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SUPREME COURT ACQUITS O'DONNELL OF LIBEL CHARGE

Not Libelous to Publish Comment or Inferences Upon Undisputed Facts-- Interesting Discussion by Court

Hugh O'Donnell, editor of the defunct New Orleans American, was freed of the charge of libel brought against him by city officials when the state supreme court handed down decisions yesterday. O'Donnell had been found guilty of the charge in Judge Christian's division of the criminal court, but Judge Christian himself was not certain of the proper construction of the law regarding the case.

In reversing the lower court the supreme court makes the distinction between the publication of certain facts and the publication of comments on those facts. It holds, in brief, that a man has the right, where certain facts are proved, to make any deduction or comment he wishes on the facts, and to publish the comment, providing that at the same time facts on which the comment is based are also published, so that the reader can draw his own conclusions as to the correctness of the reasoning.

Before the trial of the O'Donnell case in the lower court O'Donnell's attorneys had filed a demurrer. Says the supreme court:

A demurrer to that information was overruled and the accused appealed. The demurrer should have been sustained. Even if the said publication contained, as alleged in the information, the statement that the commission council was about to use the funds of the city for buying and operating a race track for the city, this would not be libelous; it would not be charging the members of the council with moral turpitude, or want of integrity, or necessarily bringing them into disrepute. Indeed, there are some good citizens of New Orleans who believe that maintaining a race track is a good thing for the city.

"But that statement is not contained in said publication. The publication may be said to have for its theme the possibility of the Business Men's Racing association being backed by city funds, and the condemnation of such a course. The thought running through it, in a most desultory manner, no doubt may be said to be as follows: That the Business Men's Racing association having purchased the City Park race track, and this association being reported by the Daily States as about to purchase also the Fair Grounds race track, and that association having been without the means to make the first of these purchases and being still less possessed of the means with which to make the second, the query arises as to where the money is to come from, and as to whether, in view of the fact that the city administration fattened the first of these purchases, it is not about to use the funds of the city, to help along the second; and that if the scheme is unwise because to all appearances doomed to disaster; that it is even reported that the said association is to build a concrete grand stand; but that 'all this too silly to be taken seriously.' This appears to us to be the substance, the skeleton of the publication; all the rest being mere language, the clothes put upon the skeleton in partisan newspaper style.

The only assertions contained in the publication are as to the fattening of the City Park race track purchase, and as to reports having been made that the purchase of the Fair Grounds race track and the construction of a grandstand by the Business Men's Racing association were contemplated, and as to the impropriety of that association; all else is stated by way of infer-

ence and comment, and the reader is left to judge of the cogency of the inference, and the justness of the comments. Thus -- 'Possibly the City Administration is also fattening this latter deal.' 'If so, who is furnishing the money?' 'Has the City Hall gone out and out into the racing business?' 'There can be little hope for the community if those,' etc., 'If Hyams et al have a chance,' etc.

"The statement that the city administration made a serious mistake in quitting its task of running the city to foster and father in risky ways the sport of racing and its dubious future -- has reference by its terms to what the City Administration has already done, and the only thing it is charged with having done is that 'it fattened' for the Business Men's Racing association the purchase of the City Park race track. The information, however, does not charge that in connection with that statement, the brief of the prosecution expressly disclaims the idea of going so. The libel is in connection with the statement, alleged to be sustained in said publication, that the Commission Council was about to use the money of the city to purchase the Fair Grounds race track.

"It is argued in the brief that the lending of public money to a private corporation is forbidden by law, and that the fore to make such a charge against the Commission council is to charge the members thereof with misconduct in office. But in the first place the construction put upon said publication by the information is not that the funds of the city are about to be lent to the Business Men's Racing association but that they are about to be used for the purchase and operation of the Fair Grounds race track, and nothing is said of said purchase not being for the city. To that effect is the intendment of the information, and the office of an innuendo is to put upon the publication the construction which the prosecution contends for. In the second place, if the said charge is contained in said publication, it is there contained not by way of assertion but, as already pointed out, by way of inference from facts that are stated; in other words by way of comment; and comment upon a matter of public interest such as this is not libel, especially by a newspaper.

