

The Supreme Court of Massachusetts vs. Sacco and Vanzetti

By ELIZABETH GLENDOWER EVANS



THE APPEAL for a new trial in the famous Sacco-Vanzetti case was heard in Boston on January 11, 12, and 13, the full bench of Supreme Court Judges sitting. The case was argued for the defendants by William G. Thompson and for the government by Dudley P. Ranney, one of the Assistant District Attorneys for Norfolk County, where the trial was held.

It will be remembered that the murder of Parmenter and Berardelli, in connection with a payroll robbery of \$15,776.51, occurred in South Braintree, Mass., on April 15, 1920, and that some three weeks later Sacco and Vanzetti, Italian radicals, were picked up on a trolley car in the vicinity. That morning they had read in the papers that the body of a fellow Italian, a comrade of their own, had been found on the pavement in New York City, having fallen, (some said having been thrown) from the fourteenth story of the Department of Justice Building, where he had been confined for two or more months.

Questioned On Views

UPON THEIR arrest, Sacco and Vanzetti were questioned as to their opinions,—"Were they socialists? Were they Communists? Were they Anarchists?" The next day they were inspected by various witnesses of the South Braintree crime, and of an earlier attempt at a similar crime in Bridgewater. Sacco was "identified" by some of these as principal in the one crime, and Vanzetti as principal in the other. The upshot was that the two of them were charged with the murder of Parmenter and of Berardelli at South Braintree.

The time when these things happened was that of the "red raids" of A. Mitchell Palmer, Attorney General of the United States,—a time of terror for foreign born "radicals" who were seized by the thousand, and a number of whom were deported. And many who watched the trial believed that the superheated atmosphere of the community leaked into the court room, that the accused were on trial for their opinions, and that the verdict flew in the face of the plain burden of the evidence. This belief has been immensely strengthened by further evidence, since discovered.

New Hearing Held

THE HEARINGS on this new evidence were held before the Hon. Webster Thayer, the same judge who sat at the trial. Much of it has been discussed in various issues of La Follette's. I for one can testify to my belief that, whatever appearance of detachment the judge gave as he sat upon the bench, he always disclosed the twist in his mind that the accused had committed murder. One piece of evidence over-shadowed all else: the accused were terrorized when they were arrested; this showed a "consciousness of guilt," and of what could they be guilty, if not of murder?

Judge Thayer's type of mind was obviously that of a casuist. Of course, he could always find authorities to justify himself, to himself. But William G. Thompson had no doubt that the Appellate Court would be constrained to grant the new trial. And lawyers of the first rank who had read his brief, shared his opinion.

Nevertheless, on May 12, a unanimous opinion sustaining Judge Thayer upon every point, was handed down. "The Judge acted within his discretion,"—that is its burden. On points of law he was always upheld. And where the facts, at war with his findings on the motions were urged, the opinion held that "it was for the judge, on all the evidence to find the facts—he could accept in whole or in part, and the question of a new trial was a matter of discretion." There is no single word in the seventy-one pages of the opinion to indicate that the incidents of the arrest, of the trial, or of the subsequent hearings, reached the understanding of the Court. The causes of the men's terror,—(relied upon as evidence of guilt, be it remember-

ed, by the prosecution)—facts given in broken sentences at the trial and always cut off by the protest of the District Attorney or of the judge, "how is that pertinent?"—facts not disputed and yet brushed aside, these were recited eloquently, convincingly by Mr. Thompson. If the row of learned judges as they sat upon the bench had ears, they must have heard. But from the opinion it would seem as if the words had never been spoken.

Both of Good Character

IN HIS argument before the Court, Mr. Thompson had called attention to the excellent character which both of the men bore; to the fact that they were both of them steadily employed; to the fact that Sacco that year had paid a Federal income tax, and that at the time of his arrest he was earning as high as \$80 a week. He called attention to the fact that after the crime occurred the men had not moved from the vicinity, but that on the contrary, on the evening of their arrest they were arranging for a meeting in a town adjacent to South Braintree to protest against the arrest and the deportation of so-called radicals. A draft of the flier to advertise this meeting was taken from Vanzetti's pocket by the police, and at the trial it was introduced by the prosecution. Further, there had been no evidence that either Sacco or Vanzetti or any of their friends had received any part of the stolen payroll of which the murders had been the occasion. And perhaps more than all, there was the alibi evidence which, especially in the case of Sacco, had amounted almost to a demonstration. Apparently, Mr. Thompson's words were spoken to vacant air.

