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Experiences of a Trial Attorney

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It is not, and should not be, too easy a task to develop rules which will cover the situation for practice and procedure in Wyoming and sufficient time should be taken by a committee in charge of recommendations to the Court to thoroughly cover the ground and give ample opportunity for the consideration of all members of the Bar, whether on the committee or not, by adequate methods of communication and reference. Obviously the peculiar conditions existing, of a local nature, should be covered by rules which are especially adapted for the purpose but it is not too early to begin the task which the Bar of Wyoming may reasonably hope will end in a much needed reform.

EXPERIENCES OF A TRIAL ATTORNEY

T. F. HAMER*

Mr. Loomis, ladies and gentlemen of the Wyoming State Bar:

It was a distinct pleasure for me to receive an invitation to come to Sheridan and talk to this Bar Association. Now that isn't because I particularly like to talk, for I think a lawyer, just as anybody else, looks forward with a little bit of dread to the necessity of making a speech. The pleasure I got was because I like to come out here and meet the good Wyoming people—the good fellows and lovely ladies. I never come without a feeling of pleasure and without feeling more or less exalted. I don't know just what I am going to talk to you about. When I got the word that I had been invited to come out here I said to myself: "I don't want to go to the labor of preparing a paper; I am just too busy. That's a bunch of lawyers, Tom Hamer, that you have to talk to. If you talk on some subject of the law, and about the law, remember, that is sure to be a critical audience." I said to the boys in my office: "What shall I talk about?" One said: "I attended a meeting of that kind not long ago and a lawyer spoke who had had a wide trial experience. He talked about some of the cases he had tried, insurance, accident, and other cases, giving some of the quirks of fortune. You have tried a good many cases, some of them rather unusual cases, and I suggest that you talk to the Wyoming Bar on that subject. Speak in an informal sort of way about the rather unusual experiences you have had." And so I think I will do that. I think I will talk about some of the cases that I have tried as a representative of the Company—the Union Pacific—that I represent, also some of the cases that I tried when in general practice and represented miscellaneous clients.

John Loomis, a moment ago, reminded me of a case he and I tried which was in a way a lesson in the force of collateral facts. We had an accident case—a crossing case—that we tried in Kearney. The case was twice tried; the first time we got a verdict from the jury.

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The Supreme Court of Nebraska reversed it on account of error in the instruction. It came back, and we tried it the second time. It involved a passenger in an automobile. We thought we had a clear record on the facts. We were convinced that they had not proven any negligence on the part of the defendant railroad. The trial court thought otherwise and let it go to the jury, and the jury, in their effort to solve the question, argued it back and forth and were out for a couple of days. The afternoon of the second day a U. P. train happened to hit an automobile at Odessa, nine miles away, and killed seven people, and the jury had a verdict in a very short time after they heard about it. I am pleased to report, however, that on the second appeal which *we* took, the Court vindicated our opinion, acquitted the railroad of neglect, and dismissed the case.

I think I will tell you a little bit about the case of Tom Lara against the Union Pacific. All of you probably have tried a personal injury case in which you felt, I am sure, that regardless of the law or of what the facts might be, you had two strikes on you when you went to trial, simply from the force of circumstances over which you had no control. Tom Lara brought suit for the loss of both eyes. Tom was a pitiful object to look at or hear about. When a man, who has been active and enjoyed all his faculties, has gone blind and is just a poor laboring Mexican, it is not a pleasant thing. He was blind; there was no doubt about that. Tom said: "I lost my sight from burns received when I was put to work at Buford." (Just at the top of the hill where we get the gravel.) "I was under one of the big digging machines. It was in the early spring and the company was just ready to begin its work getting out the gravel, and they sent me under this steam shovel to help put on a big chain, and while under the shovel somebody must have shaken the grates or done something because while I was under there on my back, working with the chain, putting it on part of the works that moves the machine, out came hot ashes and hot water through the ashes. My eyes were burned, and I have slowly gone blind." Well now, imagine facing a situation of that kind—if the story is truthful; and then again imagine, because of knowing some little bit about it—having a sincere conviction that there was no truth at all in the story. What are you trying to do? You have got to dig up facts that demonstrate no neglect on the company's part, because a jury isn't going to take to the defense of a case of that nature very kindly. You have got to dig up the proof that's necessary to show, if possible, that his condition did not result from your client's act. Proofs of that kind aren't found in the books. Our doctors heard about it and said the man wasn't hurt in the way he said he was, because a man receiving an injury of that kind, and which would cause such consequences as he had, would suffer intense pain at the time and everybody around there would know about it, and apparently nobody did know about it or any accident of that kind.

