

CRIMINAL PRACTICE COURT (Harry E. Denny)

Be It Remembered, That at the February Term, 1920, of the Criminal Practice Court of Notre Dame, the sophomore lawyers of the College of Law practising therein, the following record was made:

Court convened pursuant to law with the regular judge and officers in attendance, namely: Judge, Francis J. Vurpillat; Clerk, Arthur C. Keeney; Sheriff, Frank M. Hughes. The following proceedings were had and orders made, to-wit:

In re Jury Commissioners: The court appointed as Jury Commissioners for the year 1920 E. M. Kennedy, J. F. Heffernan, two resident householders of Notre Dame, Indiana, and legal voters therein, good and lawful men, known to be of opposite political party affiliations. Come now the said appointees and qualify as such jury commissioners by taking and subscribing the oath as such.

In re Grand Jury: The Jury Commissioners, including the Clerk of the court, *ex-officio*, having met pursuant to law in the discharge of their duties, come now into court and report their action, to-wit: the selection in manner and form as prescribed by law of the following named persons as Grand Jurors, for the February Term, 1920, of this court:

Clyde Walsh,
Charles B. Foley,
Joseph Farley,
Fred B. Dressel,
Clarence B. Smith,
Kenneth F. Nyhan,

good and lawful men, householders and legal voters of Notre Dame Indiana.

Proceedings of the Grand Jury:

Joseph Doran and
Harry E. Denny and
Mark Storen,
Prosecuting Attorneys.

Bernard V. Pater and
Aaron H. Huguenard,
Attorneys for Defendants.

Upon the issuing and service of a grand jury subpoena the following witnesses were examined before the grand jury, to-wit: Edwin J. McCarthy, Charles E. Butterworth, William A. Miner, Paul V. Paden, Eugene M. Kennedy, Alfonso A. Scott, Charles M. Dunn.

The following is the state of facts evidenced by the testimony introduced before the grand jury: Jack Johnson and John Smith planned to break into the house of Ben Franklin for what they might find. On the evening of June 1, 1919, they went to the home of Ben Franklin. Johnson stood outside on guard while Smith went to the house and tried the door. Just as Smith was about to insert a skeleton key in the door lock, Mrs. Franklin opened the door, shrieked with fright and fled through the house and out at the back door.

Smith immediately entered the house and took a watch and chain from the table. At that moment Johnson gave a warning from outside and Smith ran from the house, taking with him the watch and chain and he and Johnson ran down the street together.

The next evening they went to the house of John Brown, telling him how they got the watch and chain and asked him to assist them in dis-

posing of them. Brown took the watch and chain and two days later the three men went to the pawn shop of Ike O'Brien in Misawaka and there pawned the watch and chain. The watch was a Boss filled gold case with an H. H. Taylor movement inside and a gold chain attached. worth twenty-six dollars and belonged to Mr. Ben Franklin.

The grand jury returned into open court their indictment based on this state of facts, charging John Smith with larceny in the first count, Jack Johnson with larceny in the second count and John Brown with receiving stolen goods in the third count. The court, on motion of the prosecuting attorneys, ordered the clerk to issue bench warrant for the immediate arrest of the defendants. Comes the Sheriff into open court with the three defendants named under arrest and makes return of his warrant.

The three defendants by their attorneys above named moved separately and severally to quash each count of the indictment on the following grounds stated: 1st, for misjoinder of count three against John Brown for receiving stolen goods with counts one and two against Smith and Johnson for larceny; 2nd, for

insufficient facts alleged to constitute a crime against the defendants or any of them.

After argument upon the motion to quash, the court sustained the motion and the indictment was quashed. The defendants, however, were not discharged, but the grand jury was recalled and the cases again submitted to them, and after deliberation, the grand jury returned into open court their second indictments in the cases, to-wit: one indictment in one count against John Smith and Jack Johnson charging them jointly with the crime of larceny; and the second indictment in one count charging John Brown with the crime of receiving stolen goods. A motion to quash was made in behalf of defendants John Smith and Jack Johnson which was overruled, and to which ruling the defendants separately excepted.

The case was submitted to the jury (class) for trial upon the above facts assumed as proven. The arguments were made, by the attorneys above named and the jury retired to deliberate upon the case and arrive at their verdict.

The case against defendant John Brown for receiving stolen goods was continued.