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PLAINTIFF RESTS IN DAMAGE SUIT

Defense Now Taking an Inning In District Court

The attendance at the hearing of the Gering-Leyda damage suit yesterday afternoon was quite large, there being much interest manifested in the outcome of the case. A. N. Sullivan was the last witness placed on the stand at the time the Journal went to press yesterday. The abstract of the testimony of the remaining witnesses is given today.

Jno. Cory, called, was a constable in summer of 1908, and had a warrant for Sam Beggs at that time. When he arrested Beggs, a continuance was taken before the justice and a bond of \$200 was given with Leyda as surety. He heard a conversation between Gering and Leyda, in which Gering said, "There is the man who gave Beggs \$25 to buy whiskey with" or words to that effect. Leyda answered, "What are you going to do about it." Witness also told of charges made by Gering about Leyda running a poker room in his office and other heated expressions used. J. C. York was present at the time.

On cross-examination witness testified that Matthew and Henry Gering and Leyda were all talking and were not very choice in their language. Witness made all three keep quiet by threatening them with arrest.

Judge M. Archer followed Constable Cory on the stand and his testimony related principally to the relation of the defendant Leyda to the case tried before him wherein Sam Beggs was charged with violating the city ordinances, and in which Leyda went Beggs' security for the fine and costs. His testimony was largely corroborative of that of other witnesses in addition to identifying the record in the case in his court.

A short recess was taken after this witness pending the arrival of others.

John C. Bates, a carpenter, was the next witness for the plaintiff. Bates testified as to occurrences which took place at the hearing before Justice Barr, corroborating the fact of Gering accusing Leyda of running a poker room in his office and of his having paid Beggs money to buy whisky and perjure himself. He stated that the defendant wanted to know of plaintiff what he was going to do about it.

Attorney Clark on his cross-examination brought out the fact that Bates had been fined \$50 by Judge Archer during last fall and that the plaintiff who was then mayor had suspended the fine. The witness stated that the fine was suspended during good behavior and stated that he had behaved ever since and had taken care of his family.

Adolph Giese, a saloon keeper at Fifth and Main streets testified that he knew all the parties to the case and that on the evening of July 4, Beggs had stated to him in his place of business, "we will fix Mr. Gering." He inquired why and Beggs answered: "For selling booze on Sunday." Witness could not remember whether or not he had testified to this conversation at the hearing in county court and recalled it now as it was out of the ordinary. This developed on cross-examination.

John C. Bates was re-called by the defendant and asked whether the fine had been suspended or remitted. He stated he understood it had been suspended only.

Henry R. Gering the plaintiff, was the next witness called and he made an excellent one for his side of the case. He told the story of his life in this city, the extent of the business done by his firm and also of the details of the damages which he considered the prosecution of the case against him in county court had caused him. He gave his version of the several conversations with Leyda in different courts and testified positively that he saw the defendant whispering to the county attorney during the progress of that hearing. Mr. Gering also identified the register containing the report of the sale of liquor to Beggs as also the one which was shown Glenn and Carter when they called. The latter record was an old one for the year 1907. On the whole Mr. Gering told a direct and forcible—at times, dramatic—story of the proceedings in the case. He was examined on the direct by Gen. Cowin who fully lived up to his splendid reputation as a trial lawyer.

On his cross-examination by Mr. Clark, the witness adhered very closely to the story told on the direct. There was not a break or shift in his testimony. When asked as to why he had not given Glenn and Carter the record of the sale to Beggs when they called for it, he replied that he didn't know. He simply could not say why he had given them the wrong book. On re-direct, he testified he thought he had given them the right record at the time and did not know until later of the mistake. His testimony was made the subject of vigorous objection by counsel for the defendant at times but it was generally permitted to go in and greatly strengthened the case.

After his testimony Judge Travis took a recess until nine o'clock this morning.

The opening of the case this morning found quite a group of interested spectators on hand. The plaintiff went into the question of the plaintiff's reputation as a peaceable, law-abiding citizen and his general reputation.

Dr. E. W. Cook, state physician of the M. W. A., testified Mr. Gering's reputation was good. He had heard rumors of his having sold liquor unlawfully but principally since his arrest last July.

