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CHIEF JUSTICE JOHN B. WINSLOW

E. RAY STEVENS¹

“When an eighteenth century constitution forms the charter of liberty of a twentieth century government must its general provisions be construed and interpreted by an eighteenth century mind in the light of eighteenth century conditions and ideals? Clearly not. This were to command the race to halt in its progress, to stretch the state upon a veritable bed of Procrustes.”²

These words, written by the late Chief Justice Winslow nearly a decade before his death in sustaining the workmen’s compensation act of Wisconsin, give an index to the mind of a man who did much to bring the jurisprudence of Wisconsin into harmony with the spirit of the age in which we live.

Judge Winslow sat upon the Supreme bench of Wisconsin during all the years when that state was putting upon its statute books such enactments as its income and inheritance tax laws, its workmen’s compensation act, and its act regulating railroads and public utilities. No court in the lifetime of a single member of the court has had questions of greater importance presented to it, and no court has left a record in its decisions which more consistently faces toward the rising sun of human progress. This record is not the work of any one member of that court. But no one member contributed more to that record than Chief Justice Winslow. The opinion of the court in many of these important cases was written by him.

Judge Winslow possessed the rare faculty of seeing the controlling question in the case without being distracted by unimportant details. As a consequence his opinions were models of brevity and terse statement. He had a fine literary style, which was embellished by illustrations gathered in his wide reading in the fields of history and literature. But he never allowed his love for good literary style to affect the presentation of sound legal opinions. The decisions written by him will take rank among the great judicial opinions of this country.

Nowhere did his ability “to adhere to the spirit of the law which giveth life rather than the letter which killeth,” to use his own words, appear more marked than in his consideration of criminal cases. As he himself stated, he began his work by strictly adhering to the technical

¹Judge of the Circuit Court, Madison, Wis.

²*Borgnis v. Falk Co.*, 147 Wis. 327, 349.

rules of procedure and concurred in the reversal of many criminal cases where justice did not require such reversal. But he soon turned from the letter to the spirit of the law. Many a lawyer who urged that a conviction be set aside because some technical rule of the game had been violated had his argument shattered by the question from Chief Justice Winslow: "Could that have affected the rights of the defendant or influenced the jury in rendering its verdict in this case?" There is no better statement of the reasons that should lead courts to disregard the technical rules that were formerly applied in criminal cases than the opinion written by him in *Hack v. State*,³ where he declared that a defendant may not juggle with his constitutional rights; that he may not "play his game with loaded dice," and that justice should not "travel with leaden heel because the defendant has secretly stored up some technical error not affecting the merits, and thus secured a new trial." His controlling thought in every controversy was to discover the right and to vindicate it with as little burden and delay as possible.

One who considers only his service as a member of the Supreme Court of Wisconsin will have but an imperfect estimate of the man. He was more than a great jurist. He was a genial, companionable, lovable man, one of the best known and best beloved citizens of Wisconsin, who was ever ready to give generously of his time and energy to promote any good cause for the advancement of his fellowmen, whether it be to aid the local Y. M. C. A. or to help win the World War.

He was always deeply interested in the work of the American Institute of Criminal Law and Criminology. Most of the members of the Institute will recall his presidential address at the Milwaukee meeting. In that address Judge Winslow gave the controlling motive of his life when he declared "that man cannot live for himself alone."

³141 Wis. 346, 352.