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PERSONAL.

Senator John C. Harvey, of the Twenty-first district, was the guest of Hon. C. P. O'Malley yesterday.

Mrs. James Boylan, of Carbondale, and sons, Joseph and James, are visiting friends in this city.

Mr. and Mrs. Reed B. Freeman and Mrs. Harry C. Freeman, of Binghamton, N. Y., are the guests of Mr. and Mrs. L. R. Freeman, of 2 Platt Place.

Rev. N. J. McManus, pastor of Holy Rosary church of Providence, will sail on Saturday for Europe, where he will remain for three or four months.

George W. Rice, for ten years an employe of the Postal Telegraph company here, left yesterday for Wilkes-Barre, where he will take charge of the company's office.

John R. Wilson, who has for some time been employed by the Delaware, Lackawanna and Western company at the Hallstead mine, has been promoted to the position of outside foreman at the Avondale shaft.

Mrs. Elizabeth Connell, of 809 Clay avenue, has issued invitations to the marriage of her daughter, Miss Victoria, to Edwin Eugene Pryor on Tuesday, June 9, at 8.30, at her residence. Mr. Pryor is a nephew of Prothonotary C. E. Pryor, and is a prominent young druggist of New York.

The following ladies will represent the Woman's Relief corps of this city at the thirteenth annual convention of the Relief Corps of Pennsylvania, which begins in Chambersburg today: Mrs. E. T. Hall, Mrs. E. R. Walter, Mrs. Fred Warner, Mrs. John Bailey, Mrs. F. J. Amsden, Mrs. John S. Loomis, Mrs. Margaret Post, Mrs. Harrison, Mrs. M. J. Mitchell and Mrs. Margaret Bristley.

THEY SEEK ONLY GLORY.

Four Men Want to Be Park Commissioner.

On next Thursday night Mayor Bailey will send in to select council the name of some person to fill the vacancy on the board of park commissioners caused by the death of D. P. Mannix. There are four aspirants for the office: Ex-School Controller W. G. O'Malley, of the Twentieth ward; M. H. Griffin, George M. Wallace and Select Councilman P. F. McCann.

The mayor has not as yet selected his man, but it will probably be one of these four. There is no salary attached to the office and little or no work.

The New Lager.

Call for Casey & Kelly's extra fine lager beer. Be sure that you get it. The best is none too good.

Scranton lodge, 123, B. P. O. E., will attend a meeting of Wilkes-Barre lodge, 109, on Tuesday evening, June 1. All members desiring to attend will meet at the club rooms on that evening at 6.45 sharp. W. S. Gould, Secretary.

COME TODAY, GET A PAIR THE GREAT ORIGINAL
BALL BEARING BICYCLE Shoe
All Sizes, All Colors, All in Stock. Have Been Waiting Two Months for These Bicycle Shoes.
SCHANK & KOEHLER, 410 Spruce Street.

MR. SMITH DISBARRED

His Name Stricken from the Rolls of Lackawanna County.

OPINIONS OF THE JUDGES

They Review in Detail the Circumstances That Led Up to the Unpleasant Duty They Were Called Upon to Perform Yesterday—An Appeal to Supreme Court Probable.

Cornelius Smith is no longer an attorney of the Lackawanna county courts, and after practicing law twenty-seven years in this city, he must now involuntarily retire. By an order of the court yesterday morning Mr. Smith has been removed from his office of attorney of the court and his name stricken from the rolls thereof.

Two opinions were handed down. Judge Edwards wrote the principal one and dealt with the case from the law and the evidence. Judge Archbald wrote a concurrent opinion, in which he defended the action of the court in sitting in judgment on Mr. Smith and explained clearly the reasons why it was done. Judge Gunster did not write an opinion, but attached his name to the one by Judge Edwards, concurring in it. Mr. Smith is the second person disbarred in this county.

Both opinions were read in full before a crowded court room. The date, May 25, on Judge Archbald's opinion shows that the case would have been disposed of a week ago but for his absence from the city. Judge Edwards' opinion is dated June 1, but it was ready to be handed down a week ago. It having been generally expected that Mr. Smith's case would eventuate yesterday, the bar enclosure was almost filled with attorneys and the auditorium was taxed to its utmost.

Mr. Smith was not present to hear the judgment of the court, but his brother-in-law, Attorney James Mahon, was, and he filed an exception to the ruling of the court. It was allowed by Judge Edwards. The meaning of filing an exception is that Mr. Smith will try to carry the case to the Supreme court. The opinion of Judge Edwards is as follows:

THE DISBARRING OPINION.