"The distinction between assertion of existing fact and comment upon supposedly existing facts, or in other words the difference between assertion and comment, is thus stated in *Oilers on Libel*, 5th Ed., page 197:

"A comment, as we have already stated, is the expression of the judgment passed upon certain asserted facts by one who has applied his mind to them, and who while so commenting assumes that such allegations of fact are true. The assertion of a fact is not a comment at all. If the words complained of contain allegations of fact which are denied by the plaintiff, and which the defendant cannot prove to be true, there must be a verdict for the plaintiff. It is of no avail for the defendant to urge that he honestly believed them to be true."

"Comment on well-known or admitted facts is a very different thing from the assertion of unsubstantiated facts for comment. There is no doubt that the public acts of a public man can lawfully be made the subject of fair comment or criticism not only by the press but by all members of the public. But the distinction cannot be too clearly borne-

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FIRST ARREST UNDER ARMY LAW

DEPARTMENT OF JUSTICE STARTS SLACKER ROUNDUP HERE

U. S. GRAND JURY CHARGED

Judge Instructs Jury to Run Down Unregistered--Governor Gets Orders From Provost-Marshal.

Adam Kelmell, 1326 Camp street, Public Bell employe, was arrested at his home last night by Department of Justice agents on suspicion of having tried to evade the draft registration. In the night court he was ordered held pending investigation by Recorder Chamberlain. He is being held under the city dangerous and suspicious ordinance.

Kelmell claims to be over 31 years old, giving his date of birth as August 12, 1885. Investigation by the Department of Justice, however, is said to show there is doubt as to his being over the registration age. Kelmell was born at Selma, Ala. A communication will be sent to the state inquiring as to the date of his birth. He has been in New Orleans 18 years.

Judge R. E. Foster, of the United States district court, called on every citizen in New Orleans to help in the federal authorities, in his charge to the federal grand jury, assembling yesterday for the consideration of slacker cases. The jurist instructed the jurors to operate with the greatest possible alertness in running down unregistered men.

"It is your duty to return indictments against unregistered persons. The court will determine whether failure to register was due to ignorance, to willful disregard of the conscription act, or to other circumstances."

A large audience of business men was in the courtroom. The names of the grand jurors follow:

A. C. Carpenter, chairman; J. H. Griffing, W. B. Troyer, F. A. Reynolds, H. J. Stouse, Adolph Rohage, H. E. LeClere, Ed. H. Poteaux, John J. Demarest, W. S. Dulany, Joseph R. Wells, B. N. Bonachi, A. H. Dennis, James Ramey, H. M. Martin, Frank J. Meridier, Norem Jackson, Wallace J. Dunn, George Oliver, J. M. Sweetman, John M. Shaw and J. S. Tonry.

Governor Pleasant Sunday received the following telegram from the provost marshal-general relative to the men between 21 and 31 years who failed to register:

"Quotas are to be assigned to the several States in proportion to their population determined by the bureau of the census and not in proportion to the registration. The result is that every person who has failed to register is seriously increasing the burden of those who have registered. Ample notice and every opportunity has now been given and there is no longer any argument upon which the conduct of non-registrants can be condoned. The period of leniency referred to in my No. 590 has passed. Attention is invited to paragraph 16 of the registration law. It is requested that every effort be now made to detect and arrest persons subject to registration who have not registered and to bring each case promptly to the attention of the nearest representative of the department of justice. Wide publicity should be given to the effect of non-registration in increasing the burden of those who have registered. Care should be taken that the lists prescribed in paragraph 39 are posted promptly and all registrants should be asked to assist in bringing non-registrants to the attention of the police. Summarizing reports of registration from the various boards should be compared with the census bureau and effort should be concentrated

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EMISSARIES OF TONG HAVE GONE

AND CHINESE CITIZENS BREATHE EASY ONCE MORE

BEE PUBLICITY ROUTED THEM

Advertising Not Good for Their Business, So They Quietly Left the City

Evidently fearing action by the police, two of the emissaries of a Chinese tong that came here several weeks ago to organize a branch of the society in New Orleans, have left town, it was learned yesterday on good authority. Two articles, printed exclusively in *The Bee*, telling of their arrival here and what they intended doing, are thought to have caused them to flee.

