

# The Facts and Law Didn't Seem to Matter — Until They Did

BY GARY L. SIMMS

THE LATE, ESTEEMED California Supreme Court Justice Stanley Mosk, who served on the court for 37 years — longer than any other justice — relished telling colorful tales from the court's history. One was the case of *In re Finkler*.<sup>1</sup> Although it has faded into obscurity, last having been cited in a California appellate decision in 1965, it is worth re-telling. It is a stranger-than-fiction tale of human tragedy with a tapestry of noteworthy characters and relationships.

Henry Finkler was the Supreme Court bailiff for nine years until his suicide in 1878. He was replaced by his then 19-year-old son, Henry C. Finkler. There is no historical record of young Finkler's qualifications, if any, for such an important office. But his teenage talents were impressive in other fields. In his early years, he competed in high-wheel (penny-farthing) bicycle riding and became the state champion in both short and long distances. He also obtained a United States patent for a bicycle roller-brake.



Henry C. Finkler. Photo: *Friends of Edgewood Park*.

Despite his civil servant's salary from the court, Finkler also somehow amassed enough money by 1908 to purchase more than 200 acres of prime ranchland in San Mateo County, now known as Edgewater County Park. He and his wife built a beautiful home there and entertained frequently. Finkler was also active in civic affairs and obtained several public improvements for the area. And he was obsessed with gathering weather statistics. He proclaimed that only three places in the world

had a perfect climate: the Canary Islands, northern Africa's Mediterranean coast, and the area within a 20-mile radius of his home in Redwood City. His weather records were used to support the prize-winning slogan, "Climate Best by Government Test," which is still Redwood City's official slogan.

Meanwhile, Finkler continued working for the Supreme Court. He rose to the position of senior secretary, and in 1928, the court held a ceremony in honor of his 50 years of service. At the ceremony, he predicted that he would live to be 100 years old and announced, "I have a secret way of preserving my life, and it is a secret I will not reveal." Apparently, this did not raise any judicial

eyebrows because, as the court later acknowledged, Finkler was "a well-known character in court circles." He continued working at the court for two more years. And there would be no tale to tell if Finkler had either retired or had died peacefully at his predicted century mark. But it was not to be.

Finkler's wife had died in 1927. They had no children. He became despondent. Then, in April, 1930, Finkler went to a dentist, who recommended extracting two teeth and injected Finkler with Novocaine and a "calming drug." But Finkler left the dentist's office and went to the store of M. J. Purcell, the husband of one of Finkler's deceased wife's nieces. Finkler said he wanted to make a will before having the dental work because he had none, and did not want to risk dying intestate. Purcell gave Finkler a piece of scrap paper. Finkler handwrote a will on the paper, returned to the dentist, and had the teeth extracted.

Seven months later, Finkler asked John Layng, a friend who was an undertaker, to come to Finkler's home. Apparently, Finkler's mental state had deteriorated so badly that Layng feared Finkler might be deranged and dangerous. Layng was right. Finkler told Layng where he kept his papers and valuables in case of his death. Then, Finkler drew a revolver and fired a bullet into his heart. Death was instantaneous. Yet this was only the beginning of a curious legal saga.

The childless Finkler's only legal heirs were his half-sister Christina Finkler and several nieces and nephews of his deceased wife. But his holographic will named as his sole and equal beneficiaries, M. J. Purcell, who had been with him when he wrote the will on the scrap of paper Purcell provided, and Finkler's co-worker, Grant Taylor, who was the clerk of the Supreme Court. Finkler left nothing to his half-sister Christina or to the nieces and nephews. They and Christina filed will contests.

The trial of the will contests was a matter of great public interest and generated local newspaper headlines such as "'Boss' Charges Hurlled in Burlingame"; *Crowds at Finkler Will Fight*;<sup>2</sup> and *"Buck's Court is Packed by Curious Throng."*<sup>3</sup> "Boss" and "Buck" were references to Superior Court Judge George H. Buck, whose sternness in his 42 years as a judge had earned him the moniker, "Boss Buck." (Judge Buck was not unfamiliar with Finkler. Buck had ruled years earlier that the public had to pay for a bridge to Finkler's private property.)

