

Linck v. Kelley 25 Indiana 278

(Copy).

Snow Hill, N. C. Jany. 9, 1879.

Dear Sir: Your favor of the 8th. has just reached me, and (as therein requested) I shall immediately apprise Judge McKoy of the facts concerning the transcript in State vs. Foy.

This case involves a very interesting philological question. The prosecuting witness, in describing the offence, used a certain word which forcibly expresses the idea conveyed by the tediously paraphrastic, though more elegant and refined words, "to have complete sexual connection." The point raised by Judge Thomas for the defence is, that there is no such word in use; and that if there is, the idea of penetration is not necessarily included in its meaning. He also

argued this before the jury, and it was really interesting (and but for the solemnity of the occasion and the fiendish atrocity of the outrage, would have been highly amusing) to note the evidences of incredulity almost amounting to palpable astonishment which crept out on the countenances of those twelve honest men of good, strong every-day sense, while he was endeavoring, with so much apparent earnestness to impress those views. The word in question was one which every male citizen of the Commonwealth (except Judge T.) who had become in any respectable measure acquainted with the solid, robust Saxon class of that great family known as "The King's English", had previously heard and well understood - a word which the father of

English poetry, old Chaucer, had deigned several times to use in some of his most famous productions, Bailey, it seems, did not think his dictionary would be complete without it; and in the old editions of Dr. Johnson's Dictionary, the same word takes its place in natural alphabetical order. Numerous other high authorities might be cited. Again, when we come to examine the etymology of it we find that it is a well-descended word. It comes directly from the old Teutonic stock on which (as all philologists agree) our language is based. Even the corresponding German word of our own time (after as many changes have taken place in that language since the days of our Saxon ancestors) is strikingly similar in formation and sound. So, it is a

well authorized word - as I think ~~of~~ no scholar will deny - and if it means anything it means the performance of the sexual act, including all that naturally and properly appertains thereto. It is the one word in the English language which, of itself and of its own proper energy, expresses penetration - "the true inwardness, in the act. No other single word in the language has essentially this signification. And now, my dear Colonel, I will take leave of this very delicate subject. It is a great pity that such a word as that here alluded to should appear in the public records and reports of our Courts especially when the ends of justice did not demand ~~it~~ the appeal which ^{the} makes publicity - for the prosecutrix really used other descriptive

words which I have no doubt the court will consider sufficient to justify the verdict, and the guilt of the defendant is beyond any shadow of doubt. But if no other descriptive word was used than the one discussed I am confident it was sufficient, for the reasons given.

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Your Obt. Servant

(Signed) Swift Galloway.

Hon. Thos. S. Kenan, Atty. Genl.