Several weeks ago prominent members of the local Chinese colony sent a petition to Superintendent of Police Reynolds asking him to investigate the activities of the tong's representatives here. They said in the petition that the emissaries were sent by the On Leong Tong, which they characterized as a "murderous gang of blackmailers." The Chinese petitioners stated that a branch of the On Leong Tong were formed here their days of tranquility would soon be over.

Things in Chinatown continued to run along smoothly on the surface, but there was an undercurrent of uneasiness with respect to the coming of the strangers was strenuously objected to and trouble was seeded in the atmosphere. Residents of Chinatown were on their guard.

Then *The Bee* heard of the petition and printed a story about the tong which, next day, was verified by Superintendent Reynolds. The following day there appeared another story under big headlines. The tong always works under cover, and with the search light of publicity thus turned upon them, its agents took alarm. They lingered a few days and then disappeared.

Chinatown is now breathing freely again, having fallen back into its dreamy life of contentment.

BOGUS SALVATION ARMY MAN CAUGHT

Walter O'Dell, 29, 111 Burgundy street, alleged by the police to be the man who has been obtaining goods from merchants in various parts of the city by representing himself as an agent of the Salvation Army, was arrested yesterday. He was charged with obtaining goods under false pretenses and being a dangerous and suspicious character.

For some time the police had been searching for the culprit. Almost every other day for the past few weeks complaints came in of his activities. O'Dell, otherwise known as J. M. Russell, was arrested yesterday when he went to the Electric Shop, 618 Gravier street, with an alleged forged order from the Salvation Army for an electric fan. J. P. Stem, manager of the electrical concern, was suspicious and promptly notified the police. Corporal Anderson and Patrolman Reozza took O'Dell into custody. Paul Werner, manager of the Industrial department of the Salvation Army, assisted in the detection of the offender.

389 U. S. SHIPS ARMED
Washington, June 11.—Rear Admiral Earle testified today before the Senate naval committee that since April 1 a total of 389 ships had been armed to combat the submarines.

HOT TIME IN JIM LEE'S RESTAURANT

WHEN NEGRO WAITRESS RAISED QUESTION OF COLOR

ANGRY MAN HURLED BOTTLES

Proprietor Took Three Shots at Disturber, Two Taking Effect. Both in Custody

There was a hot old time in the restaurant of St. Jim Lee, 1117 Poydras street, yesterday afternoon when Raphael Marcia, 36, 201 North Rampart street, a laborer, heaped curses upon a negro waitress for inquiring as to his color and became involved in a row with the proprietor who shot him in the right arm twice. Bottles flew about the place and a large mirror was shattered.

Marcia went into the restaurant, the size where white persons are served, sat at a table and was tending his appetite for a hearty meal when Myrtle Carter, the ebony waitress, came up. Very politely, she asked Marcia if he was white or black, as his dark complexion caused her to be doubtful. This annoyed Marcia and he is said to have used a little vile language.

Not wishing to have any trouble in his restaurant, Lee requested Marcia to quit, but the latter was not in line to oblige him. Instead, it is alleged, Marcia showed his baseness by picking up several bottles and hurling them in quick succession at Lee's head. Lee, unskilled, however, and was not struck by any of them. But one bottle came in contact with the mirror behind him and glass was spread all over the floor. Fishes, too, cut through the atmosphere and shattered themselves upon the floor. Despite the bombardment, Lee was unscathed after the smoke of battle cleared away.

But Lee was not going to let Marcia have his fun without a little reciprocity. So he produced his revolver while the bombardment was at its height and fully convinced Marcia that he could do quite a bit of bombarding himself. Three times Lee's trusty gun barked. One bullet took a hasty departure through a window and two others went no further than Marcia's right arm. After having his injury treated at the Charity hospital, Marcia was escorted to the First precinct police station by a husky copper. He was booked for disturbing the peace and malicious mischief.

Lee, too, was arrested. He was charged with shooting and wounding.