The key issue was Finkler's testamentary capacity. As a *San Mateo Times* headline not too gingerly put it, "Aged Attaché Hinted Out of Mind."<sup>4</sup> Many witnesses testified that, in their opinion, Finkler had been of unsound mind for several years. (It was also later noted in the ensuing Supreme Court opinion that, not only had Finkler's father committed suicide, but that Finkler's

1. (1935) 3 Cal.2d 584.

2. *San Mateo Times*, Dec. 15, 1931, 1.

3. *Ibid.*

4. *Ibid.*

mother and one of his half-sisters had been committed to mental institutions.) And the dentist who treated Finkler on the day he handwrote his will testified that Finkler was of unsound mind that day.

Perhaps most remarkably, Supreme Court Clerk Grant Taylor, who presumably worked closely with Finkler and, more importantly, who stood to inherit one-half of his estate under the will, testified that Finkler was of unsound mind during the last few weeks of his life. But Chief Justice William Waste appeared as a defense witness and testified that Finkler was of sound mind until his suicide. That conflict between Justice Waste and Mr. Taylor, the court's clerk, must have been interesting indeed to the jury. And one might wonder how warmly Chief Justice Waste and Taylor got along after they offered conflicting testimony regarding Finkler's mental state. In any event, however great his talents as a chief justice may have been, his testimony was wasted on the jury.

The jury returned a verdict that Finkler was of unsound mind when he executed his will and that he had been subject to undue influence by Purcell, who stood to inherit half of Finkler's estate under the will. "Boss" Buck was not pleased. He did not dispute that Finkler was unusual, but as Buck put it, "Even Henry Ford had been considered strange." Buck granted the will proponents' motion for judgment notwithstanding the verdict, or as the local newspaper put it in a lead headline, "Buck Annuls Finkler Verdict."<sup>5</sup> As subsequent events would show, Judge Buck seemed to have a dislike for will contestants, especially if they were female.

The will contestants appealed to the Supreme Court but it refused to hear the case on the grounds that Chief Justice Waste had testified at the trial and that the other Supreme Court justices were "interested parties." According to newspaper accounts, the Supreme Court transferred the matter to the First District Court of Appeal, which also refused to hear the appeal, as did the Fourth District Court of Appeal. A Bakersfield Superior Court judge was appointed to act as temporary appellate judge. He issued a decision upholding Judge Buck's judgment notwithstanding the verdict.

Finkler's half-sister, Christina, petitioned the Supreme Court to grant hearing.

Oddly, the court did so. The case presented neither any issue of statewide importance nor any conflict of authority. And the justices did not explain why they had changed their minds about being "interested parties." (The court's opinion noted that Chief Justice Waste was disqualified from hearing the appeal but did not acknowledge that he had been a trial witness. That fact was apparently deemed to be better left unsaid for posterity.) And the court affirmed the lower court's decision, so granting review had no practical significance.

5. *San Mateo Times*, Dec. 19, 1931, 1.

But obviously, the case was of extreme importance to the court itself. One can reasonably surmise that the court simply could not tolerate any suggestion that its trusted aide of more than 50 years was of unsound mind, and so had to have the last word.

The majority opinion by Justice Preston recounted Finkler's many years of service to the court and noted that he had worked at the court until the day before his suicide. The opinion was for all purposes an encomium to Finkler. The clear and oft-reiterated, but not explicit, premise was that a person of unsound mind could not work for the court. Indeed, the court virtually took judicial notice of this. And the court was loath even to discuss the evidence that suggested Finkler might have been mentally unstable. "To set out at length the testimony of each individual witness would add nothing to the legal literature of this state."<sup>6</sup> Rather, the court offered a brief, general summary; noting that Finkler spoke of a tunnel from his property in Redwood City to Lake Merced in San Francisco; he was cruel to dumb animals; he claimed supernatural powers; he had delusions; and "in many ways he was peculiar and that during many years he was eccentric in some respects."<sup>7</sup>

That was putting it mildly, too mildly for Justice William Langdon, who dissented. And who was Justice Langdon's law clerk, who presumably had at least a hand in drafting the dissenting opinion? The now-venerated Bernard Witkin.<sup>8</sup> They called the majority to task:

[T]he brief and inadequate summary of the evidence of the contestants, set forth in the [majority] opinion, does not present the real picture.

