

DECISION IN THE WARE CASE

Syllabus of Opinion of Circuit Court of Appeals.

SOUND PROOF OF CONSPIRACY

Issue of Assent to Old Agreement Same as New Agreement—Ware Will Appeal to the Supreme Court.

The attorneys for the government and defendant have presented the printed opinion from the circuit court of appeals affirming the conviction of Rev. George G. Ware in the district court for the district of Nebraska, for conspiracy to defraud the government of title to land. The majority opinion is written by Judge Sanborn and concurred in by Judge Hook. Judge Phillips concurs in all of the opinion "save in respect of the manner in which the trial court dealt with the application of the statute of limitations," and files a dissenting opinion on that point. The syllabus in part is as follows:

1. Conspiracy—Statute of limitations—When conspiracy and subsequent overt acts punishable after conspiracy and overt acts barred—Conspiracy participation of defendant within three years indispensable.
2. Evidence—Proof of conspiracy before the three years competent, but insufficient to establish it within three years.
3. But in connection with evidence allude to the existence of the conspiracy and of the defendant's conscious participation in it within the three years. It is held that evidence for the consideration of the jury in determining the issues presented by the indictment.
4. Overt act of co-conspirator incompetent to establish continued existence of conspiracy.
5. Issue of joint assent to existence and execution of old conspiracy governed by same rules as issue of formation of new one.
6. Homestead law—Agreement to procure citizens to enter lands thereunder and grant use to another until final proof unlawful.

Character Main Issue.
The main issue at the trial involved the character of the agreement between Ware and Lambert, made in the summer of 1903, and more than three years before the filing of the indictment. Lambert testified that he knew that this contract was that he should procure qualified homesteaders to enter the tract, that the homesteaders of the U. B. L. Land and Cattle company, a corporation of which Ware was president, had been made to erect a building for each of them upon their lands in order to enable them to prove up and procure title to their respective tracts from the United States, to give to Ware the use of these lands for grazing purposes until they obtained title under the homestead laws and then to convey the lands to them for \$250 for each quarter section and that Ware agreed to pay this \$250 for each quarter, to pay all the expenses of the homesteaders, including their expenses of travel and their fees at the land office, and to pay Lambert his expenses and \$50 for each homesteader whom he procured to carry out this agreement. Ware admitted that he had made an agreement with Lambert, but he testified that he never made any contract to buy or take the title to any of these lands. He insisted that the limit of the agreement was that he should pay the necessary expenses of the homesteader in filing and making improvements upon their lands until they secured title, in consideration that they should give to him the use of these lands for grazing purposes until they proved up and secured their titles from the government. Whatever the terms of the agreement may have been there was ample evidence to sustain a finding by the jury that it constituted an unlawful conspiracy to defraud the United States of the possession, use and title of these lands.

Execution of Agreement.
That in the execution of this agreement he procured within the three years at least fifteen persons to enter these lands, within the enclosure of the U. B. L. company, constructed shacks upon some of these tracts, took leases on some of them from the homesteaders to Ware for ninety-nine years, paid all the expenses of the homesteaders, charged these expenses to them and Ware balanced up from the information which he obtained from these books and Ware paid the charges against him thereon to the amount of \$106,775. None of the homesteaders ever spent a day or a night in the shacks upon the land which they entered or cultivated or used a foot of it. The defendant himself testified that during the three years prior to the indictment he received these leases on the books, counted books of Lambert and at the entries thereon, and paid the charges thereon and during all this time he kept the books, the use of the lands upon which these homesteaders fled. Here was substantial evidence of the just nature of the conspiracy to defraud the United States and the conscious participation of the defendants therein, and hence there was no error in the refusal of the court to instruct the jury to return a verdict for the defendant.

Use of the Land.
The use of the land entered by a homesteader, together with adjacent lands, by another person for grazing purposes until the entryman makes his final proof or disposes of his holdings, without the reservation of application of any part of the land or of its use to cultivation or to residence thereon, is inconsistent with the purpose and spirit and violative of the provisions of the law, and an agreement to procure homesteaders to make entries of public lands in order that third persons may obtain such use from them is an unlawful agreement, and is in violation of the oaths they are required to take when they make their applications to enter, and hence there was no error in the refusal of the court below to instruct the jury that such a contract was not an unlawful conspiracy. If qualified homesteaders could lawfully lease or grant the use of the land they might enter to others without restriction or reservation until they could prove up or dispose of their holdings, third persons might appropriate to themselves by the use of successive homesteaders, who would dispose of title, large tracts of the public domain for indefinite periods, and might thereby retard or prevent the use of said lands by the United States.

Appeal for New Trial.
T. J. Mahoney, principal attorney for Mr. Ware, is at present in Colorado Springs on his vacation, and is said to be preparing a motion for an appeal to the supreme court of the United States for a new trial. Mr. Mahoney will be given forty days to complete this appeal, and in the meanwhile no further action will be taken until the appeal is disposed of in the supreme court.

