

fine them for creating it. Suppose the Co-operative store on Main Street was getting in a large lot of new goods, which had just come from the East—a great many boxes, and pile them up on the sidewalk and leave them there. Suppose they pile them up there carelessly and leave them piled up there, obstructing the sidewalk and creating a nuisance, and suppose some person should go to Jeter Clinton and make a complaint, and Jeter should issue process and enquire into it, and if he found they had been guilty of creating a nuisance he might order that nuisance abated. But how? Could he order the officers of the law to go there and break open these boxes and leave them on the street to be trampled under foot by horses, or burn or destroy them? No, gentlemen, he might remove them, or procure them to be removed, so that they would no longer be a nuisance to the public. The nuisance could be abated but not by destroying the property. There might be ten thousand dollars worth of property in those boxes. Abatement may be done without destroying the property. Still there are instances, gentlemen, where property may be destroyed. Suppose, for instance, some back room in this place was occupied by counterfeiters, or other men with tools for counterfeiting, and they were at work in the night time with closed blinds, and for sometime it was not known what they were engaged in, but at length proof comes in the proper form to the proper court that there are men there committing crime and creating a real nuisance, the Court might order that all the tools and false dies and counterfeit bank paper made to imitate that upon which the national currency is printed might be seized and destroyed.

There are some instances in which property may be destroyed, but courts and officers must be careful how far they go in abating the nuisance. Suppose some man is building a fine residence, and he hauls lumber and other material and piles it up on the street or sidewalk. Now he may do so, taking care to do as little to inconvenience the public as may be. He may even use a little of the sidewalk to pile up his materials. But suppose, without any regard to the public rights, he causes this to be a nuisance by obstructing the passage there of pedestrians or teams, that nuisance may be abated. But would anyone expect that the officers would burn up the lumber or break it to pieces with axes or hatchets? No, they would expect that the officers would order those persons to pile it up out of the way or remove it, so as to inconvenience the public as little as possible. The nuisance could be abated in that way without destroying the property, and they could even fine him for that nuisance without going to the extent of breaking his brick or other material. You see, gentlemen, there is always a proper way to do a proper thing, but there may also be an improper way to do a proper thing. In enforcing the laws, we who enforce them are governed by the law ourselves. The law which points out the crime also points out the manner of punishing it. I may, sitting upon this Bench, have to pronounce sentence of death, and it has lately been my duty to do so, but I must take care that I keep within the rules of law that are laid down. If I do not, if I go beyond those rules, a higher court can set aside my judgment, and if I make any mistake, no one would be more rejoiced to set right that mistake than myself. I should be very careful that I do not sentence a man to death wrongfully. I must keep right within the law.

Now, gentlemen, whether it be a justice of the peace or a district court, in inquiring into what property may be destroyed, it must render judgment and direct what property shall be destroyed. No court has the right to order property to be destroyed without so particularly describing it as to direct the officer what it is.

No, this proposition, taken in connection with this warrant of abatement here, would leave to this officer a wide discretion as to what kind of property was used there for the purpose of keeping a house of prostitution. This warrant orders the abatement of all property used therein, kept for the purposes of keeping or conducting a house of ill-fame. It reads thus: "You are therefore hereby ordered to proceed forthwith to abate said nuisance by demolishing all things found there-

in, used for the purpose of keeping and conducting a house of ill-fame." The order don't specify the kind of things to be destroyed. "You are ordered to demolish all things found therein, used for the purpose of keeping or conducting a house of ill-fame." The magistrate ought to point out what it is that is to be destroyed, and not leave it to the officer who executes the warrant. The officer might have thought these girls were things used in keeping and conducting a house of prostitution, and he might have taken their lives. No one would think for a moment that the magistrate meant so, but this language is broad enough to cover the demolishing of the girls, and certainly, gentlemen of the jury, one of the first and last requisites of a house of ill-fame would be the girls. I don't mean to say that the magistrate meant so, but this language is broad enough to mean so. Fortunately, the officer did not so understand it, and therefore did not demolish the girls. The magistrate, even if it were conceded that he had the right to order some property destroyed, even if it were conceded that he had the right to do such a thing, should have pointed out the kind of property which he intended should be destroyed, and that too within the limits of his jurisdiction. But there has been no jurisdiction ever conferred upon a Justice of the Peace to destroy an unlimited quantity of property, property worth thousands and thousands of dollars. Suppose this Court, which has vastly more power than a justice of the peace, was to issue a warrant of that kind, and leave the officer to judge what kind of property is used in keeping and conducting a house of ill-fame. The officers with such large scope might go further even than the Court intended they should go. I say, therefore, in regard to this proposition—