That isn't a bad argument to make to an unbiased individual, but personal injury lawyers have a ready answer to that argument. They say to the jury: "You covered it up; you wouldn't let your man say anything about it; you wouldn't let him go to the doctor at the time, and the men who were working with him were all Mexicans and have gone back to Mexico." Well, a good many of them were, and had, except the bosses. We began an earnest quest for information on about what the condition of Tom Lara's eyes had been back over the years. Considerable inquiry went around the country because of the fact that he had been a floating laborer. Inquiry went out to various railroads about where he worked, and away back in 1916—that accident, as I remember, was along about 1927 perhaps—but back in 1916 we found that Lara had worked for the M. K. & T. somewhere in Missouri at some little station. Somebody went down there to investigate, and it is a little bit of a spot where the people don't move around very rapidly and he ran onto the village blacksmith—they had them in 1916, they are out of style now—and he found a fellow who had been the Constable and found another person or two, all of whom knew that a Mexican by the name of Lara had worked there and lived in an outfit car there for a while. The Constable had a distinct recollection of him because he was an impetuous, hot-blooded Mexican and had sliced a man with a knife, and the Constable had him before the Justice of the Peace. He was able to recall quite distinctly that he had a spot—a cataract or something on one eye. He learned from one of the other men about Lara liking to play poker. He wasn't alone, for others did too, and they played with him at the outfit car occasionally. They were able to remember that they called him "One-Spot" because of a spot in his eye. Well, right here may be a good place to digress for a moment and tell you just a little bit about an incident that happened. During the trial, when one of these chaps with whom he played poker testified that he had played with him, he said he had known him and that he was quite sure that he had some visual defect, something like a spot in his eye. I asked: "Did you ever pay any special attention to his eyes?" The witness replied: "Man, what do you look at when the other fellow draws cards?" That was a much better argument than I could have made on it. Well, from there Tom had gone to various places. We traced him until we found that he had a claim against the Pennsylvania for the loss of an eye. He had a claim in California under their compensation law for injury to his eyes which had resulted in blindness in one of them and for which he had been paid compensation. He had a claim against the Milwaukee where he said his eyes were burned while putting out a fire on the right-of-way, and he had one or two others. Well, the case came on trial and these facts were established, and the jury brought in the sort of verdict that they should have. We had testimony of different kinds, including that of experts, and they had testimony too, of course, but we were fortunate in that we had the

testimony of a doctor who had been the head of some institution in Illinois where Tom had been treated because of this eye condition. At the time he was treated he was completely blind in one eye and pretty nearly blind in the other. I remember the testimony of the doctor and remember the mistake counsel for plaintiff made on cross-examination: "Doctor, you can't tell exactly when this condition came about, but you think a good long time before February 1927?" "No," the doctors says, "I can't tell you exactly, but from my examination in October, I can say with absolute assurance that the condition which I observed in October didn't result from a burn received in March or April." I thought it was as convincing a bit of testimony from a non-prejudiced expert as I had ever heard because of the positive quality of it: "I can say with absolute assurance—." The case was submitted, which it should have been, notwithstanding the fact that I suggested to Judge Woodruff who presided at the trial that there was nothing to go to a jury—but he disagreed. We thought there should be no recovery and there was none.