TROUBLE ON DRUID HILL
Improvement Club Members Aroused at President Willing to Sell to Colored Folk.
Some of the residents of Druid Hill addition are roused over a report that W. A. Chapman, president of the Druid Hill improvement club, is about to sell his property at 3316 Spaulding street to a negro family. Some of the people in the neighborhood are inclined to draw the color line and are up in arms because of the reported sale. Mr. Chapman said Tuesday afternoon he had not sold his property to a negro or to anyone else, but he was ready to dispose of it to anyone who would plunk down the price. "I have devoted my time for several years," said Mr. Chapman, "to building up the neighborhood and these people who are protesting are the ones who have obstructed every move we have made for the betterment of the addition. We got the council to order sidewalks and these people went in and got an injunction to prevent it, claiming they wanted the street brought down to grade first. I got disgusted and went to my neighbors and asked them if they would blame me for selling out to a negro or anyone else who would buy and they said they would not blame me at all. They said they would be willing to sell to negroes or to anyone else if these things kept up. I haven't sold yet, but I may." The injunction suit to prevent the laying

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A WONDERFUL SALE OF
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Worth up to \$1.50, at 49c

We have grouped hundreds of dozens of the prettiest Children's Dresses in one great bargain lot to sell Wednesday. All these dresses are new, reasonable, just the dresses for present wear, all sizes and every dress a great bargain.



Little low neck French dresses with sashes; becoming little Buster Brown dresses; charming White dresses in lingerie effects; colored chambray dresses with embroidered fronts, lace and embroidered trimmed children's dresses; dainty and cool dresses of colored, striped and checked lawns, ginghams, etc., worth up to \$1.50 each, at—



49c

Women's Wash Shirt Waist Suits, 98c
Great lots of the cool wash suits in all new styles—many are positively worth \$4—new colored effects, checks, stripes and flowered patterns—some trimmed with bands of lace, others with pretty embroidered fronts—on big bargain table, at a suit, ... **98c**

Big Special Sale of Low and High OUTING SHOES

For Men, Women and Children
These tennis and outing shoes are in all sizes, leather soles, high or low cut and worth regularly up to \$1.25 pair—select from large bargain squares—**ON SALE IN BASEMENT, AT PAIR ... 35c**

Bargain Squares Piled High With EMBROIDERIES

Great lots of fine embroideries and insertings in narrow, medium and wide effects, including many fine corset cover widths—the patterns are new and desirable—in **3½c-7½c-15c**

IN NOTION DEPT.—Main Floor
Racine Stocking Feet—Don't throw away any fine hosiery when the feet are worn out—cut out worn feet and sew in a pair of "Racines," white or black, all sizes—double wear for stockings—3 pr. for 25c—a pair, ... **10c**
Horn Hair Pins, 12 in Ladies' and children's a box, shell or amber, at **7½c** 10c to \$1.00 a pair
Hooks and Eyes, two dozen on card, at, ... **1c**

BRANDEIS BOSTON STORE & SONS

OMAHA WEATHER FORECAST—Wednesday Fair.
Our Noonday Lunch
Business men and business women who are accustomed to light lunches will find our service especially satisfactory. The surroundings are suggestive of this satisfaction. The service is prompt, intelligent and pleasing. The menu includes every dainty dish that the light diner would desire, while prices are modest and reasonable.

BENNETT'S
LINEN, DUCK and WASH SKIRTS... HALF PRICE

\$1.50 Linen Duck Skirts for 75c
\$2.50 Irish Linen Skirts for 1.25
\$5.00 Irish Linen Skirts for 2.50

GARBAGE CANS To comply with City Ordinance. Prices up from ... **\$1.25**
Basement -- \$1.25 -- Basement

NOON LUNCHEONETTES—Popular prices, fine service and perfect Menu.

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Now is the time to make your summer trip to the Rockies, where you can find the most enjoyment, at the least expense, and avoid the hot nights of August and September.
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Just the thing for these heated days. Made with heavy soles, they protect the feet and the low tops make them the ideal summer shoe—and they are not expensive at Fry's—only, the pair, **\$3.50**
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Our Mid-Summer Clearance Sale
Bargains are causing unprecedented business activity for August. DON'T MISS WEDNESDAY'S SNAPS:

- Ladies' Suit Department**
Suits, Waists, Coats, Skirts, all classes and styles of summer ready-to-wear garments on sale at most sweeping price reductions, in many cases less than actual cost of materials alone.
\$4.00 WASH SUITS—Madras, Ginghams and Lawns, in all colors and white, new, pretty styles trimmed with laces and embroideries on sale, ... **98c**
\$3.00 WASH SKIRTS—Made of fine union linens, newest styles, remarkable bargains, Wednesday, choice for ... **89c**
WOMEN'S WAISTS—In most charming new designs, well made, daintily trimmed, values to \$1.50, at ... **49c**
LONG KIMONOS—A regular \$1.25 value, sale price ... **49c**
LAWN WRAPPERS—Regular \$1.00 values in Wednesday's sale ... **45c**
HANDSOME TAILOR SUITS—That sold regularly at \$30.00 and \$35.00—splendid assortment of styles, on sale Wednesday at ... **\$9.90**
CHILDREN'S DRESSES—That would sell regularly up to \$2.00, newest styles in lawns, ginghams and madras—choice for ... **49c**
SHORT KIMONOS—A splendid purchase, on sale Wednesday at ... **15c**

