

Propter Defectum

By Lon Williams

A Judge Steele Story



Frenchy Demeree was protesting violently. "One of these jurors is *propter defectum* . . ."

What seemed like a plain case of murder was now shaping up as an accident—but Judge Steele figured that this accident was too danged convenient, and too pat. . .

JUDGE WARDLOW STEELE slid heavily onto his split-log bench for another nerve-twisting session of criminal court. In lieu of a gavel, he laid his sixgun before him on a puncheon table that served as a desk. In Flat Creek's log courthouse, an air of expectancy hung tense and ominous. This court of law—regarded by lawless men at its inception as

an attempt to do something that couldn't be done—had repeatedly demonstrated a surprising deadliness. Men who'd considered themselves smart enough to outwit its ignorant, uncouth judge, had wound up with ropes around their necks. But, be-consarned if they didn't keep on coming—brazen varmints who still thought themselves too clever to be

outdone.

From habit, Judge Steele cast savage blue eyes over a jammed courtroom. As usual, those remorseless eyes fell upon a mongrel crowd—fierce, bearded goldiggers; sleek gamblers; sneak-thieves; cutthroats; scum of boom-towns, and outcasts of settled society. Despite what had so far been achieved, the fact that Flat Creek citizens gave up their Vigilante committee in favor of a law court signified, in Steele's opinion, a misguided and premature faith in orderly processes. Moreover, their election of him to be their judge, he figured, constituted their supreme act of bad judgment.

But a judge he was and, by thunder, a judge had but one duty with respect to criminals—that of a relentless avenger. Accordingly, he gave his straw-colored mustache a left jerk and a right jerk, leaned over and spat into his sandbox. "Sheriff, call court."

Tall, poker-faced, drawling Sheriff Jerd Buckalew pounded with his .45 on an inverted cracker-barrel. "This court's now in session. Anybody who thinks it ain't, will learn otherwise—to his everlastin' sorrow."

Backing Jerd Buckalew were a dozen granite-hewed deputies, who seconded Bucky's prediction by nods and vigorous hitches at their gunbelts. Standing along front and side walls were other armed men—a score of hard-faced observers who looked on impassively, but in their confident bearing exhibited a cocked-and-primed readiness for trouble.

Judge Steele ordered gruffly, "Clerk, call fust case."

James Skiffington rose like a tall scarecrow, his voice as crisp as cracking icicles. "People versus Abner, alias Potleg, Tunstall. Charge, first-degree murder."

Judge Steele looked down at a splitlog bench reserved for tough varmints who,

wittingly or unwittingly, were living their last small hours. His jaws tensed. What he saw sitting there was as mean-looking a mortal as he'd seen in many a day—a stout, rat-eyed rascal, insolent as a tiger, a smooth upper lip lifted on one side like that of a cur getting ready to pitch into a fight.

Judge Steele's nostrils dilated. "Murder, eh? Somebody ought to told you murder's gone out of fashion hereabouts. Well, better late than never, so we'll be tellin' it to you pronto. You got a lawyer?"

Lean, ill-fed, axe-faced French Demeree in black suit and soiled white vest got up. "I'm his lawyer, your honor. French Demeree. Plea is not guilty."

"Oh, sure," growled Judge Steele. "Demeree from Tennessee. Come West for health and fortune. If you want my opinion, Demeree, your appearance in this court usually spells bad health and misfortune for those conceited, brainless not-guilty scoundrels." He swung left. "Whar's our man?"

A stocky, well-fed redhead got up, proud and confident, though not confident in his cause, apparently. "Wade Claybrook, your honor."

Judge Steele eyed him with a slow-growing dislike. "Sure, Wade. Man-eater Claybrook. From how you go after these blood-smeared criminals, I'd suspect you of living on a diet of raw meat. You should've been raised as a cannibal, considerin' how many murders we have to deal with."