In the matter of the Proctor incident, the action of the Supreme Court was remarkable. This so-called evidence was told last August in La Follette's Magazine, how Capt. Charles H. Proctor of the State Police, called as a government witness, had admitted, after the trial, that his testimony relative to the government's claim that the mortal bullet had been fired from Sacco's gun, had been purposely framed. He was understood both by the defendant's counsel and likewise by the judge, as was shown in his instruction to the jury, to have supported this claim. But in a later affidavit he explained that on the witness stand the question had been put to him in a prearranged form of words. Had he been asked the direct question, he said, "I should have answered them, as I do now, without hesitation, in the negative."

Dodges the Issue

THE DISTRICT attorney and his assistant each of them filed an affidavit making an indignant general denial; but their statements really confirmed Capt. Proctor's. Indeed, the assistant district attorney admitted in so many words that he had known Capt. Proctor's opinion. Judge Thayer considered the three affidavits in a lengthy opinion which, with many words, discussed self-evident or irrelevant matters but which omitted all reference to the main fact; and as an outcome, he found that Capt. Proctor's misunderstood testimony had not been injurious to the defendant's case, and that the prosecuting officers had done nothing incompatible with the strictest sense of honor. And what did the Supreme Court do in the matter? Quoting at length from the three easily understood affidavits and even more at length from Judge Thayer's opinion, it had held that his findings "cannot be successfully challenged!"

Equally astonishing is its dealings with the elaborate series of photographs taken under a high power microscope which were introduced at hearings subsequent to the trial, and which the defense held proved, among other things, that the bullet which had killed Berardelli could not have been fired from Sacco's gun. One of the microphotographs showed the primer of a shell fired from Sacco's pistol as an experiment during the trial, which had a dent from the firing pin twenty-three degrees off centre,

and in contrast was another microphotograph of the primer of the bullet which had killed Berardelli in which the firing pin struck in the exact center.

Pistol Was Off Range

THE DISTRICT attorney had argued that this discrepancy was due to a "tolerance of the firing pin." Had a larger number of shots been fired from Sacco's gun, he claimed the firing pin would probably have struck anywhere within a radius of twenty-three degrees. "If you thought that, why did you not test your theory by firing a larger number of shots?" asked Mr. Thompson. "I have studied at the Worcester Polytechnic, and I know that pistols with such 'tolerance' of the firing pin would not be saleable. However, why argue the question? Let us put it to the test. Let us go out in the lot and fire Sacco's pistol fifty times, or one hundred times. We will bring the primers into the court room, and we will see if in every instance Sacco's pistol does not strike twenty-three degrees off center. I will stand by that test."

In spite of this challenge, Judge Thayer did not allow the shots to be fired. And the Supreme Court, summing up this mass of evidence in a single page, found "that the photographic and microscopic examinations and experimental tests were evidence only for the judge's consideration . . . the judge had heard the evidence at the trial (a clear misstatement, since the microphotographs had not then been made) and his declination to follow the defendant's experts cannot be classed as an error at law."

In an article written last August in La Follette's Magazine under the title When The Downtrodden Ask Justice, the probable outcome of an appeal to the Supreme Court in the Sacco-Vanzetti Case was discussed, and the forecast was ventured that, by hook or by crook, the lower court would be upheld. "Supreme Court judges, after all," it was commented, "are only human beings; there is such a thing as pride of profession; and were all that transpired at the trial and at the subsequent hearings to be revealed to the full light of day, a blow would be dealt to the processes of justice which no court could contemplate with equanimity."

The facts as stated in this article are given in non-legal words, and the opinions are those of one unlearned in the law. Those who desire a more complete and a more scholarly statement are referred to an article in the New Republic of June 9th. As a conclusion, this article says of the Commonwealth against Sacco and Vanzetti that the Supreme Court "already stands condemned."

La Follette's Magazine will publish, in a later article, some further facts relative to the case which it is believed will be of interest. Meanwhile, let no one who is interested in seeing justice done, forget that money, money, money is needed.

STOCK FRAUDS LEAD ALL

Of all robberies of the public, that of the fraudulent salesman of stock is the greatest, credit men have determined. Loss from stock fraud is four times the loss from burglary, grand larceny and petty theft. It leads that of forgery ten times, and trade frauds four times. At the present rate it is large enough to pay off the national debt in twenty years.

TEACHERS GIVEN BONUSES

On recommendation of the school superintendent at Coldwater, Mich., a bonus of \$50 is given to teachers, who although possessing the minimum scholastic requirements attended the summer school last year. The bonus is part of the movement to keep teachers in that community abreast of the times in the teaching profession and to enable them to qualify for higher positions.