"The immediate circumstances which led to the granting of the above rule are connected with the case of Ira H. Burns against Cornelius Smith and John Jennings, No. 781, September term, 1895. There were two rules pending in the case; one to set aside the case an award of arbitration, the other to strike off an appeal. Both rules were argued before Judges Gunster and Edwards at the argument court commencing Dec. 16, 1895, and an opinion disposing of the rules was handed down March 30, 1896. The consultation by the two judges as to the disposition to be made of the rules was held in the latter part of February, about the 26th, so that up to that time nothing had been said or done in regard to the case since the argument of the rules.

"It appears that the respondent had been informed by a member of the bar that Judge Gunster had handed down an opinion in his case on Dec. 30, 1895, discharging the rule to strike off the appeal. The respondent saw the judge, who assured him that such was not and could not be the fact, because the case had not been even considered by the judges who heard it, and that there would not be any consultation in regard to it until both judges could meet, one of them being from home at the time. The respondent immediately thereafter wrote the following letter:

Scranton, Pa., Dec. 31, 1895.

Hon. F. W. Gunster.

Dear Sir:—I confess I was puzzled when your honor told me you had not handed down the opinion in the rule to show cause why the appeal should not be stricken off. A respectable member of the bar informed me that on last Monday your honor handed down an opinion discharging the rule, and upon a statement being made by Mr. Burns and Mr. Kasson, your honor took back the opinion for further consideration. But as you say otherwise, I suppose I have been misinformed.

Yours truly,
C. Smith.

WHAT WEDEMAN SAID.

"The member of the bar referred to was Mr. Wedeman, who afterward testified that the only information given by him to the respondent was that such an opinion had been handed down, but that he had said nothing about the opinion being recalled for further consideration. It is unnecessary now to discuss Mr. Wedeman's mistake. It is sufficient to state that on the day referred to by him an opinion was handed down in the case of Roberts vs. Frothingham involving one of the same points that was raised in the Smith case. This opinion was recalled. On the same day another opinion was handed down in which the respondent, Cornelius Smith, was defendant, discharging a rule for judgment against him for the want of a sufficient affidavit of defense.

"This accounts for Mr. Wedeman's mistake. The respondent then, having been personally assured by Judge Gunster that the case of Burns vs. Smith had not yet been considered, and being himself apparently satisfied that he had been misinformed, the inquiry as to the case should have ended until it was disposed of in the regular order of court business.

"While the case was in the hands of the judges awaiting consideration and disposition, the respondent wrote the following letter:

Scranton, Pa., March 13, 1896.

Hon. F. W. Gunster.

Dear Sir:—Being your friend from the very first day of my introduction to you, it would seem that I might at least claim fair treatment at your hands. More than this I do not want, nor have claimed more. It being stated to me that in open court you announced your opinion in the case of Burns vs. Smith et al., discharging the rule to show cause why the appeal should not be stricken off, and at the request of Mr. Kasson and Mr. Burns, in my absence, you took the opinion back. Upon further inquiry this statement was confirmed by other gentlemen who were then present in court. Now, if you once had the case, and once decided it, it does not seem to me to be either just or fair for you to turn the case over to another judge.

Respectfully yours,
C. Smith.

RULE ENTERED ON HIM.

"In view of the facts above stated on March 23, 1896, we caused a rule to be entered upon the respondent to show cause why he should not be removed from the office of attorney of this court, and his name stricken from the roles thereof on the ground

1. That the said letters reflected upon the official honesty and integrity of Hon. F. W. Gunster, one of the judges of this court.

2. That they tried to influence and prejudice the disposition of the said rule pending in the hands of said judges.

3. That the action of the said Cornelius Smith was in violation of his duty and oath as an attorney of this court, and in contempt and derogation of the administration of justice therein, and an attempted interference therewith."

"At the hearing evidence was taken and the respondent was heard in his own behalf personally and by counsel, the rule being represented by three members of the bar, appointed by the court. On the final argument of the rule the remarks of the respondent in open court being of such an extraordinary character we directed that these remarks be made a part of the record of the case, informing the respondent at the time that the judgment of the court would be based upon the whole record before us

"The record of the case is now before us and we have the unpleasant duty to perform of passing judgment upon the professional conduct of a member of our bar.