Geo. E. Dovey, merchant and president of the First National Bank, testified in effect the same as Dr. Cook. He only heard of the selling of liquors principally since last July.

Jacob Tritsch, vice president of the Bank of Cass County, also testified that he had known plaintiff many years and that his reputation was good. He had only heard of the liquor trouble since July.

Jas. Robertson, clerk of the district court, testified as the others. He had never heard rumors concerning the selling of liquor by the plaintiff.

W. E. Rosencrans, county clerk, testified Mr. Gering's reputation was good. On cross-examination he stated he had heard about Mr. Gering selling liquor after his arrest last July.

W. D. Wheeler, ex-treasurer and ex-sheriff, testified as to his acquaintance with plaintiff, and that his reputation prior to July 7, 1908, was good.

D. Hawksworth, former superintendent of motive power of the Burlington and ex-county commissioner, testified as to his acquaintance with the plaintiff, and that his reputation was good. On cross-examination he stated that he had heard rumors of Mr. Gering selling liquors but this was after his arrest. He had never heard such rumors previous.

J. C. York, barber, called testified as to conversation between plaintiff and defendant last July in Justice Barr's court. Witness related to plaintiff coming into the room and charging defendant with furnishing money to have him indicted. Defendant called plaintiff a liar and witness thought added an oath to it.

Conrad Schlater, the well known German citizen and pioneer, called and testified his acquaintance with plaintiff. Plaintiff's reputation was good, witness couldn't want a better neighbor.

The plaintiff rested at 9:50 a. m. The defense immediately sprung a sensation upon the court and the crowd by announcing that the defendant also rested and would introduce no evidence in the case.

Attorney Clark asked to have the jury excluded while he argued one instruction. This was done and Mr. Clark at once plunged into his argument. He admitted the plaintiff had made a good case of malice. He argued that no connection had been shown between Leyda and the county attorney who filed the complaint. He spoke of Leyda's connection with Beggs and contended defendant had done no more than was the duty of any citizen. He contended that Leyda had committed no unlawful act while he charged the plaintiff's petition with admitting a crime. Arguing upon the question of conspiracy, Mr. Clark argued that Rawls' connection with the case was vital, and the charge of conspiracy must fall unless this connection be shown.

He spoke of the hearing in county court of the plaintiff and contended the state had made a prima facie case or Mr. Gering would not have submitted evidence in defense.

Quoting the statute relative to the sale of liquors in violation of law as applicable to Mr. Gering's case, and argued at length upon that section of the statute relating to the powers conferred upon druggists under the law. The court indicated a possible difference of opinion on the question by his questions.

Attorney J. Elmer Leyda argued upon the question of malicious prosecution and the right of parties to consult the county attorney to secure the institution of criminal proceedings. He contended that in the case at bar no connection between Leyda and the prosecution of Mr. Gering had been shown by the evidence. He also argued briefly upon the question of the law regarding druggists' permits.

Attorney Gering, for the plaintiff, contended that to accept the argument of defendant's counsel would mean to prohibit absolutely the sale of liquor by druggists for any purpose. Mr. Gering made an extended argument to show the cases cited by the opposing counsel, did not apply to the facts in this case. Up to the question of evidence, Mr. Gering contended there was plenty of evidence connecting Leyda with the case. Mr. Gering reflected severely upon the actions of County Attorney Rawls in the case.

Gen. Jno. C. Cowin made a strong, forcible and eloquent argument. He contended Mr. Gering had never been charged with selling liquor on Sunday. He read the original complaint filed in county court by County Attorney Rawls. He pointed out the failure to show liquor sold on Sunday and the efforts of the defense to shift ground in the case.

He pointed out the difference between a license and a permit. A permit simply meant the right to sell liquor as a medicine. He spoke of the absurdity of the contention that druggists could not sell liquor on Sunday. Gen. Cowin's argument was an able and masterly one upon this branch of the case. Speaking to the question of connecting Leyda with the case, he stated the fact of dismissing the case against County Attorney Rawls and severely criticised any public official who hired persons to induce others to commit crimes. He referred to Leyda's connection with Beggs and stated he did not believe Mr. Rawls would have done as he did. Reviewing the testimony he contended there was plenty of testimony in the case to connect Leyda with the case.