Many witnesses, in frequent contact with Finkler, testified that in their opinion he was mentally unsound. They further testified to conduct which can hardly permit of any other inference. He was a persistent collector of refuse and junk of no value. He had a habit of acquiring old-fashioned ladies' hats, which he would offer to his friends. He informed his friends that he was a great inventor, and among his achievements were a perpetual motion machine and a fuel for an internal combustion engine, made of human excreta. He disclosed to another that he had built an airship in the attic of his house, superior to any craft now flying, but that he refused to take the roof off the house and



Mr. and Mrs. Henry C. Finkler. Photo: Redwood City Public Library.

6. *In re Finkler*, *supra*, 3 Cal.2d 584, 592.

7. *Id.* at 593.

8. [Editor's Note: See pages 15–19 of this issue.]

hence would permit the secret to die with him. He instructed visitors to save their urine, which he used for the purpose of sharpening saws. He suffered from fear of persecution and arrest, and possessed a number of loaded guns, which he carried and kept in his house. He claimed possession of supernatural power to wish evil to other persons. He also believed that there was a secret well on his premises which would supply his airplane with fuel, and was of the opinion that he had control over the water supply of San Mateo County, and could turn it off by means of a valve on his land. He described a cave connecting his home, near Redwood City, with the Golden Gate, through which people habitually passed.

On the day the will was executed, the decedent was suffering from toothache and neuralgia. He visited his dentist, who testified at length concerning Finkler's nervous, irrational condition at the time. In an attempt to extract the tooth, a local anesthetic was injected, and a quieting drug was administered. But the patient was recalcitrant and the dentist recommended a general anesthetic. Finkler thereupon left the office and went directly to Purcell's store, where he executed the will immediately. The dentist testified that in his opinion the decedent was of unsound mind at the time he left the office.

The mere fact that decedent was an employee of this court up to the time of his death is not of particular significance in view of the testimony of respondent Taylor, clerk of the court, that in his opinion Finkler was, during the last few weeks of his life, of unsound mind. The conduct evidencing this mental unsoundness was, as stated above, not of late development, but was manifested over a period of several years, so that the jury might well conclude that the mental unsoundness which respondent Taylor observed at the period just before death was also present at the time the will was executed.

It seems to me that the jury might reasonably determine, as it did, from the recital of these circumstances, that the decedent was not possessed of the requisite testamentary capacity.<sup>9</sup>

We would not have the full story were it not for Justice Langdon and Mr. Witkin. This was not out of character for them. Witkin's outspokenness was legendary. And Justice Langdon was tenacious and perhaps unique in his willingness to dig into the facts of a case. Perhaps the best example was his involvement in *People v. Tedesco*,<sup>10</sup> in which the Court affirmed the first-degree murder conviction of Charles Tedesco, a Redondo Beach man. Langdon

dissented, saying only this: "I dissent. The evidence in this case was purely circumstantial, and in my opinion insufficient to justify the verdict of guilty of murder in the first degree."<sup>11</sup> Was that the end of the story? No. Langdon went to Redondo Beach and personally investigated the case. He reported his findings to his Supreme Court colleagues. He persuaded three of them (Chief Justice Waste and Justices Preston and Seawell) that they had wrongly affirmed the conviction. In what at least two newspapers described as a "precedent-shattering appeal," the four justices went to Sacramento and persuaded Governor Frank Merriam to commute Tedesco's death sentence to life imprisonment because his conviction was based solely on suspect circumstantial evidence.<sup>12</sup> (Note to criminal-defense lawyers: Good luck with that in today's Court.)