"At the outset we may say that the circumstances must be exceptional which would justify an attorney in writing a letter of any kind to a judge in reference to a case pending in his hands and awaiting disposition. The most innocent letter that could be written would border closely upon the line of unprofessional conduct, because there must of necessity be in the mind of the writer some purpose to influence the judge in some way or another in connection with the case. If such a purpose is disclosed or can be ascertained from any fact or circumstance, the attorney writing the letter is guilty of unprofessional conduct, and is unfaithful to the court.

FIRST PASSED OVER.

"Referring to the two letters written by the respondent the first may be passed over with the comment that the writing of it was unnecessary because the writer had already been personally assured of the mistake in regard to the handing down of the opinion. Its main relevancy in the present inqiry is that it contains the admission on the part of the respondent that he had been misinformed.

"Thus it appears that on Dec. 31, 1895, the mistake had been explained to the satisfaction of the respondent and the misunderstanding was apparently at an end.

"More than two months had elapsed, the case being yet in the hands of the judges, when the respondent wrote the second letter. We cannot escape the conclusion that the writing of this letter was grossly unprofessional. What was the purpose of the respondent in writing the letter at the time it was written? And what new or additional information did he have which would give him the faintest excuse for writing?

"It is stated in the letter that 'upon further inquiry this statement (in regard to hand down of the opinion) was confirmed by other gentlemen, who were then present in court.' This is manifestly wrong, because the respondent in his answer, in his testimony and in his final arguments states distinctly that he could not name or recall anybody who gave him such information, and that the only foundation for the statement was a faint recollection he had of a remark made by somebody while he was passing through the court room. He did not pay sufficient attention to the person to remember who he was.

MOTIVE OF THE WRITER.

"We may safely conclude then that there was no information in his possession which would be likely to move him to write the letter. What motive could the writer of such a letter have unless it was to influence and prejudice the disposition of a case pending in the hands of the judges? An analysis of the letter will show that it reflects upon the official honesty and integrity of the judge to whom it was written. It begins with a protestation of friendship and immediately suggests unfair treatment at his hands, the unfair treatment consisting in deciding a case once, withdrawing the opinion at the instance of the plaintiff and Mr. Kasson, and over to another judge to decide presumably in another way.

"To say of a judge that he is not 'just or fair' in the performance of his official duty is to accuse him of the gravest offense, and to say that he withdraws a decision in favor of the defendant at the instance of the plaintiff in the case, coupled with the insinuation that the case was to be turned over to another judge for another decision, is a serious accusation, directly affecting the honor and integrity of the judiciary. The conduct of an attorney who makes such accusations is in violation of his duty and oath and is in contempt and derogation of the administration of justice. We are satisfied from the evidence that the specifications which were the basis of the rule in this case are fully sustained.

"Objection was made by the respondent to the introduction of testimony relating to other attacks made by him upon other members of this court. We considered the evidence pertinent on two grounds: First, as showing the motive and animus of the respondent in writing the letters in question; and second, as matter appealing to the discretion of the court in fixing the penalty to be imposed upon the respondent in case the charges against him were sustained. The testimony appeared to us to be particularly relevant when we considered that the case of Burns vs. Smith and Jennings, about which the letters were written, arose out of the cases of Jennings vs. the Lehigh Valley Railroad company, and that the attacks made upon the other members of the court by the respondent were made by him in the prosecution of these latter cases. Briefly stated, the evidence discloses the following facts:

THE TRIAL IN 1892.

"In September, 1892, the case of James Jennings was on trial before the late Judge Connolly. When the jury rendered their verdict it was immediately set aside by the trial judge, for reasons that appeared just to him. Some time after the death of Judge Connolly, the respondent, as attorney for Jennings, charged the late judge with having entered into a corrupt agreement with one of the defendant's attorneys, by which the verdict aforesaid was to be set aside. When this chearge was first made the matter was taken up by the court and the respondent was severely reprimanded in open court. He subsequently renewed the attack in various forms, it appearing in a petition to the Supreme court as late as last year in these words: 'That there and then Ira H. Burns solicited and procured from the Honorable Judge Connolly an agreement to set aside any verdict which the jury should render in favor of the plaintiff.'

"The next attack made by the respondent on the judiciary of this county was directed against the president judge of this court. In the case of Jennings vs. the Lehigh Valley Railroad company R. W. Archbald, E. N. Willard, Everett Warren, Lemuel Amerman, Ira H. Burns, C. E. Pryor, Myron Kasson and Thomas Reynolds, defendants, No. 1073, Sept. Term 1895 the respondent signed and filed a declaration in which the defendants named were charged with a conspiracy to defeat the plaintiff. In the declaration it is alleged that 'the defendants well knowing the premises but continuing and intending to injure the plaintiff, conspired to defeat the action aforesaid and in pursuance of said combination and conspiracy the defendants fabricated and procured false and fraudulent testimony against the plaintiff and procured the verdict in favor of the plaintiff to be set aside.'