Undaunted by sarcastic criticism, Wade Claybrook spoke his piece. "If your honor please, I'm considering entry of a *nolle prosequi* in this case."

"You're considerin' a nollie what?"

"I fear we have no case against this man, your honor. At first it looked like murder; but since indictment further information has come to light, by reason

of which I'm asking leave to enter—"

"That's enough!" Judge Steele leaned forward, furious. "I was wrong about you, Wade. Instead of being a man-eater, living on raw meat, you're a milk-fed kitten. But don't talk to me about entering anything that means turning this snarling killer loose on society. If he gits out of here alive, he'll know he's been somewhar. Sheriff, 'panel a jury."

BUCKALEW handed a list to Skiffington. Skiffy called one name after another, and twelve men filed forward and seated themselves on jury benches—rough-faced, sober characters, some of them barbarous enough to eat bones, as well as raw meat, at least half of them Vigies.

"A good jury," Judge Steele muttered. His eyes shifted forward. "Witnesses come and be sworn."

Two from each side came forward and lifted right hands, a short gloomhound and three long leanies. Skiffington also held up his right hand. "Swear - tell - truth - whole - truth - nothin' - but - truth - selpygod."

When they'd been herded off to a witness-room in back, Judge Steele gave his mustache a jerk with each hand. He'd considered paying Skiffy a compliment on his oratory, but defendant Ab Tunstall's mouth at that instant had swapped sides with its snarl.

"Call fust witness!" Judge Steele snapped.

Claybrook got up. "Elam, alias Little Lamb, Chadburn."

A deputy brought him in, a long-bodied homo with a neck of similar pattern. He was a brown-eyed, friendly sort, whose demeanor suggested he knew much and was ready to tell all; as soon as he was seated on an inverted nail-keg he swallowed and looked up expectantly.

"Look this way," said Claybrook.

"You say your name is Elam Chadburn?"

Ye—ye—ye—I—I—I—yu—yu—e-yuh."

"Where do you live?"

"F—f—f—fl—fu—pft—"

Judge Steele leaned forward, face inflamed with anger. "Mr. Prosecutor, do you expect to prove anything by this stammerin', tongue-tied monkey?"

"Your honor, I had expected him to be my best witness. I'm confident he knows plenty; although I confess I've never been able to get from him a coherent story."

"I'm not surprised. Suppose you file him away for future reference and call your next witness."

"Yes, your honor. Call Lillard, alias Lily, Poole."

Witness Chadburn was replaced by witness Poole. He, too, was long and lean, and he gave out an impression of absent-mindedness and cynical indifference to human fortunes and misfortunes.

"Mr. Poole, how old are you?" Claybrook asked.

Judge Steele was already angry; he became more so. "Mr. Prosecutor, this witness is undoubtedly an adult, somewhere between thirty and sixty. He looks reasonably normal, and it's plain he can see and hear. Now, just let him tell what he knows about this murder, and forget about his age and whar he lives."

Claybrook looked peeved. "All right; Mr. Poole, you saw Ernie Grimes get shot, didn't you?"

"I did."

"Tell about it."

Lily Poole shrugged off some of his indifference. "It happened last Friday outside Snip-snip Oliver's barbershop. I was a-settin' on Pfluger's store porch a-whittlin', when I looks across and through a window I sees this Ernie Grimes combin' his head before a lookin'-glass. He's one of these handsome fellers—dude

dresser, curly dark-brown hair, proud as a blister—and he stands there combin' his head and admirin' hisself. Then he ties a handkerchief round his neck, sets his gray hat at a nippy angle, gives his gunbelt a hitch, and looks at hisself some more. Then—

"Now, your honor," said Claybrook, "all this is highly irrelevant and time-wasting."

Judge Steele gave his mustache a single sharp jerk. "You're askin' him, Claybrook."

"Did you also see defendant Tunstall?"

"I did," said Poole.

"Where was he?"

"He was there on Pfluger's porch, not a dozen feet from me."

