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DARROW OPENS HAYWOOD'S CASE

SaysOrchardPrompted by Revenge.

ATTACKS ON MINEOWNERS

Accuses Them of Trying to Implicate Haywood.

WHY CHANGE OF NAMES

Explanation Offered of Money Sent Simpkins and Orchard—Mineowners Alleged to Have Instigated the Independence Explosion.

BOISE, Idaho, June 24.—(Special.)—Clarence S. Darrow's opening statement to the jury in the Haywood case today was a disappointment. Like the cross-examination of Orchard by E. F. Richardson, it seemed to lack purpose, and those who expected a strong and plausible line of defense failed to find their expectations realized.

Mr. Darrow talked three and a half hours, but, beyond entering some denials and making some charges, he accomplished very little, while his effort made a bad impression everywhere. He made the dual mistake of admitting what could not be explained and offering diaphanous explanations of those things which he declared the defense ready to prove in refutation of testimony brought out by the state.

At times he dropped into stump oratory to relieve the monotony, as when he launched into laudation of the Federation, when he attacked the mining companies and when he boiled over with well-simulated indignation at the work of the Pinkerton agency. In his attack on the mining companies, he sought to make it appear that these were oppressors of the miners until the Federation came along and humbled them into the dust, compelling them to give their men enough to eat and afford them proper hospital accommodations when ill. To those who know something of the provision made for miners in practically all camps where metalliferous mining is conducted, this all sounded very cheap.

Explaining Money Sent Orchard.

The opening disclosed many glaring weaknesses. One of these was the explanation the attorney made of the payments made by Pettibone to Orchard. He admitted only those payments which have been proved independently of Orchard's testimony, but left the inference that there might have been more. The explanation was that Orchard deposited money with Pettibone to be sent to him when he might need it. The use of the aliases was admitted, but this was tamely explained by the statement that the miners in the Cripple Creek district who were deported all changed their names. Orchard was not deported, and the defense says he enjoyed especial immunity; nor was Pettibone at Cripple Creek, nor yet was he deported; yet these two men both used aliases frequently in communicating with each other. Orchard gave directions how the money was to be sent, according to Mr. Darrow, and Pettibone simply complied with the directions. This explanation related only to those payments which have been traced. Orchard had left the money in Pettibone's safe; Orchard the gambler had left his cash and gone away 1500 miles and then telegraphed for it in driblets. That story is one that few will be willing to swallow.

According to Mr. Darrow, Orchard lied as to most everything else but those transactions respecting which the state introduced conclusive proof, and as to these the attorney offered the kind of explanation stated.

Weak Points in Argument.

Of the letter from Haywood to Orchard's wife, Mr. Darrow had nothing to say beyond the statement that they would handle that when the witnesses were placed on the stand. Mr. Richardson avoided that in his argument the other day, and the public is rather interested to know what kind of an explanation is to be brought forward later respecting it.

Throughout Mr. Darrow's argument were the contradictions that were so prominent in the work of Mr. Richardson in conducting the cross-examination of the chief witnesses of the state. Mr. Darrow questioned what Orchard said about the Independence explosion, but the defense expected to show it was brought about by the mineowners. The latter did not intend to kill anybody, but wished simply to make a demonstration to create prejudice against the Federation. For the purpose of such a demonstration they loaded enough giant powder under that platform to tear everything to pieces, whereas half a dozen sticks would have been sufficient for any such mild purpose. But while the mineowners blew up these men at that station, it was Orchard sure enough who killed Steunenberg.

Two Contradictory Arguments.

One statement made by Mr. Darrow in effect was that this was not a trial of these men for murder, but a trial of the Western Federation by the Colorado mine-owners, the case having been sent to Idaho for the purpose of breaking up the Federation. How it happened that Orchard did the deed that precipitated the prosecution, if it were the work of the mine-owners, is difficult to understand, unless the murderer were in the employ of the latter, but Mr. Darrow distinctly acquitted Orchard of being the tool of anybody in this crime. That manifestly was because it would conflict with another theory, to have him working for the Colorado mine-owners in committing the murder, since it is to be proved by a dozen witnesses that he did it for personal revenge.