BACK AND HIP WERE WRENCHED

Henry Messner has filed suit in the civil district court against Jacques Mosler for \$2,800 damages. He alleges that on May 19 he was engaged in measuring the back of an automobile which was standing in Girod street, between Carondelet and Baronne. A machine owned by Mosler and driven by an employee of the latter approached from the rear at a dangerous pace and crashed into the second machine, throwing Messner to the ground. The latter suffered from a wrenched back and hip, he asserts.

BRITISH GAIN MILE
London, June 11.—Another mile of German trenches were captured by General Plumers' forces today, the war office report says. It also was announced that Italy had shifted the brunt of the attack from Trieste to the region of Trent. The capture of Monte-Ortigara, 7,000 feet high, is the outstanding feature of the Italian drive.

WAR BUDGET RECOMMENDED
Washington, June 11.—The Senate this afternoon voted 48 to 22 to send the \$3,340,000,000 army and navy war budget back to conference.

MEXICO, WHILE NEUTRAL, IS FRIENDLY TO CAUSE OF U. S.

Letters From Carranza Looked Upon as Significant--German Activities in Mexico Will Stop

By International News Service.

Washington, June 11.—Mexico will give the United States assurances of her warmest friendship, amounting practically to a declaration of sympathy for the cause of the Allies, tomorrow.

This was expressed in an autograph letter from President Carranza to the government of the United States. The letter was received by Ambassador Bonillas, of Mexico, and will be presented to Secretary Lansing tomorrow.

Ambassador Bonillas is authority for the statement that Mexico will seek to continue the policy of neutrality in the World War, but he does not deny that the sentiment of Mexico is with the Allied cause.

While President Carranza's letter is intended as an official announcement that Mexico has returned to normal conditions, its expression of friendship for President Wilson personally and for continued friendly relations with the United States are taken in diplomatic circles to mean that Mexico's sympathy is entirely with the Allies.

Ambassador Bonillas denied today that Mexico contemplated entering the war on the side of the Allies, but it is evident that German activities on the Mexican side of the line will be stopped.

CASHIER GAGGED AND ROBBED OF \$3 40 LABOR HEADS URGE FOOD LAWS

By International News Service.

Washington, June 11.—Forty labor leaders headed by Samuel Gompers, conferred today with President Wilson to go before Congress and urge the immediate passage of food bills. They urged that the bills be passed by July 1 and that President Wilson and Herbert Hoover receive power to handle the food situation themselves.

They complained the cost of living had advanced while wages had not kept pace and it was feared that widespread discontentment would result unless action was taken. President Wilson gave no indication of his probable course, but told the delegates that he was entirely in accord with them.

Miss Collins has charge of the lunch counter at the mill. She told the police she was sitting at the table when she heard a noise and turned around to see a man behind her. Before Miss Collins could utter a cry the man snatched her handkerchief, thrust it into her mouth and fast her hands behind her back. The girl fainted.

After taking the money, the marauder threw the lunch checks on the floor and set the machine. Police are in doubt as to whether it was his intention to fire the building.

DRAFTING STARTS MONDAY
Washington, June 11.—The registration deadline was crossed at 9 o'clock tonight. Tomorrow government agents will begin arresting those who are unregistered. Hundreds of arrests are expected immediately and before the roundup is through more than a thousand probably will be jailed. On Monday next, unless all signs fail, actual drafting will begin.

SEARCH FOR SPIES IN NAVY CONTINUES WITH VIGOR
Washington, June 11.—The search for spies or traitors in the navy is going on tonight. Following charges made by Secretary Daniels that confidential documents recently were stolen from files of the ordnance department.

SURPRISE ATTACKS FAIL
Paris, June 11.—The German surprise attacks near Courcy have failed, the war office announces. Artillery is active along the entire front.

U. S. GRAND JURY INDICTS 55 MEN
Dallas, June 11.—Fifty-five white men in the Farmers and Laborers' Protective association were indicted tonight by the Federal grand jury conspiracy against the Government. Their names are withheld as only half are arrested. W. A. Bergfeldt, a mail carrier, at Haskell, Texas, also was indicted for threatening the life of the President.

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