"What was he doing?"

"When I saw him, he was shoving a sixshooter into its holster."

"You mean *drawing* a sixshooter, don't you?"

DEMEREE sprang up. "I object, your honor, that's a leading question."

"I thought it had a slight draw to it myself," said Judge Steele. "But proceed, Claybrook; just don't ask leading questions."

"What else did you see, Mr. Poole?"

"I saw a man runnin' off, like a scared coyote. They call him Hump Jordan, though I reckon his name's Kelso."

"Yes," said Claybrook. "Why was he running?"

"Object, your honor," said French Demeree. "Witness not permitted to draw conclusions."

"Question withdrawn, your honor," said Claybrook. He studied a moment, his eyes resting vacantly on Lily Poole. "What else did you see?"

"Well, now, there is this Ernie Grimes over there in Snip-snip's place, admirin' hisself before a lookin'-glass. So far as I

know, he's a stranger in town, same as this Tunstall and—"

"Objection," shouted Demeree. "Witness should stick to what he knows, not to what he doesn't know."

"Go on and tell what you know, Mr. Poole," urged Claybrook.

"—and Hump Jordan," Poole finished. "Now, about this Ernie Grimes. He's still straight across there in Snip-snip's place, admirin' his handsome self. After so long a time, he's satisfied nobody could be any handsomer; so he lays his shoulders back, fixes his arms at his sides, his elbows out sharply, which gives him a picture-frame look. He's just about ready to leave when he decides to take one more glimpse at his handsome self. This time he knows he's perfect, with not a pimp nor whisker, so out he comes. He's about two steps out of Snip-snip's place, when a thunderclap lets itself loose within ten feet of me. In that same instant, Ernie Grimes grabs his shirtfront with both hands, staggers a second, then falls on his face. That's when I look around, and there's this Tunstall shovin' a smokin' sixshooter into its leather. There's Hump Jordan, too, pickin' hisself up where he's tumbled off Pfluger's porch, and he sure don't waste no time around there, once he gets up."

"What else did you see?"

"There's been' riders lopin' by, which keeps me busy spittin' dust. Somewhere around close a drunk man is singin' a sad song, and over in Cooksy Blair's saloon somebody's knockin' fire out of a piano. That pretty gal, what's new in Cooksy's place, starts singin', too, and—"

"That will be all," said Claybrook. "Cross-examine."

LAWYER DEMEREE got up, a pleased expression on his sharp face. "Mr. Poole, you mentioned Hump Jordan as being there on Pfluger's porch. Had you

heard Jordan and Mr. Tunstall, defendant here, in any kind of conversation?"

"They'd been jowerin' a right smart."

"Isn't it true that Hump Jordan had thrown a knife at Tunstall, two knives, in fact?"

"Wouldn't be surprised; they was two knives stickin' in Pfluger's wall about that time."

"And isn't it true that Hump Jordan had a third knife in his hand and was advancing upon Mr. Tunstall in a threatening manner?"

"Sounded like it. I was interested in this handsome Ernie Grimes and not payin' much attention to Tunstall and Hump Jordan; but I heard Jordan say—"

"Object," said Claybrook. "He can't tell what somebody said."

"Of course I can," said witness Poole. "I remember every word of it."

Judge Steele looked down at Poole. "Sure, Lily, but you'll have to get it out of your system by goin' round Robin Hood's barn; it'd be hearsay if you told it straight out."

"Well, what he done was tell Tunstall he'd cut his dang black heart out."

"Fine," said Judge Steele. "Now you've told it, and nobody's hurt."

"No more questions," said Demeree.

"Prosecution rests, your honor," said Claybrook.

"Call Kelso, alias Hump, Jordan," said Demeree. "Witness for defendant."

Lily Poole was displaced by Hump Jordan, slim, surly, and slightly humped. If there was any expression, other than surliness, on his thin mug, it was one of cold contempt for everything around him. It riled Judge Steele, just to look at him.