Attorney Clark replying to Gen. Cowin sought to show that no connection had been shown between Leyda and any unlawful act, but contended he was doing his duty as a public spirited citizen. Mr. Clark argued upon what he contended was the law in the case.

Judge Travis pointed out the difference between a charge of selling on Sunday and for selling liquor for purposes other than medicinal, mechanical and chemical purposes. As the Sunday selling charge was out of this case, Judge Travis did not feel that he had to construe the law. He had been trying the case under a false understanding of the case. He could not sustain the motion of the defendant to direct a verdict for him.

Attorneys Leyda and Clark made a desperate fight to save the defendant, basing their attack upon the petition of plaintiff as applied to the evidence adduced.

Judge Travis thought the petition stated a cause of action and there was evidence to be weighed by the jury. He overruled the motion to direct a verdict.

Attorney Clark then wanted to withdraw his rest after the motion to direct a verdict had been overruled.

Gen. Cowin spoke briefly in objecting to withdrawing his rest, and spoke of counsel being surprised at Beggs' testimony. Gen. Cowin thought counsel surprised at all the testimony in the case.

The defense opened their side of the case by calling former County Attorney Rawls to the stand. Mr. Rawls went into the details concerning the filing of the case against Gering. He remembered Beggs coming to him in June and telling him he could get liquor of Gering and talking over a prosecution of plaintiff with him. He testified that he would have to have other evidence than his mere word. This was about June 6th. At that time Beggs said he had a bottle of whisky. He related circumstances surrounding Leyda's connection with the case and exonerated Leyda from any connection with the case prior to its trial. He denied Leyda advised with him

during the trial and presented his side of the case in such a manner as to show that he, (the witness) acted throughout in good faith and in the line of his duty.

He was cross-examined by General Cowin who delved closely into his testimony. He laid particular stress upon what transpired at Gering's store when Beggs went after the liquor. He testified Beggs told witness that Gering required of him "Don't you know that this is Sunday?" and that Beggs answered "I do." That Beggs also told Gering his name. Witness reluctantly admitted he had told Beggs he ought to get the whisky. Witness testified as to Glenn and Carter going after the liquor register and they told him that they did not see Beggs' name registered, and they did not see the register for 1908. Witness denied having told Beggs to "see Leyda. He is acting in this matter."

He knew that Leyda had seen Beggs at Manspeaker's barn. He couldn't recall when he first received information about Leyda seeing Beggs, but it was before this trial. Gen. Cowin severely questioned the witness as to Leyda's actions in the matter. Closely questioned as to Beggs getting money from Leyda, witness did not know why Leyda gave it to them, but guessed it had some connection with getting the whisky. Asked as to saying to Beggs, Leyda will be up to see you today and he will tell you what to do and all about it," witness denied it. Witness never told Beggs that Leyda would pay them money. Witness had paid them money and had signed a \$10 note for them. The cross-examination by Gen. Cowin was one seldom heard in this city and a very brilliant one.

On re-direct examination witness testified he had asked Beggs what representation he had made to Gering when he got the liquor and he gave the answer indicated in his direct examination.

Gen. Cowin here went into the length of time witness had known Beggs and received the information he had known him since the forepart of June. He knew little of him except by hearsay.

The probabilities are the case will reach an end sometime during this afternoon and go to the jury either tonight or tomorrow morning.

Saturday's Session.

The Gering-Leyda damage suit yesterday developed several interesting features, these occurring after the edition for the paper for yesterday had gone to press. The chief of these was the examination of the defendant by Gen. Cowin, Mr. Leyda taking the stand and giving his version of the case as stated in the abstract. Gen. Cowin's cross-examination was searching and developed several things of interest in the matter and materially aided the prosecution. There was much interest in the case manifested and the attendance was quite large.

T. W. Glenn was called and related the circumstances of the visit which he and T. H. Carter made to the drug store of the plaintiff in this action. He testified that the record they eventually saw did not show the name of Sam Beggs on it as having purchased liquor of the plaintiff in July 1908. He stated that he asked for the 1908 record but that it was not shown him. The two men returned to the office of County Attorney Rawls and told him of their failure to find Beggs' name on the register. This was the essence of his testimony.

