

JUDGMENT AGAINST PRICE STANDS

The Case Goes to the Court of Appeals and the Execution May be Delayed.

Robert F. Leach, Jr., one of the Baltimore attorneys for Marshall E. Price, whose execution for the murder of Miss Sallie E. Dean, is set for next Friday, filed in the Clerk's office last Saturday a motion to strike out the judgment. The attorneys offered seventeen reasons, as follows:

First—That Price was not properly arraigned.

Second—That he did not plead to the indictment.

Third—That he was prevented from having the trial take place in another county by counsel.

Fourth—That he desired a trial by jury, which statement, it is said, is supported by prisoner's affidavit and the oath of Millard F. Taylor, one of the counsel.

Fifth—That Price never elected to be tried by the court.

Sixth—That he never consented to a trial by the court.

Seventh—That he never authorized counsel to elect by court, but begged for a jury trial.

Eighth—That the verdict was against what the evidence would have been had the senior counsel for the defense permitted the witnesses who were in court at the time of trial to testify.

Ninth—That the record does not show that prisoner was present when sentence was passed upon him.

Tenth—That the alleged confession, taken in part only, was not admissible.

Eleventh—That hear-say evidence was admitted.

Twelfth—That the confession taken by the court was not legal.

Thirteenth—That new and valuable evidence has been discovered of material benefit to the defendant, but which was not known at the time of the trial.

Fourteenth—That the trial was not according to the Bill of Rights of this State, Articles 20, 21 and 23.

Fifteenth—That the trial and sentence were in violation of the constitution and laws of the United States.

Sixteenth—That the judgment in this case is void because the prisoner was tried by the court and not by a jury of twelve men.

Seventeenth—And for many other good and sufficient reasons.

Sheriff Berry and Deputy Sheriff

Sheriff Berry and Deputy Sheriff Roe went to Baltimore Saturday morning to remove Price to Denton jail. So quietly did they proceed with their mission that very few people knew of his coming. The officers called at Marshal Frey's office and then at the jail. After 7 o'clock they called a cab and removed the prisoner to the steamer Joppa and put him in a stateroom, under guard. On the way up the river Sunday morning Price was permitted to take a room on the opposite side of the boat so that while the steamer lay for a few minutes at Dover Bridge he might talk with his parents on shore, who were there to see him. There were many passengers on board, but only a few of them knew that the now famous young criminal was a fellow-passenger. When Denton was reached Price was kept on board until all the passengers had disembarked. Only a few people were about the wharf when a carriage called at the boat and the condemned man was driven to the prison, where he is to remain until the date of his execution, July 5th. The return to the place which must have been anything but pleasant to him cast no cloud upon the prisoner, however, for he was in a cheerful mood, and nodded recognition to acquaintances as he smilingly passed along. He chatted pleasantly with those who spoke to him. One of the men who addressed him alluded to the fact that there was no danger of violence, and Price answered emphatically, with an oath, that he feared nothing. His nonchalant manner, which he seems to have maintained all along, had not deserted him. He has grown much stouter since his trial.

Judges Wickes and Stump, last Wednesday afternoon, heard the motion to strike out the judgment. The hearing attracted little attention, and the number present was small. Messrs. Taylor, Baker and Leach, the Baltimore counsel for Price, were present. The judges read the motion, and the allegation that a change of venue had been urged before Judge Stump was pronounced false by His Honor. The Judge explained that Taylor had spoken to him on the street about removing the case, and that he (Judge Stump) had informed him that a removal could be had only by filing the formal affidavit, and that he could not say where the case would be sent in the event of removal. The Judge stated that as counsel for defense had filed no such affidavit and application there was, therefore, no removal. Judge Wickes, referring to that portion of the motion which stated that verbal application on the part of Price's counsel had been made to him for change of venue, said that the statement was absolutely false. The court was evidently not pleased with this part of the proceedings, and rebuked Lawyer Taylor sharply for his disregard of facts. The attorney said the allegations made in his paper were stronger than he intended, and that he would make corrections.