Demeree began with calm assurance. "Your name is Kelso Jordan?"

"Yes."

"Are you acquainted with defendant, Mr. Tunstall?"

"Yes."

"Were you on Pfluger's store porch with him last Friday afternoon?"

"Yes."

"Had he followed you there?"

Claybrook popped up. "Object; question is leading."

"Were you on Pfluger's porch ahead of Mr. Tunstall?"

"Yes; he followed me there."

"Did you have a quarrel with him?"

"Yes."

"What about?"

"He'd made unkind remarks about my personal appearance."

"You and he had previously quarreled, then?"

"Yes."

"Did he resume his unkind remarks?"

"Yes."

"And you became angry?"

"Yes."

"What did you do?"

"I threw a knife at him."

"What did you do next?"

"I gave a repeat performance."

"Then what did you do?"

"I drew a third knife and made as if to kill him."

"What did he do?"

"He whipped up a gun and clipped a fancy shot at me."

"But missed you?"

"Yes."

"What did you do?"

"I cleared out."

Demeree cast a taunting glance at Claybrook. "Cross-examine."

Claybrook shook his head resignedly. "No questions."

JUDGE STEELE drew a hand angrily across his forehead; his nostrils dilated fiercely. "Claybrook, what do you mean, no questions? Can't you see this witness is a lyin', sneakin', stinkin' polecat? Why

don't you tear him limb from limb? You ought to pull him down off of thar and stomp his insides out. Any more witnesses, Demeree?"

"Your honor, I have one more, but his testimony would only be corroborative of what has come from Lily Poole and Hump Jordan. He will swear that he saw Hump Jordan throw two knives at Mr. Tunstall, then advance upon him with a third knife; that Mr. Tunstall was backed against a wall in dire peril of being killed; and that he drew his gun and fired to save his own life."

Claybrook got up. "It isn't necessary to call him, your honor. I think we have a clear picture of what happened."

Demeree assumed a pious attitude. "Mr. Claybrook is to be commended for his exemplary fairness and high sense of justice, your honor. It is clear enough—as Mr. Claybrook inferred—that Mr. Tunstall shot in self-defense and that his missing his assailant, and that killing Grimes instead was purely accidental. Accordingly, I move that your honor direct a verdict of acquittal."

Judge Steele was so mad his vision was momentarily blurred. "And now," he growled, "I suppose Me-too Claybrook will want to second that motion."

Claybrook got up promptly. "Your honor, I do not resist his motion. In a case of this kind—of which there are precedents in our law—there was no crime in killing Grimes, if there would have been none in killing Hump Jordan. It is certain that if Tunstall had killed Hump, he would have been guilty of no crime, for self-defense is clearly indicated. As I said, I do not resist Mr. Demeree's motion."

"I didn't expect you to, by thunder," snarled Judge Steele.

Demeree had remained standing. "I wish again to commend Mr. Claybrook for his high-minded character and

unimpeachable sense of justice and right. Also, I renew my motion for a directed verdict of acquittal."

Judge Steele heaved himself up, driven to ferocity by desperation. "Well, blow me; you can move till your face is blue, but you'll git no directed verdict of acquittal. And you'd better save them flowers you've been tossin' at Claybrook and put 'em on your client's grave."

"Thar's something about this case that stinks worse'n a dead horse. Be-consarned if everything don't fit everything else like works in a watch. This snarlin' dog Potleg Tunstall misses a man within five feet of him, but hits another man dead center clear across Flat Creek's widest street; this skin-and-bone buffalo called Hump Jordan throws two knives at Potleg Tunstall and misses him at five feet. Yet you forked-tongue lawyers talk about self-defense and accidents, when you ought to know this whole thing was a put-up job to kill Ernie Grimes. Well, Potleg ain't out of here yet and, by thunder—"

Judge Steele's roving, remorseless eyes had made contact with a big six-footer on a distant puncheon. His angry thoughts subsided. "Bill Hacker, get yourself up here, before I start a massacre."