- Children's Clothing**
A more complete assortment would be hard to find and better bargains were never offered by any house.
CHILDREN'S KNEE PANT SUITS—values to \$5.00, all newest styles and best materials, well made, neatly trimmed, in two lots, this sale at ... **\$1.95 and \$2.95**
BOYS' KNEE PANT SUITS that sold up to \$1.00 to close, **35c and 50c**
CHILDREN'S WASH SUITS in splendid assortment of styles, colors and fabrics, garments that would sell regularly up to \$1.00, in this sale at ... **35c and 50c**
CHILDREN'S WASH PANTS, regular values to 60c, in one lot, at choice for ... **15c**

- Other Special Wednesday Bargains**
35c EMBROIDERED WHITE BELTS on sale at ... **15c**
25c BELTS in leather or steel studded elastic, for ... **39c**
25c EMBROIDERIES in 4 to 6 yard strips, on sale at, yard ... **10c**
VAL AND TORCHON LACE, a clean-up of stock, at ... **2½c and 5c**
50c LAUNDRY BAGS on sale Wednesday for, each ... **25c**
WATCH FOR GREAT EMBROIDERY SALE FRIDAY AT ... **3½c and 5c**

- Extra Specials Wednesday**
AT 9:00 A. M. AFTERNOON ONLY
1 case of Turkish Towels, 16c grade, 3 pairs to a customer, at each **6½c**
1 case of 65c Cotton Blankets, at each ... **49c**
15c Batiste, yard, for ... **7½c**
12c Batiste, yard for ... **7c**
12½c Outing Flannel, yard for ... **7c**
12c Teazledun, yard for ... **9c**
9c Extra heavy bleached Muslin 6½c
8½c dark Wool Goods, satin finished, all colors, for, yard ... **3½c**
1 case of extra fine Bleached Muslin, regular price 10c, yard ... **6½c**
1 case of Lonsdale, yard ... **9½c**
1 case of Fruit of the Loom, yd. ... **9½c**
1 case of Hope, yard for ... **9½c**
Amoskeag Apron Checks, yard ... **6½c**
Simpson's Silver Grey Prints, yard ... **7½c**
12c Percales, yard wide, yard ... **7c**
75c Unbleached Sheets ... **55c**
65c Unbleached Sheets ... **49c**

- One Day Hardware Specials**
12 Gallon Galvanized Garbage Cans for ... **\$1.25**
16 Gallon Galvanized Garbage Cans for ... **\$1.45**
5 Double Sheets Tanglefoot Fly Paper for ... **20c**
35 Galvanized Water Pails, 3 gallon, for ... **20c**
55 Galvanized Chamber Pails, 3 gallon, for ... **39c**
35c Grass Suckles, closing them out at ... **15c**
25c Sink Strainers, Mrs. Vrooman's, for ... **12½c**
Rubber Garden Hose, to close out, at ... **6c**
65c Bread Boxes, one day, for ... **39c**
Brass Curtain Rods, extension, one day, for ... **35c**
THIS IS TO BE FOR ONE DAY ONLY—DON'T FORGET THIS.

- Groceries**
READ THESE GROCERY PRICES FOR WEDNESDAY'S SALE
12 bars Best Laundry Soap for ... **25c**
The best White or Yellow Cornmeal, per sack ... **10c**
The best Corn Starch, per package ... **10c**
8 pounds choice Japan Tea for ... **50c**
1 pound package Macaroni for ... **35c**
Gallon cans Peaches, Plums or Pears 35c
Gallon can Grapes for ... **35c**
Gallon can Currants, Pumpkins or Apples for ... **35c**
Bromington, Johnson, one day, for ... **10c**
1 pound cans Sardines, per can ... **15c**
Fancy Glassed Jelly, per quart ... **15c**
1 pound cans assorted Soups for ... **7c**
25c Macaroni, per package ... **10c**
The best Soda Crackers, net pound ... **8c**
The best Tea Siftings, per pound ... **12½c**
Fancy Santos Coffee, per pound ... **27½c**
FRESH VEGETABLES AND FRUITS—OMAHA'S GREATEST MARKET.
Extra large 24 size, juicy Lemons, per dozen ... **20c**
Extra medium size, juicy Lemons, per dozen ... **20c**
Extra fancy, 25 size, Grape Fruit, 7½c
Fresh Onions, per bunch ... **10c**
Fresh Beets, per bunch ... **10c**
Fresh Carrots, per bunch ... **10c**
Fresh Cauliflower, per head ... **10c**
Fresh Sweet Corn, per dozen ... **10c**
Fresh Summer Squash, each ... **2c**
Fresh Parsley, per bunch ... **10c**
Fresh Cooking Apples, per peck ... **85c**
Fresh Sweet Peppers, per dozen ... **10c**
Fresh Cucumbers, each ... **12½c**

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