1. That a justice of the peace had jurisdiction of complaints of nuisance.

2. There may be instances on proper proof in which a justice of the peace may order certain things destroyed within certain limits.

But if the counsel mean by this proposition that a justice of the peace had jurisdiction to order this property to be destroyed by this officer and those under him, I say, no. If they mean to ask me if a justice of the peace has jurisdiction in cases of nuisance, I say, yes. But even within his jurisdiction he must be careful how he exercises that power.

Right there let me say, if we allow one justice of the peace to do a certain thing in a certain case, we must allow him in another case to do a similar thing, and we must allow another justice of the peace in a similar case to do a similar thing.

Not for the purpose of making a comparison which would be disagreeable to some, but simply to illustrate this point, I will suppose a case. The keeping of a house of ill-fame is against the law, and the City Council, under the legislature of the Territory and Congress have a right to punish the keepers of houses of ill-fame. It is necessary to good society and good morals that this should be so. And gentlemen, when it is proved before a justice of the peace, that a certain woman in a certain house keeps what is known as a bawdy house, or place that is resorted to by men for the purpose of illicit sexual intercourse, he has a right to deal with it under certain limits. On the other hand, when it is proved that a man keeps a similar house for illicit sexual intercourse, a justice of the peace has jurisdiction and may deal with it within certain limits. Now, then, suppose it should be proved by affidavit before some justice of the peace that John Smith was occupying a house in which he keeps a dozen women, with all of whom he has sexual intercourse, no matter though he may claim them all as his wives, it is equally criminal, for the law allows only one wife at a time. If a complaint of that kind is made before a justice of the peace, setting forth that he lives in a certain house and that he keeps there twelve women, with all of whom he has sexual intercourse—now, if Jeter Clinton is authorized in one case to issue a warrant of abatement and have all the household furniture destroyed, then Jeter Clinton must be allowed in the other case to do just the same thing, for they are both against the law, and if Kate Flint claims that

40 or 50 men are her husbands and in the other case the man claims that these twelve women are his wives, that does not take it out of the law which governs it, and if Jeter Clinton, justice of the peace, can order all the furniture of Kate Flint to be destroyed by the officer, because she was adjudged guilty of keeping a house resorted to for illicit sexual intercourse, then he could do the same thing in the case of John Smith, who kept a house for similar purpose. No, gentlemen, he can't do it. No justice of the peace can send his officers into the house of a polygamist and destroy all the furniture, and such things as are usually kept in a house where people live, on the charge that there is illicit intercourse in that house. No one would recognize such jurisdiction in a justice of the peace. No justice of the peace can send officers into the house of Brigham Young, to destroy his furniture. No, gentlemen, that is not the way to deal with that crime, and, whatever you or I think of it personally, it must be dealt with in accordance with the recognized rules of law, and we can't recognize such jurisdiction in a justice of the peace.

Fifth.

There is no dispute about his being a justice of the peace at that time. I have before said to you that he had the right to enquire into the complaint and fine her if found guilty, and, in default of payment of the fine, to imprison her. He had a right to enquire whether that house was kept as a bawdy house, and to this proposition, as it is worded, I say, yes. It does not ask me to say to you that he had a right to issue this warrant. In fact, when you come to read the warrant, you will observe that it leaves it to the officer. It says, "All things used used in the keeping or conducting a house of prostitution."

Sixth.

Now, as that is worded, and it is done very carefully by skillful counsel, I say, yes. At the same time, I say to you, to remember the application of these various doctrines to this case.

Seventh.

No, gentlemen, taken as whole, I can't give you that.

Eighth.