Bill Hacker rose. "Coming, Judge." He was broadshouldered, with dark, boring eyes, black, short-cut mustache, and a pair of sixguns. He held brief conference with half a dozen bearded confidants and came forward with long, determined strides.

Judge Steele sat down as Hacker slid up beside him. "Bill, these lawyers have got me so mad I can't see straight. What in tarnation can I do? I wasn't cut out for no judge nohow, and you know it. I won't ever forgive you for wishin' this job off on me."

"You're a fine judge, Wardlow; couldn't be any better," said Hacker. "You

just be patient now, and we'll get a pry-pole under something pretty soon. One of my men just whispered to me a little something back there. According to him, Tunstall, Hump Jordan and Little Lamb Chadburn used to have a traveling show; he forgets where he saw them, but he's pretty sure he's right. So I suggest you have this skunk called Hump Jordan take a seat back there, while you work on Little Lamb for a spell."

"Bill, I knowed it; this whole setup smelled bad from fust off. But how can we git anything out of that stammerin' polecat?"

"Little Lamb's undoubtedly faking; probably was part of his act in their show. Anyhow, try scaring his daylights out."

Judge Steele straightened. "You, thar, Hump Jordan, take a seat down thar and stay with it; I figure you'll be wanted again soon. Sheriff, have Little Lamb Chadburn brought back in here."

SHERIFF BUCKALEW gave a nod, and Elam Chadburn was ushered in. Hump Jordan, looking puzzled and uneasy for a change, found an aisle-side puncheon seat and sat down.

Elam Chadburn appeared less willing to talk than formerly.

Judge Steele glared at him. "Is your name Elam Chadburn?"

"Ye—ye—ye—yi—yi—"

"Answer my question, consarn you!"

"Yes."

"Well, why didn't you say so? How would you like to have a rope put around your neck?"

Little-Lamb paled and hand-swiped his fluffed-up sandy hair. "I—yi—yi—wouldn't like it."

"You've made a study of that stammerin' business, hain't you? By thunder, you'd have to study, to be such a artist. Ever been in show business?"

"Huh?"

"You heard me."

"Yes, sir, I have."

"You're a friend to that mad-dog down thar they call Potleg Tunstall, ain't you?"

"No, sir, no friend; but I know 'im."

"Been in show business with 'im?"

A shrill clearing of throat cut in, and Judge Steele glared at Hump Jordan, whose face had assumed a murderous look. One of Bill Hacker's men, a black-bearded giant, was moving forward.

Little Lamb Chadburn hesitated, swallowed, and looked from Hump to Tunstall. Potleg, too, had assumed a slaughterous expression. Little Lamb stammered, "Ye—ye—yi—"

"You answer my question, you scrawny stinker," growled Judge Steele. "That dog-faced murderer thar by Demeree ain't goin' to hurt nobody from now on; that goes for Buffalo-hump too."

"I was in show business with both of 'em," said Little Lamb.

"How about Ernie Grimes?"

"Well, he—"

"Out with it, and don't be so consarned slow."

"Well, Ernie was in our show, too; and there was a girl named Abby Gurney. She was a pretty thing; could sing too. Fact is, she's got a job now at Cooksy Blair's saloon, where she sings regular. She was—"

Demeree eased up. "Now, your honor, I'm going to object. This examination is highly irregular. Prosecution had rested, and you can't—"

Judge Steele's face tightened. "Demeree, you set down thar and stay set. Prosecution has rested, all right; but now it's spit on its hands and started fightin' again. You just consider yourself a interested spectator from now on." He swung toward witness Chadburn. "Now, Little Lamb, you go right ahead, and if

you tell one single solitary lie, I guarantee you'll get your neck stretched."