Cross-examined by Gen. Cowin the witness was uncertain as to many of the incidents of the matter and admitted an unfriendly feeling toward Mr. Gering. Gen. Cowin's examination weakened the testimony of the witness very materially.

T. M. Carter called, testified he was 73 years of age and knew all the parties. He accompanied Mr. Glenn to Gering's drug store on July 6, went at Mr. Glenn's request and not the county attorney's. Clerk at the store told them the would have to see Mr. Gering. They called an hour later when Mr. Gering gave them what purported to be the register for 1908, after searching for it for some time. The two examined the book and found on the page which was supposed to be the right one, no record of any intoxicating liquor to anyone. They left after closing the book. Mr. Gering remarked "if other people did not sell more than he did there would be little sold." They proceeded to the county attorney's office and reported to him that they found no record of the sale of liquor to Beggs or anyone else in June and July, 1908.

On cross-examination by Gen. Cowin, the witness failed to identify the register shown him by counsel

as the one shown him at the drug store.

John M. Leyda testified he was one of the defendants. First met Beggs on July 4th near Manspeaker's barn.

The witness had proceed this far when he saw Beggs in the room and asked him to be excluded from the room. This lead to a wrangle between counsel over excluding Beggs but he eventually remained in the room.

Witness then went into details as to how he came to meet Beggs, asking Ralph Beggs if Sam Beggs was present. Ralph answered he was his brother was there. He asked Sam if he had been getting whiskey from Gering in violation of law. He said he had, and witness told him he understood he would be a witness against Gering and if the latter was violating the law he wanted him punished. Sam wanted to know what there was in it for him. Leyda told him that he could not promise him anything. He never told him to go to Manspeaker for money. Witness first learned from W. L. Pickett something which never got into the testimony as the court ruled it out. He had never talked to Rawls about it, and did not assist in prosecuting Gering. The two Beggs called on him on July 6 and wanted money and he told them to come in, in the afternoon and he would see what he could do. He then called on Mr. Rawls who told him what the Beggs had done and about the liquor they had bought the day before. Witness paid the Beggs' \$10 that afternoon. Witness had not conferred with Rawls and Beggs as to the prosecution of Mr. Gering. Witness denied ever stating that "we want to get the S— of a B—" or words to that effect and that "we'll file a complaint this afternoon." Witness went into details concerning the giving of the note to him by the Beggs'. Witness never stated that the note was a blind as testified by Ralph Beggs. Witness never stated "we are going to have Gering arrested." Witness did not know where Ralph Beggs was at the time he had the conversation with Sam Beggs, but he was not near them. Witness never advised the county attorney about the conduct of the trial of Gering nor did he go to the county attorney's office at noon.

On cross-examination by Gen. Cowin, witness admitted he did not feel kindly toward Mr. Gering. In fact he had an unfriendly feeling toward him for a year past. Enmity made no difference in his treatment of Mr. Gering. Gen. Cowin dramatically forced from the witness that he would not probably have loaned the Beggs the \$10 he did except that they had secured the liquor in the case. Witness swore he did not tell Beggs to go to Gering's and get liquor. Witness was acting purely from a sense of public welfare and not from his personal feelings. Gen. Cowin made a strong and pronounced effort to show the witness had written articles for various newspapers and that he had inspired others attacking Mr. Gering, but witness denied this.

Mr. Rawls was recalled was asked why he had dismissed the case brought against Sam Beggs by Mr. Gering in which he was charged with obtaining liquor by false pretenses. He answered it was because he thought there was not enough evidence to secure a conviction and he believed Beggs was being persecuted.

Ell Manspeaker, deputy sheriff, testified that he hired Beggs to work for him on July 4 and let him go on the next day Sunday, paying him \$2 for his work. He further testified that Beggs had brought him liquor which had come from Gering's drug store. He never told Beggs to go to Gering's and get liquor. Beggs had brought him liquor in June which he had taken and kept, and afterwards he had turned the liquor over to Beggs and Rawls who were together. Beggs got the liquor. Beggs asked for it. Witness locked the whiskey in the safe. A humorous feature of the case developed when the witness and Attorney Gering locked horns on the liquor question. The counsel for plaintiff, Mr. Gering, tried to show the interest of the witness by reason of his being the jailor and for having his bills for boarding city prisoners cut down by the action of the city, while Mr. Henry Gering was mayor, but was unable to show this.

