facts disclosed here and there, but no clear or steady light. There are glimpses of light only, here and there, like the momentary gleams of the sun breaking in the rifts of the clouds, on a day that is overcast. The prosecution must have realized this at the close of the last adjourned hearing, otherwise the complainant would not have moved for a further adjournment for witnesses—a motion which I granted. Had he been satisfied that the charge was proved he would have rested it there and then. The information is dismissed with costs, not because it has been shown to be false, but because it hsa not been shown to be true.

THOMAS PARKER, J. P.

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PUBLIC NOTICE

Take Notice that the Municipality of the County of Northumberland will apply at the next meeting of the Local Legislature to pass an Act to amend Chapter Two of the Consolidated Statutes of New Brunswick 1903 entitled an Act Respecting the Division of the Province into Counties, Towns and Parishes by repealing the sections of the said act in which division of the Parishes of South Esk and Derby are stated and enacting the following amendments

(111) Parish of South Esk—North and North East by North Esk west by the County line and South by a line commencing at the Canadian Government Railway Bridge across the North West Branch of the Miramichi River thence South along the said Railway to the Southern side of the overhead bridge crossing the said railway thence in a westerly direction till it strikes the lower line of Thomas Young's lot at the South East Corner thereof thence westerly along the rear line of the grants bounded on South West Miramichi River to the rear of the Davidson grants thence on the same courses as the rear of the Davidson grants to the Blackville line thence along the parish lines of Blackville, Blissfield and Ludlow to the County Line.

(115) Derby West by Blackville North by South Esk east by the lower extremity of Beaubear's Island and to include the same and South by the South West Branch of the Miramichi River.

Dated this twenty-eighth day of January, A. D., 1919.

E. P. WILLISTON, Secretary-Treasurer