"Well, I was going to say, our show busted up. It was because this Ernie Grimes stole our girl Abby Gurney. When Potleg found where she was, and where he'd likely find Ernie Grimes, he says he's going to follow 'em. Hump says he'll go, too, and they'll work it out together."

DEMEREE started to get up, but when a couple of deputies moved toward him, he eased back down.

"Now, a most important question," said Judge Steele. "This Hump Jordan, he'd most likely be world-champion knife thrower, wouldn't he?"

"Claimed to be, yes, sir; it was part of his act. Abby Gurney would put on tights and stand against a wide board, and Hump'd fence her in with knives at twenty feet."

"And this dog called Tunstall was pretty fancy with a sixgun, eh?"

"Claimed to be world-champion fancy shooter—though Ernie Grimes was better. This Abby Gurney could hold a burning match between her teeth, and Tunstall would shoot its flame off at forty, fifty, sixty feet."

"Now, since you're talkin' about experts, Hump Jordan wouldn't be likely to miss a man with a knife at five or six feet, would he?"

"He could split a button at twenty feet."

"And this sheep-killin' Potleg Tunstall wouldn't likely miss a man at five or six feet with a sixgun, would he?"

"No."

Judge Steele turned to Hacker. "Now, Bill, what else?"

Hacker nodded forward. "Take a look, Wardlow."

Hump Jordan was on his feet, a long knife in hand. But Giant Blackbeard had

him locked in a bear-hug.

Bill Hacker slid down. "Hold everything, Wardlow; I'll be right back." Blackbeard and two helpers carried Hump out and were followed by Hacker and about fifteen others. In three or four minutes Hacker was back. "They're hanging Hump Jordan on our old beech behind Cooksy Blair's saloon, Wardlow. I figure we're ready now for a verdict."

Judge Steele swung left. Twelve jurors got up at his nod and filed out. When they'd been out long enough to stretch and take a couple of deep breaths, they filed back in.

One of their number, a solemn-faced gold digger, remained standing. "Guilty, Judge. First degree murder."

French Demeree was on his feet. "Your honor, I move for a new trial."

"You don't say! Well, what in tarnation for?"

"Your honor, one of those jurors is *propter defectum*, whereas every accused is entitled to trial by a jury of twelve."

"What does he mean, Bill?"

Hacker drawled his answer. "He means one of our jurors has a physical defect, on account of which he is not qualified as a juror. He has in mind Brant Burlew, who's deaf as a post. Brant is *propter defectum*, all right, but Demeree should've objected by way of examination on *voir dire*. If it had been a case of *propter affectum*—if he could show that a juror was prejudiced one way or another before the trial started—its discovery would have been ground for a new trial; but being only *propter defectum*, it's deemed waived."

"Bill Hacker, you shut up." Judge Steele looked at Sheriff Buckalew. "That murderin' skunk's your man, Bucky; hang him." He glared at French Demeree. "For good and sufficient reasons, Axe-face, your motion is overruled."



When everybody except Judge Steele and Bill Hacker had gone out to see Potleg Tunstall strung up, Judge Steele got up and holstered his sixgun.

“I know less every day about being a judge. I’m so ignorant, I don’t know whether I’m goin’ or comin’. You ought to been judge, Bill; you’re educated. You’d know how to put them consarned lawyers in their proper places—if they’ve got any proper places other than stretchin’ hangropes.”

Hacker thoughtfully filled his pipe with tobacco crumbs and struck a match.

“You’re doing a fine job, Wardlow. A skunk now and then will get away—thanks to lawyers—but they won’t *all* get away. I imagine that what happens here is right discouraging to a lot of criminally-inclined humans, too—more so than if we followed Vigilante methods, which criminals could copy. You just keep hammering away, and any time you need a touch of moral support, I’ll be around.”

Wardlow Steele drew his sixgun, absently twirled it once around his finger and reholstered it. “All right, Bill. It’s like turnin’ a sausage-grinder—but by thunder, so long as murderers furnish us meat, just so long we’ll keep a-grindin’.”