"The case, being on the trial list, was called, and the announcements made that it would be tried before Judge McPherson, of Dauphin county. The respondent then moved for a change of venue, which was denied; he then declined to proceed with the case, and a non-suit was entered in accordance with the act of assembly, which non-suit, after argument, was allowed to stand.

CHARGES OFT REPEATED.

"The foregoing charges against the members of this court especially the charge against Judge Connolly, have been repeated from time to time, in various forms and in various petitions and affidavits, and were reiterated by the respondent in open court in his final argument on the present rule. The conduct of the respondent for the past four years, whenever concerned in the Jennings cases, has disclosed a constant and persistent purpose to attack the integrity of the court. This conduct is evidence as to the motives of the respondent in making the attack, which is the subject matter of the inquiry now before us.

"As a further justification for the judgment was intended to enter in this case and as an illustration of the attitude and animus of the respondent we refer to his remarks in open court in defense of the charges. Whatever force his apology which is on record might have had has been completely nullified by his declarations in his argument. His plea is an attempt to justify every attack made by him upon the members of this court. These attacks were repeated with aggravation emphasized with argument and invective and the principle governing and protecting the relation of an attorney to the court were definitely violated. Respondent's argument is a part of the record of the case and need not be referred to further in this connection.

"Having discussed some of the facts of this case we shall now proceed to questions of law.

"The respondent evidently misconceives the law and practice of the courts of this state in denying the right of this court to sit in judgment upon him in the present case. In every case of this nature, involving the relation of an attorney to the court in which he practices, the court whose integrity is questioned or attacked is the proper authorities to dispose of the case. We know of no case in the Supreme Court where an exception has been made to the authority of the court sitting under such circumstances. It is an unpleasant duty imposed upon judges and courts, and it is a duty founded in reason. However disagreeable the performance of this duty may be, it should be the exercise of a weak discretion to impose upon some other judge a responsibility we are unwilling to assume ourselves. An attorney is an officer of the court. He has sworn fidelity to the court. The court is his best judge of his conduct.

HAVE EXCLUSIVE POWER.

"Courts of record and of general jurisdiction are vested with exclusive power to regulate the conduct of their own officers, and in this respect their decisions are put on the same footing with that numerous class of cases which is wisely confided to the legal discretion and judgment of the court having jurisdiction over the subject matter.' McLaughlin case, 5 W. & S., 272.

"It was late as 1879 that the legislature wisely passed an act of assembly allowing an attorney a writ of error, so that the Supreme Court would fully review the action of the court below in cases of this nature.

"The power of a court to admit as an attorney to its bar a person possessing the requisite qualifications, and to remove therefrom when found unworthy, has always been recognized and cannot be questioned. This power of removal for just cause is as necessary as that of admission for a due administration of law. In Re Samuel Davis, 93 Pa., 116.

"No judge is bound to admit, a person to practice law, who is not properly qualified, or whose moral character is bad. The profession of the law is one of the highest and noblest in the world. The attorney is an officer of the court and is brought into close and intimate relations with the court. Whether he shall be admitted or whether he shall be disbarred is a judicial question for the court. Splanis case, 123 Pa., 527.

"Numerous other cases could be cited showing that the question of disbarring an attorney for unprofessional conduct is peculiarly a matter to be determined by the court before whom he practices his profession. The respondent made a motion for a change of venue. This motion was refused because we did not consider the present inquiry as a matter relating to a change of venue, and even if by any rule of construction it could be held to be governed by the provisions of the law, the allowance of the motion would not have been in keeping with the exercise of a wise and responsible discretion.

DISCUSSION NOT NECESSARY.

"It is not necessary to discuss at any great length the duty of an attorney in his official relation to the court. It is briefly expressed in the terms of his oath, 'to behave himself in the office of attorney, according to the best of his learning and ability, and with all good fidelity as well to the court as to the client.'

"The respondent appears to have misapprehended the nature of the oath he has taken, for he says that 'if fidelity to my client come in contact with fidelity to the court, then I say it is fidelity to my client every time; and if I must sink the attorney, I let him sink. Talk about fidelity to the court, fidelity to my client is my first allegiance, as I understand my profession, and that I must stand by, lead them where it will.' On this question we quote the appropriate words of Gibson, C. J., in Rush vs. Cavenaugh, 2 Pa., 187: 'It is a popular, but gross mistake to suppose that a lawyer owes no fidelity to any one except his client; and that the latter is the keeper of his professional conscience. He is expressly bound by his official oath to behave himself in his office of attorney with all the fidelity to the court as well as to the client.'