Let me tell you a story about Sam Maddalena. Sam was a Sicilian, crafty and slick as he could be. Sam was involved in an actual accident; this one happened, Lara's didn't, but was out of whole cloth. Sam was riding one of these speeder track cars, gas driven, and the car went through an open switch and Sam rolled off. Sam worked around in the yards in Lexington, Nebraska, after this until somebody told him he had been hurt. Sam concluded then that he could not work any longer unless he had light work. Well, there wasn't any change made in the work and in due time Sam brought suit. His whereabouts were unknown for a long time but through some contact we learned that Sam was in excellent condition, but, against Sam's testimony, that would be a question for a jury. They might be prone to believe him when he limped into the courtroom bearing his weight on a cane and dragging his leg, as he did. So it became necessary, if possible, to get absolute evidence—convincing evidence. We sent a local motion picture photographer over to see if he could get Sam, who was working with a gang putting in concrete curbing, in a picture. The photographer went over and talked to the boss and said he wanted to photograph the bunch at work and he started his machine. The Italian had all the instincts of a prima donna, trained to sing and hold the middle of the stage at the Metropolitan Opera. You never saw anybody work so hard or shovel so furiously. The case came on for trial and Sam told his story—told how he was hurt, what happened, and it was true. "But, you worked after that, didn't you, Sam? Didn't you work quite a while?" "Justa lighta work—lighta job, picka da spike, geta da pape, cleana da station—no reala work." "Oh, just a light job, you didn't do any real work—haven't since?" "No, can'ta do." Well, the picture came on and there was quite a battle over its admissibility. This was the first time a motion picture had been used in

a trial in our State, back about 1923. Judge Grimes, who presided, had the kind of wisdom born of common sense and thought anything that helps to establish a disputed fact is evidence. He admitted the film. We showed it on an improvised screen. I have it here and wish I could show it to you. The jury looked at the picture and promptly returned a verdict in our favor, and we felt pretty good about it. The jury system is a great success, gentlemen. That's where justice prevails. All you have to do is just convince these boys, and if you have evidence you are all right. I went around feeling pretty proud about what had been done. About a year later, just as I was coming down from my office at Kearney where I lived at that time, at the foot of the stairs I met a chap. "How do you do, Mr. Hamer." There was that look on my face you will have when you are not quite sure who the chap is you are shaking hands with. He said: "You are not sure about me, are you?" I said: "I ought to know you, I know I have run across you all right and we have had some contact." He said: "My name is"—Smith, we will say—"I was on that jury in the Maddalena case. We had quite an argument about that, us jurors did. We went out and we finally concluded that we didn't want any of them damn Sicilians in this country anyway." So, the jury system is a great success.

Speaking of Lexington reminds me of another case I tried—not railroad case. This was a will contest in which I represented the contestant, a brother of the testator, who had died without issue, but who had left his property, which was quite desirable, to a woman with whom he had fallen in contact. He had been living with the woman and her husband at their home for a while, and they were good to him in a way, but they were designing—they knew the property was desirable. The old boy became discontented; he was in bad physical condition, and he thought he was getting pretty good treatment there for a while and then became discontented and sent for his brother to come out and take care of him. There was a sort of faint representation that if he would come out and take care of him he would make him, the brother, the beneficiary in his will. The brother wasn't there very long until the testator was again dissatisfied. Of course he was in that frame of mind—frail old man—the frame of mind a man in that condition often is in when he is not sure just what he wants to do. Nothing satisfies him. He thought he would be much happier if the woman to whom I have referred had continued to take care of him, and she though she would be much happier if she had charge of his affairs. Well, the issues were what they usually are in a will contest—lack of testamentary capacity and undue influence. There is nothing harder to establish than undue influence, or rather, that undue influence is exercised. It is not hard to establish the possibility of undue influence, but proof that it was exercised is different and difficult. We were shooting a scatter-gun, attacking his capacity and, of course, doing our darndest to show the woman procured execution of the will.

The brother contestant had received certain letters, two as I remember, which were loaded with threats—he must get out of there or the K.K.K. would do something to him, or somebody else would do something to him. My associate and I had no doubt that the woman was the author of the letters. I had a little bit of her genuine handwriting, and I admit I couldn't see any similarity in the world. Whose was it? We puzzled over it and puzzled over it and puzzled. They were written in a very peculiar, rough, unsteady, uneven manner. My associate finally said: "She wrote it with her left hand." We had been very careful in handling them not to get finger prints on them, but when we had them looked over, there were no prints. He said: "She wrote them not only with her left hand but with a glove on." Nice theory, but how to prove it? A beautiful theory. The lady was a woman of rather meager education, and in going over the letters I noticed eight misspelled words, rather common words. That fitted in with what I knew about her, so when she testified as she did and was cross-examined, I said: "How do you spell 'strike'?" "S-t-r-i-c-k." That was just the way it was written in the letter. And so through the eight misspelled words, and she misspelled, or spelled, seven of them exactly as they were in the threatening letters. Rather a conclusive demonstration but still not enough. I said (pardon me, I am saying this to you, pardon me for the frequent use of the first person singular but I don't know any other way to do this), I said: "Madam, sit down at this table, I want you to write with your left hand." I have never seen a look more completely of terror on the face of a witness than she then wore. She said she couldn't write left handed. I insisted that she sit down and try. She sat down and it was a scrawl, of course, but looked a great deal like the other scrawl, and I finally gave her a sentence that had in it the one word that she had orally correctly spelled, and she misspelled it exactly the same way that she had in the letter. In other words, when subjected to the strain of writing it left-handed, she misspelled it. Well, when we got in all the evidence we thought that that was sufficient to warrant denying the probate of the will, and so it was.

