

COPY

February 4, 1935.

PERSONAL

My dear Mr. Swope:

Immediate judgment. Indictment quashed.

The distress which led to your complaint may be somewhat alleviated if for a moment you free yourself from the tyranny of the blue pencil and consider the history of the law. "Equal justice" is a time-honored phrase placing a strong emphasis upon impartiality, - an emphasis which it is well to retain.

Dictionaries use the expression in defining "Equity": - "Standard" - "equal justice"; "Century" - "equal or impartial justice".

Glance at the first inaugural of Thomas Jefferson - is he not still your favorite author? - one who had much to say about "Justice". But he was not content to say simply "Justice". Even when he wished to bring his expression of political ideals within the "narrowest compass" he spoke of "equal and exact justice to all men";:

"About to enter, fellow-citizens, on the exercise of duties which comprehend everything dear and valuable to you, it is proper you should understand what I deem the essential principles of our Government, and consequently those which ought to shape its Administration. I will compress them within the narrowest compass they will bear, stating the general principle, but not all its limitations. Equal and exact justice to all men, of whatever state or persuasion, religious or political;" (1 Messages and Papers of the Presidents, p. 323).

Probably no sentence in our reports is more frequently quoted than the one you will find in the opinion delivered for the Court by Justice Stanley Matthews in the famous case of Yick

Wo v. Hopkins, 118 U. S. pp. 373, 374:

“Though the law itself be fair and its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution”.

Our oath drives the point home. It was prescribed in the first Judiciary Act of 1789:

“I _____, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____ according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States: So help me God.”

If I had time I could give you a host of illustrations of the use of the phrase “Equal Justice”. There is a long history in that phrase. Try to bear with it.

Very sincerely yours,

Mr. Herbert Bayard Swope,
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