"To say that the office of an attorney is an important and highly honorable one is to repeat what has been often said by the highest udicial authority in the state. It sustains an important relation in the administration of justice. As was said by Justice Mercur: 'He (the attorney) possesses certain powers and privileges from which others are excluded and assumes important duties and obligations towards both court and client. He is an officer of the former, and a representative of the latter. His position is so responsible, his opportunities for good and for evil are so many, that both statute and common law have united in throwing all reasonable safeguards around his conduct.'

DUTY TO HIS CLIENT.

"To his client he owes honesty, fidelity and the best use of his learning and ability; to the court he owes respect, confidence and skill and learning. The moment he questions or attacks the integrity and honesty of the court without cause, that moment he forfeits his privileges as an officer of the court and makes himself amenable to the penalty of the law. We feel it incumbent upon us to say that the relations of bar and court in this county have been those of mutual respect and confidence ever since the organization of the county, and we are sorry we have to pass upon the present exceptional case. But we cannot overlook the conduct of the respondent in his official relation to the court. It discloses a series of caluminous attacks upon the integrity of at least three of the judges. To allow these attacks to pass without notice or action on our part would tend to destroy the confidence of the community in the court, and to undermine the honor of the judiciary. We have no hesitation in saying that these attacks are without the least foundation in fact.

"We do not mean to say that the judiciary is not the proper subject of fair and honest criticism from the bar and the public.

"Manly independence on the part of an attorney and the fearless assertions of his rights and the rights of his clients within respectful bounds, are entirely consistent with the respect due from the attorney to the court. The official acts of the judges are always open to the scrutiny of the public.

"Now, therefore, on the 1st day of June, 1896, having duly considered the evidence and the argument of counsel, it is ordered and adjudged that the rule in this case be made absolute, that the said Cornelius Smith be removed from his office of attorney of the court, and his name stricken from the rolls thereof.

"H. M. Edwards,
"A. L. J.

"Concurred in by
"F. W. Gunster, A. L. J."

JUDGE ARCHBALD'S OPINION.

Judge Archbald expressed himself in plain terms concerning Mr. Smith's attitude toward the court for several years. His opinion is as follows:

"The application for a change of venue was in my judgment rightly refused for the simple reason that the case does not fall within any of the statutes upon that subject. It is at least doubtful whether it could indeed have been made to do so. How can the court of one county undertake to say for the court of another who shall practice at its bar, or whether a particular attorney has forfeited his official relations to it? This is a judicial question which each court must decide for itself and even the legislature can not interfere with it. Splane, case 123 Pa., 527. Had the respondent asked to have the judge of an adjoining district called in and the case certified to him for disposal that might have been another question, but it is difficult to see how even that could have prevailed. Even though two of the judges of this court be regarded as affected personally by the controversy the other—Judge Edwards—would still be left, as to whom there is no such obligation.

"But what is there in reality to prevent the whole court from participating in the decision to be made? If an attorney by official misconduct forfeits his right to practice why should judges who have been the immediate witnesses to it, abrogate the duty which they owe to the community and to the profession because that misconduct involves also an abuse of themselves. In Austin's case, Rawle 191, the whole proceeding grew out of the personal relations of the presiding judge of the attorneys who were disbarred and in the case of Steinman and Hinsel 95, Pa 220, the origin was a libelous attack on the court in a newspaper that the respondent owned. And yet in neither, though hotly contested, was any question made as to the right or the propriety of the judge who was thus affected, entering the rule to disbar or disposing of it.

"Our courts would be weak and mean indeed if for just cause arising before them they could decide upon and punish the misconduct of an attorney because the judges were themselves made the personal subjects to it. No such restriction exists in punishing contempts, why should there be in the matter of disbarment? The person of the judge is lost in the court in which he presides. An attack upon him there is an attack upon the commonwealth which he represents and the which he is there appointed to administer, against which he is bound to protect both himself and the position which he fills. So far, therefore, as Judge Gunster and myself may seem to be drawn into this controversy I see no occasion on this account for our being driven from our posts and casting upon Judge Edwards alone the responsibility of this rule.

"I do not propose to speak at length as to the merits, they are fully covered by Judge Edwards, to whom the duty of

[Continued on Page 7.]

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