

3409

IN
The Supreme Court
OF THE
STATE OF COLORADO.

ANTONIO BENEDICT,
Plaintiff in Error,
VS.
THE PEOPLE OF THE STATE OF
COLORADO,
Defendant in Error.

No. 3409.

REPLY OF PLAINTIFF IN ERROR.

J. McD. LIVESAY,
Attorney for Plaintiff in Error.

CLARK & REID, PRINTERS, 1335 LAWRENCE ST., DENVER.

FILED IN
SUPREME COURT,

JUN 15 1895

James H. Miller
CLERK

7

I N

The Supreme Court

O F T H E

S T A T E O F C O L O R A D O .

ANTONIO BENEDICT,
Plaintiff in Error,
vs.
THE PEOPLE OF THE STATE OF
COLORADO,
Defendant in Error.

No. 3409.

REPLY OF PLAINTIFF IN ERROR.

Defendant in error has not cited a single authority. In reply I shall confine my attention, and briefly, to what is said in paragraph IV. of brief and argument of defendant in error concerning whether or not defendant had a public trial.

Counsel for defendant in error say that a public trial was had within the meaning of our Constitution; that "It was a trial in which the Court, the officers of the Court, the witnesses for both parties, the jury, the defendant and his counsel were present, who certainly constitute a part of the public in numbers," etc.

The witnesses for both parties were not present during the trial—that is, all at the same time. Only the

witness when testifying was permitted to be or remain in the court room during the trial. (See affidavits of William Williams, under Sheriff, and Thomas Hooper, Sheriff, fols. 46 and 48, abstract of record.)

Yes, the Court was present; the officers of the Court, the jury, the defendant and his counsel were present. But these certainly did not constitute even a *part* of the public on that occasion. The Court was the Court and nothing more. The officers of the Court, the attorneys, jurors and witnesses were auxiliaries or a part of the Court itself. They did not appear as individuals, but in an official or *quasi* official capacity. Hence, I say they cannot be considered as a *part* even of the public or people on the occasion of the trial. At church, a theater, hotel, public meeting, in a railway or street car, or on the streets, the persons who constituted the Court, the officers of the Court, the attorneys and jurors would be of the public—a part of the public. Everybody understands what is meant by a public meeting or public place—a meeting or place where anybody and everybody may go and remain so long as he or she conducts himself or herself in a proper manner.

If the view of counsel for defendant in error is correct, then it would seem that the provisions of the Constitution of the United States and of our own State are worse than superfluous—were ridiculous blunders. But they were not and are not blunders. The framers of those instruments in the light of the history of the centuries had reasons, the very best of reasons, for the provision. And they meant just what they said in such plain language. They said and meant that the trial should be a public one; that anybody and everybody might attend, should have ingress and egress; that it should not be a *private* affair. Yes, if you please, it was

the intention that mere idlers, curiosity seekers, if you desire to put it in that language, should be admitted to any and all criminal trials. Who is so wise or so dazzlingly pure that he should arrogate to himself the authority to say to any citizen, "Thou shalt or shalt not attend a criminal trial"? What Court, in the face of the unambiguous provision of our supreme law, is so overpowering in greatness and goodness that it should set itself up as the guardian of the morals of the people, and, in a criminal case, order the public from the court room and bar and lock the doors of the temple of justice for fear that the sovereign people may be contaminated? The people's morals contaminated! Bah! As I understand it, it is the duty of the Courts to construe the law and to administer justice according to the law. It is not their business to lecture their masters on the subject of morality.

Counsel for defendant in error ask, "What good purpose could the presence of the public serve?" This question is not at all pertinent. Many cogent reasons might be given why the public should be admitted to all trials, civil as well as criminal, but in the case at bar this answer is sufficient: Obedience to law.

Counsel say, "It is as much the duty of the Courts to prevent a violation of the law as it is to punish offenders." Who violated the law? Was it not the Court itself?

The observance of the law—the sacred observance of the Constitution under a republican form of government—is of the highest importance at all times. And in these days when discontentment is abroad, when law is lightly regarded and its total abolition is advocated by some, it behooves the patriot, and, above all, the Courts, to oppose and rectify, if possible, any violation, inten-

tional or otherwise, of our Constitution, the very basis of our government, institutions and society.

I respectfully and sincerely submit that the defendant did not have and was not allowed a public trial in any sense; that the so-called trial was in the nature of a star chamber proceeding. And for that reason alone the judgment should be reversed.

J. McD, LIVESAY,

Attorney for Plaintiff in Error.