No, gentlemen, I can't give you that.

Ninth.

With a qualification I can give that. I can give that with a qualification. If the counsel means that to apply to the three times damages, I say, yes. I say you can't give to the plaintiff a verdict at three times the value unless you find that this property was wilfully and maliciously destroyed. If, however, you shall find in favor of the plaintiff, all the facts requisite to a verdict, save the wilful malice, then you should find a verdict in her favor for the actual value of the property. You can't give her a verdict for three times the value of the property unless you find it was destroyed wilfully and maliciously, and, if there was a lack of malice, then you may render a verdict for the actual value.

Tenth.

Yes, gentlemen, with the qualification I gave to the last one. If, as I have before said, you find a verdict in favor of the plaintiff and against such of the defendants as you find were responsible for this destruction of property; and if you don't find that it was done wilfully and maliciously, you may find a verdict for the simple value; but if you find that it was done wilfully and maliciously, you must give a verdict for three times the value.

Eleventh.

Well, this is a sort of definition of the words wilful and malicious, but I prefer to confine myself to the words of the statute. The statute says, where the destruction is wilfully and maliciously done, you may give three times the value of the property. The meaning of the words in our language are found in the dictionary, and it is not necessary for the Court to go into the definition of the words wilful and malicious. The destruction should be wilfully and maliciously done before you may give a verdict for three times the value.

Twelfth.

No. I have already said, gentle-

men, that you may find for the plaintiff for the actual value if you find from the evidence that it was not done wilfully and maliciously, and for three times the value of the property, provided it was destroyed wilfully and maliciously.

Thirteenth.

Yes, gentlemen, that's so.

Fourteenth.

No, gentlemen, I can't say that. There are some things for which a party may be sued in a civil action and also indicted in a criminal one, but I can't charge you that there must be in this case a conviction for the criminal offense before you can give a verdict for civil damages.

On the part of the plaintiff I am requested to say—

First.

Yes, gentlemen, I have already said that to you.

Second.

I have here interlined, in pencil, "in 1872," as we are dealing with a justice of the peace at that particular time. I therefore say, justice of the peace in 1872. There has been some legislation since and I don't care to say anything about that at all.

Yes, gentlemen, I have already said to you that Justice of the Peace Clinton, in ordering an unlimited quantity of property to be destroyed, and such as he did order to be destroyed, went beyond his authority as justice of the peace, and had no authority to order it to be destroyed.

Third.

Yes, gentlemen, it is. In executing that warrant, the Justice did not keep within his jurisdiction.

Fourth.

Yes, gentlemen, but the presumption of malice can be explained away and overthrown by evidence, and when the malice is explained away to the satisfaction of the jury the excessive or treble damages will not be granted. Where property is destroyed with hatchets or knives, the presumption is that it is done with actual malice and ill will, but when the proof in the case shows that it was wrong to do it if they had no malice, and the evidence in the case fails to convince the jury that there was malice, they must not give the extreme damages in three times the value which the law gives when it is destroyed through malice. But still, where there is no malice the parties are liable for the actual value of the property.

Now, gentlemen of the jury, in the course of my comments on these written propositions I have said all I deem it necessary to say. I will further remark, however, that no justice of the peace, no court of any grade, can regard it as of more importance that those who are guilty of offences such as have been involved in this case, can be more anxious to have them punished than this court, and I know no one more anxious than this court to have this species of immorality dealt with within the prescribed rules of law. But let everything be done decently and in order. Let officers in all courts, in executing the law, keep themselves within the law. Where this is done we find the highest degree of good order, morality, and prosperity. This produces the highest amount of good to the whole community. Good laws, well executed, always produce the highest good to the whole community. Where the laws are either bad, or good laws are not properly enforced, there is little prosperity, morality or peace.

Let us enforce the laws, but let us do it carefully. We are all liable to err, but when we do err, and are set right by others, let us bow to it and learn by it.

Counsel for defendants excepted to the refusal to give the third, fourth, seventh, eighth, tenth, twelfth and fourteenth requests, and also to the charge in answer to the first and second and to the giving of each of the requests on the part of the plaintiff, and to the charge as a whole.

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