Now there is a peculiar quality, at least it has been my observation, and I have had contact with many of them, that there is a peculiar mental quality common to nearly every crook who starts out to deceive. He often falls victim to it. He is the victim of an exaggerated ego. This was the case with John Sukumlyn tried at North Platte. John was a nice looking young fellow in his early twenties who had worked there about two years as a fireman. One night, being called to take his engine from North Platte to Sidney, he went back, at Paxton, over the tender and onto the tank which is called a "Vanderbilt," a long tank, circular in form with a wooden platform on the top and a manhole or filling hole covered with an iron sheet. His purpose was to fill the tank. There was no dispute about that, and it was dark—no

dispute about those facts. When John came back to the engine he was doubled over with pain. John said: "I slipped into the manhole and have very seriously injured myself," and he presented as evidence the appearance of a great deal of agony. The engineer said: "Well, do you think you can make it to Ogallala if I will help you?" John said: "Yes," but he went on up to Sidney and John came back, still firing his train, back to North Platte. Then he went to the doctor and the doctor reported that John had evidently sustained an injury to the testicles, that was what he was complaining of. John laid off; John worked no more as John W. Sukumlyn. That was the last day of December 1922, or the last day of November, I should say, of 1922. On the last day of December, a month later, John went to Salt Lake and we heard no more of John for some little time. John, through his lawyers, and very reputable lawyers, let it be known he had a claim that he had been terribly injured by his accident and had been rendered totally unfit to fulfill the destiny of man; that he was no fit subject for marriage, and that likewise, life for John was just bleak and barren of everything a young man looks forward to. That looked pretty serious, but there were some few little things that pointed the finger of suspicion. There was no doubt about the manhole cover being gone just as John said it was, nor that the engine was sent out in defective condition just as he had said it had been. A little while later very pitiful letters began to come in to the claim department urging that they do something and saying that "I am wholly unable to work" and that at a certain time he would be at a certain point and "you can write me there." Somebody would go to see John but he was never there. This happened not once but two, three or four times. Of course there was only one conclusion and that was that John was trying to avoid all contact. But finally John did make an appointment and it was kept. He was taken to a doctor for examination, and that doctor reported there was no permanent condition and if he had suffered an injury he had recovered. That didn't abate his zeal so far as his claim was concerned. John was hurt in November, and this had got to be April perhaps. Mr. Jeffers got a letter one day explaining John's terrible condition. Mr. Gray got a letter a little bit later explaining his terrible condition. Then, in some way or another, suspicion pointed to the fact that John was working in a plaster mill, down at Las Vegas, I believe, Las Vegas, Nevada. Somebody went down there to check up on John and make an investigation and discovered that John was not there but had been there. He had been there at the very time he wrote to Mr. Jeffers that he was completely incapacitated and would never be able to work or never be able to get married; he was there hard at work when he wrote to Mr. Gray. That looked pretty good as evidence that at least part of the claim was phony. One day one of the claim men stationed at North Platte happened to be at Rawlins and saw what he thought was a familiar figure go upstairs in the station where the