Again, Mr. Darrow admitted that Orchard told the truth when he said Simpkins went to Caldwell with him. Of course he did; other witnesses saw him there with Orchard. But Mr. Darrow did not seek to explain why Simpkins took an assumed name or why he disappeared off the face of the earth so soon, as the fact was made known after the murder that he had been seen at Caldwell with Orchard. Mr. Darrow passed that feature over very lightly, declaring Simpkins was

Clarence S. Darrow, Who Stated Case for Defense in Haywood Trial Yesterday.

on a regular tour of official duty, going immediately afterward to Denver.

Draft Sent to Simpkins.

Then followed a remarkable statement respecting the draft sent Simpkins on December 21 for Orchard, in regard to which Pettibone wrote the latter that it had been forwarded in that manner. Mr. Darrow said Simpkins had more money in his pocket when he got ready to leave Denver than he needed. So he gave Haywood $100 and asked him to buy a draft with it and send it to him.

There were many other such glaring instances of accommodation of the defense to proved facts, explanations being offered which it would require volumes of testimony to lodge in the mind of any person. All who heard the statement were surprised at its weakness in the particulars and in its lack of strength in setting up any positive defense.

The effect on the jury was noticeable. The jurors lost all interest after Mr. Darrow had talked an hour. One seemed to be trying to follow him through, but the others were plainly "tired."

What State Has Up Sleeve.

Though it is known there are scores of witnesses to go on the stand to testify in contradiction of Orchard, this failure of Mr. Darrow to outline a reasonable plan of defense has impressed everybody with the idea that the defense is destined to fall down miserably when its witnesses get under cross-examination. Persons connected with the prosecution who are in a position to know what it has left up its sleeve say they will demolish on rebuttal every theory advanced by Mr. Darrow, besides proving on cross-examination a great many of the defense's witnesses are wandering far from the truth.

The defense seems to be a hodge-podge of attack on mineowners, laudation of the Federation and explanations that conflict with each other. Mr. Darrow intimated throughout that Pettibone was not close to the inner circle, whereas it can be proved he was hand in glove with the officials of the Federation in everything, and it is going to be difficult for the defense to withstand the showing that will be made on that point before the case closes.

DARROW STATES THE DEFENSE

Will Prove Orchard Liar and Mineowners Conspirators.

BOISE, Idaho, June 24.—Mr. Darrow, in opening his statement of the case for the defense, reminded the jurors of the instruction given them by the court that they are to keep their minds entirely open as to the guilt or innocence of the accused man until all the evidence from both sides has been introduced.

"You have listened to the theory and the evidence of the state," Mr. Darrow proceeded. "Mr. Hawley has covered a wide ground in his opening for the state, and we will have to meet him step by step. The defendant has been charged nationally with the murder of former Governor Steunenberg. But the state has told you the case rests upon a giant conspiracy of which the defendant was among others a part.

"The state's attorney has told you the murder of Governor Steunenberg was but an incident. They have told you the Western Federation of Miners was an agent to commit murders, to control politics, to hire lawyers and other criminal things.

"Part of this is true; part of it is not true. It is true that there is a labor organization known as the Western Federation of Miners. It is true the Western Federation of Miners has spent money for lawyers. It was unfortunate, but most people have to employ lawyers at some time or another.

Hawley Godfather of Federation.

"This organization was really born in 1892-1893, right down in a cell beneath this courtroom, where Ed Boyce, the first president, was a prisoner, and where now the three men, charged with this murder, are awaiting the judgment of this jury. To start out with, they hired lawyers and they hired the best they could. They hired Mr. Hawley, now the leading counsel for the state. Mr. Hawley laid out the plan of their organization for them; he advised

(Concluded on Page 2.)

LEFT MINORITY HOLDING THE BAG

Harriman Crowd Accused of Fraud.

IN CHICAGO TERMINAL DEAL

Stillman, Schiff and Gould in Same Conspiracy.

STEERED INTO BANKRUPTCY

Minority Stockholders Oppose Sale for $10,000,000 Less Than Value Subject to Baltimore & Ohio Lease.