The court then ordered that Price be brought into the room, and Sheriff Berry soon returned with him. The prisoner seemed to be undisturbed in spirit, and all those present noted how well he looked. At the instance of the court Mr. Bussum was sworn and gave a brief his

tory of the case, incidentally stating that the motion made by the Baltimore counsel was full of fabrications. "If these statements are true," said Mr. Russum, passionately, referring to the charge of unfaithfulness, etc., made against him, "then I am not fit to practice at this or any other bar. If they are false, the party making them against me has no business in this court." Applause from the audience greeted his remarks; but the Judges promptly suppressed the outburst. Mr. Russum's statement to the court was as follows:

After his appointment as Price's counsel he visited him in the Baltimore city jail, and there stated to Price that the proposition to remove the case to Baltimore would not in his opinion meet with the favor of the court, and that in his opinion it would not be possible to get an impartial trial before a jury in Caroline county, or in any county where the case would be removed, and that the case could be fairly tried before the court; that Price there stated that he would leave the matter entirely to the judgment of affiant; that affiant afterward saw Price in the Baltimore jail and the case was gone over, and Price there consented to try the case before the court; that when Price was brought to Denton for trial affiant never heard anything from said Price directly or indirectly indicating his desire to be tried by a jury or for a change of venue; that the removal was talked over with Millard F. Taylor and affiant stated his views as above; that upon the arraignment of the prisoner both he and affiant pleaded "not guilty," and that upon being asked how he would be tried affiant replied "by the court," but does not know whether prisoner said anything or not; that Price and all the counsel for him were present and knew all that was done and consented thereto; that after trial and verdict the court called on the counsel for the defendant, defendant and all counsel being present, except Mr. Taylor, who had gone, to state whether or not they would move for a new trial or had any other motion to file; affiant answered that they had not; that the court then asked Price whether he had anything to say why sentence should not be passed, whereupon Price said he had not, declaring his innocence; that affiant never suppressed any evidence, and there were no witnesses to summon to affiant's knowledge.

The arraignment of Price, the pleading, etc., as stated by Mr. Russum was corroborated by the other counsel for the prisoner and the State's Attorney.

Mr. Taylor said in an affidavit that when he was employed by Price it was with the distinct understanding that there should be a change of venue, and that he preferred Baltimore; that he urged this point to Judge Stump.

An affidavit filed in the case was by the prisoner, stating that he came to Denton in charge of Marshal Frey the day before the trial; that he desired to have the case removed from Caroline county to Baltimore, and certainly from Caroline county, and so expected until he was brought up for trial; that he never was asked nor did he ever consent to be tried by the court, and that he did not plead to the indictment nor authorize any one else to so plead for him.

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After Mr. Russum got through Mr. Taylor took the floor and addressed the court on the alleged irregularities of arraigning the prisoner, citing several authorities. The court then took a recess until the evening, when J. Henry Baker argued at length on the illegality of the proceedings of the Price trial because the records failed to show that Price was present in court when the sentence was passed. Robert F. Leach, Jr., followed him, taking the ground that the conviction was in conflict with the Constitution of the United States, which prescribes that a jury of twelve men only can legally convict in such cases.

An affidavit signed by Dr. Dunning was filed. This recites that he has practiced in the Price family, and from the facts he has learned—that the young man suffered a sun-stroke and was struck by lightning when a child—and his mental peculiarities, together with the fact that the State did not show any motive for murder, he is of the opinion that Price is a victim of homicidal monomania.

After careful deliberation Judge Wickes, shortly after 8 o'clock, rendered the decision of the court, overruling the motion to strike out the judgment. The Judge explained wherein, according to the laws of the State, the positions assumed by the defense's counsel were entirely untenable. The Judge was very eloquent and forcible in his remarks. Price was present and apparently was as unconcerned as anyone in attendance. His counsel immediately filed a petition for a writ of error upon which to take the case to the Court of Appeals.

At the conclusion of the day's proceedings Wednesday Mr. Taylor, Mr. Baker and Mr. Leach, attorneys for Price, made oath that the writ of error was not taken for delay. The writ embodies substantially what was contained in the motion, but excepted in addition the ruling of the court ordering the clerk to extend his record of the trial of Price to show that the prisoner was present.

Judges Wickes and Stump on Thursday ordered that the clerk transmit the record of this case to the Court of Appeals, as prayed in the petition. The court did not give any order to the clerk to make any change in the docket entries in the case, nor was any change made. The writ goes to the clerk of the Court of Appeals this week.