What about other characters in the Finkler saga? Judge "Boss" Buck's seeming dislike for will contestants, especially female ones, led to his downfall. He was the judge in a highly publicized will contest in 1931 involving the \$8.5 million estate (adjusted for inflation: \$128 million in today's dollars) of the wealthy banker and investor James Flood. The contestant was Constance May Gavin, who had been reared as an adopted child by Flood and his wife and who claimed to be his child by his first wife. Considerable evidence at the trial supported Gavin's claim, but Judge Buck acted strangely. He told witnesses they did not have to answer questions if they did not want to do so, and he disallowed seemingly relevant evidence. Then, suddenly, he told the jurors that they had to find in favor of the Flood estate and against Gavin. The jurors attempted to rebel, and ten of the twelve said they favored Gavin, but Judge Buck insisted they do as he said, and he directed a verdict for the Flood estate. His ruling was poorly received, to say the least. He was "hissed and booed" by those in the courtroom.<sup>13</sup> When one juror refused to comply, "pandemonium broke loose — cheers, handclapping, shouts — screams of acclaim" for the disobedient juror. And Judge Buck provoked a "storm of criticism,"<sup>14</sup> including newspaper editorials.<sup>15</sup> The following year, after 42 years on the bench, Judge Buck was "decisively beaten" in his reelection bid.<sup>16</sup> And calling to mind the proverb that revenge is a dish best served cold, Buck was replaced by

11. *Id.* at 222 (Langdon, J., dissenting).

12. "Highest State Justices Plead to Save Killer," *San Francisco Examiner*, Oct. 18, 1934, 1; "Lack of Evidence Commutes Charles Tedesco's Sentence," *Wilmington Daily Press*, Nov. 16, 1934, 1.

13. "Flood Fortune Claim Thrown Out by Judge," *Pomona Progress Bulletin*, Aug., 7, 1931, 1; "Directed Verdict for Flood Ordered; Some Jurors Are Defiant Over Demand," *Whittier News*, Aug., 7 1931, 1.

14. "'I'm Right,' Judge Answers to Criticism," *San Francisco Examiner*, Aug. 8, 1931, 6.

15. *See, e.g.*, "A Jury's Rights Are Despotically Denied," *Modesto News-Herald*, Aug. 8, 1931, 14.

16. "Flood Estate Judge Beaten," *Santa Rosa Press Democrat*, Nov. 10, 1932, 1.

9. *In re Finkler*, *supra*, 3 Cal.2d at 603–606 (Langdon, J., dissenting).

10. *People v. Tedesco* (1934) 1 Cal.2d 211.

Maxwell McNutt, the attorney who had unsuccessfully represented Gavin and — who else? — Finkler’s half-sister, who had unsuccessfully contested Finkler’s will.<sup>17</sup> Moreover, the Supreme Court unanimously reversed Judge Buck’s judgment that directed a verdict for the Flood estate.<sup>18</sup> The court’s opinion reversing Judge Buck’s directed verdict was written by Justice Langdon, who later dissented in *Finkler* and would have reversed Judge Buck in that case as well.

And what about Chief Justice Waste and Court Clerk Taylor? Waste remained as chief justice until his death in 1940. Taylor was an honorary pallbearer at Justice Waste’s funeral and remained at the court until 1942. (Apparently, their conflicting testimony in *Finkler* had not caused any permanent hard feelings between them.) And after the court affirmed the judgment that Taylor was a beneficiary under Finkler’s will, Taylor’s family occupied Finkler’s former home until 1967.

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17. *Ibid.*

18. *In re Estate of Flood* (1933) 217 Cal. 763; “15 to 20 New Witnesses in Flood Case,” *Oakland Tribune*, Apr. 19, 1933, 1.

Is there any message for today’s lawyers in the Finkler saga? Perhaps not, except that sometimes a case is unwinnable despite the best facts and law. Finkler had worked for the Supreme Court for 50 years. That was all that mattered to every judge connected with the case, from Judge Buck to the Supreme Court, except for Justice Langdon. Or conversely, as Finkler’s will beneficiaries learned, sometimes one wins a case for reasons entirely apart from facts, law, or logic. As former football coach Barry Switzer once said, “Some people are born on third base and go through life thinking they hit a triple.” ★

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