CHICAGO, June 24.—(Special.)—Stockholders representing a minority interest of 60,000 shares of Chicago Terminal Transfer Railroad Company's stock filed a petition in Judge Kohlsaat's court today, asking to be allowed to intervene in pending litigation against the company, and charging Edward H. Harriman, James Stillman, Jacob H. Schiff and George J. Gould with causing the bankruptcy of the company through fraud.

The petitioners are George I. Malcom, George D. Mackay, Edward A. Morgan, Edward L. Oppenheim and James L. Laidlaw, who are represented in the fight by Hornblower, Miller & Potter, of New York; Knight & Hoyne, and Hopkins, Peffers & Hopkins, of Chicago.

The receiver of the Terminal Company, John N. Faithhorn, also filed an answer to the former petition of the Baltimore & Ohio Road in opposition to the effort which that company is making to have the terminal property sold, subject to a 99-year lease which it holds. It is this lease which the minority interest has attacked on the ground that fraud was committed by the head of the Harriman system of railroads, the head of the Gould system, the president of the National City Bank of New York and a member of the brokerage firm of Kuhn, Loeb & Company.

The charge is made in the minority petition that, having worked their will with the terminal property, and having practically steered it to the brink of bankruptcy by a nefarious scheme to relieve themselves from a financial obligation, Mr. Harriman and his friends sold out their control and left the minority holding the bag.

With respect to selling the terminal property subject to the lease of the Baltimore & Ohio, it is stated that, if this is done, that company will secure the terminal for about $17,000,000, whereas it is worth at least $27,000,000.

WALKER CHARGES CONSPIRACY

Promoter Attacks Harriman About Tillamook Railroad Deal.

NEW YORK, June 24.—A suit was started today in the United States Circuit Court by Henry M. Walker, a resident of New Jersey, against Edward H. Harriman and other defendants, alleging breach of contract and conspiracy to prevent construction of the Portland, Nehalem & Tillamook Railway, in Oregon. In his complaint Mr. Walker places his monetary damages at $500,000. Two corporative defendants and 29 other individuals have not been served, and for this reason their names have been withheld by the court.

Mr. Walker says he was employed in 1906 by the officials of the Portland, Nehalem & Tillamook Railway to float its bonds in London and make arrangements with a California corporation, also named as one of the defendants, to advance $600,000 to be used in constructing the railway, the security to be bonds of the railway company. An issue of $3,000,000 of bonds was to be disposed of by him, for which he was to receive a commission of 15 per cent, 2400 shares of stock and $45,000 in cash. The issue of bonds was to be delivered to him in London, where he entered into an agreement with the London Share & Debenture Company, which was to advance the sum of $2,400,000 on the bonds.

Walker said the bonds were not delivered to him, and on his return to the United States he found that the president of the corporation, and its board of directors, had refused to sign the bonds. Mr. Walker also asserts that he found "that by trick and device the charter and property of the railway had been transferred to Elmer E. Lytle, an agent of E. H. Harriman, and all the capital stock of the road had been rendered practically worthless through the influence of Mr. Harriman." He says also, that Mr. Harriman and associates brought about the insolvency of the California company, which had contracted to loan the money to the railway for construction purposes. The complaint of Mr. Walker says that Mr. Harriman and his associates are bitterly opposed to the construction of this railway, or any other in that vicinity, fearing it would interfere with their ownership and monopoly in that part of the state.

Mr. Walker asks that a receiver be appointed for the property, that officers of the company be ordered to sign and issue the bonds, account to him for 2400 shares of stock they have wrongfully withheld from, and pay $35,000 legally due him. He further asks the cancellation of all transfers made by Mr. Harriman or the latter's agents, and that the road be restored its franchise by the state of Oregon.

Mr. Walker's story has been heard here before, but the man and his contentions are quite generally discredited. It is pointed out by men connected with the Portland, Nehalem & Tillamook Railway scheme that lack of confidence in Mr. Walker himself was responsible for the failure to finance the road.

Had there been merit in Mr. Walker's case, it is believed that he would not have waited a number of years to bring suit, but would have commenced action immediately upon the development of the alleged conspiracy. Portland people who are acquainted with the attempt to build the Portland, Nehalem & Tillamook Railway do not regard the Walker suit seriously.