The defendant offered in evidence the police court record showing that the fine in the Jack Bates case had been remitted by Mayor Gering.

The defendant then sought to have Court Reporter Earl Travis sworn and have him read the testimony of Sam Beggs given in the county court.

This was vigorously resisted by counsel for the plaintiff as Beggs was in the room at the time and could be produced. Attorney Matthew Gering made objections and made a strong and forcible argument against such procedure. He cited various cases decided in this court on the same proposition.

Attorney Clark sought to introduce evidence merely to show the evidence in the lower court was sufficient to warrant holding the plaintiff in this case to the district court and justified the county attorney in bringing the action.

Gen. Cowin in opposition to the offer made an argument against it which was logical and masterly. Attorney Clark made a further argument seeking to sustain his offer as did Gen. Cowin in opposition.

Judge Travis after the argument announced that he would not pass upon the question involved until in the morning and, in deciding the case would decide it as though the witness Beggs was in the room when court convened. A recess until 9 o'clock today was then taken.

When court opened this morning to the usual large crowd of spectators, Judge Travis announced that the objection of plaintiffs counsel to the introduction of Sam Beggs' testimony in the lower court was sustained. The defendant excepted to the ruling.

Henry R. Gering, the plaintiff, was recalled to identify certain pages in the register of liquors sold for June and July. These pages were offered in evidence by the defendant. An objection by Gen. Cowin was sustained. Later an offer of the entire book was admitted over the objection of plaintiff. An offer of certain pages of the register which Glenn and Carter looked at was offered and objected to by plaintiff. The pages were admitted on the ground that defendant was entitled to discuss their contents before the jury.

Another record of sales of liquor during 1908 was offered by defendant and after a protracted argument between counsel the plaintiff's objection was overruled.

T. W. Glenn recalled by plaintiff testified he had called at Gering's store and examined registers, of his own volition. Witness could not identify the register shown him among those on the table.

C. A. Rawls, recalled by the plaintiff, knew Jno. H. Becker. Asked if he had told Mr. Becker shortly after the hearing of Mr. Gering in court, that a prominent democrat was back of the prosecution, witness stated that was in effect that was true. Witness asked if Leyda was a prominent democrat, answered he couldn't, so consider him. He referred to Leyda having run for office several times on the democratic ticket. The effort of Gen. Cowin to locate who the prominent democrat was failed, because of the faulty memory of the witness.

A. J. Beeson, county judge, recalled by defendant, located Leyda in his court room at the time of the hearing of Mr. Gering in his court. On cross-examination he could not say that defendant had not sat by the county attorney during the hearing.

Defendant rested his case at 9:45 and Earl Travis, court reporter, called in rebuttal by plaintiff, testified he took notes of the hearing of Henry R. Gering in the county court, and the plaintiff introduced the evidence given by T. W. Glenn in the lower court, for the purpose of impeaching his testimony in this case. The defendant also read from the testimony given on direct examination to corroborate the testimony he had given in this trial. The court sustained an objection to this and ended the attempt to corroborate Glenn's testimony.

T. W. Glenn recalled first seen Beggs in the latter part of June when he called at the home of witness. Beggs left and witness left his home afterward. This was on Sunday, about 9:30 in the morning. Witness did not know where Beggs went, but saw him later at Manspeaker's barn and went with him to Gering's store. Beggs told witness he was going to get whiskey. Witness examined Beggs' pockets to see if he had liquor. He did this to see if Gering was selling whiskey. Witness knew he would be asked if he had made this examination in case Gering was arrested. Possibly the county attorney had asked him to make this examination. An objection by the defense that this was improper cross-examination was sustained, as was much more offered by the plaintiff.

Attorney Gering made an offer to show the bias and prejudice of the witness. Judge Travis severely rebuked Mr. Gering for his insistence in the matter.

(Continued on Third Page.)