railroad men clean up. Being quite discreet, he made a very discreet inquiry and said to the callboy: "Who is that chap?" The boy replied that it was a brakeman by the name of Hester. No more was said but he returned home and then he—the claim agent—wrote the superintendent for Hester's personal record. When it came and was compared with Sukumlyn's personal record, there could not be any doubt that they were one and the same fellow. For instance, Sukumlyn's brother was Thomas W. Sukumlyn. Hester's nearest relative was given as Thomas W. Sukumlyn. The same fellow. The case came on for trial and as I viewed it, there was only one way to successfully try it, that was to let him go just as hard as he would go. If it became known to him or his counsel (and they were completely innocent) that we knew he had been at work in the plaster mill and as a brakeman on another division for about a year while the value of the case would shrink greatly, the probability of winning it would probably vanish. So when the case came on for trial he testified and was cross-examined at great length about what he had been doing. He said he had done absolutely no manual labor. He said he couldn't stand to be on his feet for more than about half an hour at a time because if he was he suffered most intense pain. "Well, where have you been?" "My brother has a radio shop in Los Angeles and I have tried to sell for him at San Francisco, St. Louis and Kansas City." Month by month and day by day we covered it but he continued to say just what he had to begin with: "I haven't done any physical labor since I left North Platte." I had the pay checks he had drawn from the plaster mill in my pocket, and I pulled them out one at a time and showed them to him. "Yes, that's mine." "What were you doing?" "I was working down there." "What at?" "Handling plaster sacks." "What do they weigh?" "Oh, anywhere from a hundred to a hundred and twenty-five pounds, I guess." "But you couldn't do any physical labor?" "I did that." "And you were doing that at the time you wrote to Mr. Jeffers that you were under a doctor's care?" "Yes." "And you wrote for the purpose of deceiving the company?" "Yes." "And you were doing that at the time you wrote to Mr. Gray and made your pitiful appeal?" "Yes." "For the purpose of trying to deceive?" "Yes." We had stationed a number of the men that he had been running with between Rawlins and Green River and who knew him as "Hester" but who had never heard of Sukumlyn outside of the town. About this time I received a nudge in the back from my associate Kim Keefe, whom some of you may have known; that was the signal to me that the men who were Sukumlyn's associates had just walked in the rear door of the courtroom. In a most dramatic fashion I started the question: "Do you know John L. Hester?" The witness answered he did. "Who is he?" "Me." "What does he do?" "Works for the Union Pacific." "As a brakeman?" "Yes, Sir." "And you have hardly laid off since you went to work?" "Yes, hardly." "And you came down here with the

design to deceive this Court and to deceive this jury in the hope that you would get a large award for an injury you never sustained?" "Yes, sir." Automatically, about that time, the Court very properly said: "Mr. Sheriff, you may take this man into custody. Mr. County Attorney, you will file a charge against him for perjury." While it has its funny side, the situation was charged with drama for that jury. You could have heard a pin fall. He was a fine looking young fellow; you couldn't help but like him. I remember one juror coming forward and saying when the thing was over: "I am so sorry about this. Why will men do these things?" I didn't say this at the time, but I say it now—that I guess the chap, whoever it was who said it, that "The love of money is the root of all evil" was about right. He would have been more nearly right had he said: "The love of *easy* money is the root of all evil." John was out to get some easy money.

I think I have talked long enough. I thank you.

HOPEFUL FACTS ABOUT WYOMING

DR. A. G. CRANE*

Members of Wyoming Bar:

I was pleased to receive an invitation to attend your meeting here and address you. Perhaps it is a little odd to find a schoolmaster mixed up with so many lawyers. On the other hand, the Office of Secretary of State has many official relations with the legal fraternity.

I have heard some discussion on the issue of advanced copies of laws enacted by the last Legislature. Perhaps some facts regarding this project would be of interest to you. It is the obligation of the Secretary of State's Office to supervise the printing of Session Laws following each legislative session. The process of printing the Session Laws is to have the material set up in convenient forms for proof-reading. By a simple devise of having the proof sheets printed in larger quantities, we had copies available for earlier distribution. The only additional printing expense is the expense involved in running more copies of the proof sheet. Some 500 copies were printed in this way as rapidly as the laws were enacted. It required some 500 copies to meet the mailing list. All bills carrying the emergency clause, making the law effective immediately upon enactment, were included and also other laws of immediate interest. The mailing list consisted of all public officials and all members of the Wyoming Bar. No charge was made to any individual for this service. Expense was paid by the State and amounted to \$1,243.00 for printing and postage. The mailing was performed by the regular staff of the Office of the Secretary of State. Six mailings were made.

*—Secretary of State, State of Wyoming.