CANNOT REMEMBER ANY SUIT

Harriman Has Even Forgotten Name of Railroad Involved.

NEW YORK, June 24.—(Special.)—E. H. Harriman at his home in Tuxedo last night told an Oregonian reporter that he cannot recollect the Portland, Nehalem & Tillamook deal at all.

"At the present moment I do not recall the name of Mr. Walker and the Portland and what-you-may-call-it railroad or any dealings I have had with either," he said.

"It is possible that Marshal Henkel may have served me with papers in New York yesterday. But I am served so often that I didn't take particular notice. In the development of my railroad interests in the West there are a great many details that I haven't been able to watch out for personally, and of what has been done regarding unbuilt roads on paper I am particularly ignorant.

"If I was really served yesterday and if Mr. Walker really carries this to the United States Circuit Court, why, I suppose I shall then learn what it is all about. But according to my present recollection I cannot connect the alledged suit with myself, either personally or in relation to my railroad interests."

Stop Sale of Fake Absinthe.

PARIS, June 24.—The Hygienic Commission of the Chamber of Deputies today reported against a bill for the total prohibition of absinthe on the ground that it could not with reason distinguish between absinthe and many other liquors. The commission, however, will draw up a bill prohibiting manufacture or sale of the cheap imitation which goes by that name.

SAVAGE ASSAULT ON INDICTMENTS

MillionairesRaiseMany Technical Points.

OVERRULED ON TWO FIRST

Petty Flaws in Minutes Are Brushed Aside.

QUIBBLES ENRAGE HENEY

One Point Hinges on Whether Judge Nodded Head—Ruef and Schmitz Also Spin Cobwebs to Obstruct the Law.

SAN FRANCISCO, June 24.—Six of the corporation and city officials under indictment for bribery, President Calhoun, General Manager Mullally, Chief Counsel Ford and Assistant Counsel Abbott, of the United Railroads; Vice-President Glass, of the Pacific States Telephone & Telegraph Company, and Mayor Eugene E. Schmitz, through their attorneys, made determined efforts today to have Superior Judge Lawlor set aside the indictments against them on grounds of technical errors. After two sessions of court had been consumed in the presentation of evidence in support of their contentions, the hearing was adjourned until 2 o'clock tomorrow afternoon, when arguments will be presented and authorities submitted.

Schmitz' attorney today withdrew from the District Court of Appeals his petition for admittance to bail through writ of habeas corpus, and gave the explanation that technical omissions in the document necessitated its reframing. It was said that a new petition will be filed tomorrow.

Ruef Makes Similar Defense.

Abraham Ruef late in the afternoon was called to answer to 28 of the 80-odd indictments charging him with bribery of municipal officials, 14 in connection with the gas-rate deal and 14 in connection with the issuance of the United Railroads trolley franchise. Ruef, through his attorney, moved to set aside the indictments on grounds similar to those urged by the other defendants. The motion was set for hearing Thursday before Judge Lawlor.

The grand jury met in special session today and began an investigation into the ambushing of an Eddy-street car of the United Railroads Company last Saturday night near the Chutes, when a squad of policemen and detectives, forewarned, foiled an attacking party and arrested three.

One of the latter has turned state's evidence, and it is said that he has confessed the details of a conspiracy which existed with the knowledge of certain labor leaders interested in the present strike against the streetcar company. The grand jury will continue its investigation tomorrow.

One Technical Point Falls.

Among the contentions set up by the joint defense for the overthrow of the indictments is that technically illegal steps were followed in making up the present grand jury. It is claimed, for instance, that the names of dead jurymen—notably Adolph Roos, a Market-street liquor dealer—were returned into the big jury box after the 19 grand jurors, composing the previous grand jury, were selected, and that, as a result, the names of dead men were called in the preliminary proceedings in the selection of the present grand jury.

In this connection Judge Lawlor called on Sheriff O'Neil for a statement concerning Roos. The Sheriff said he was informed by a relative of Roos that the latter is not dead, but for the last two years has been living in Paris, where his life was saved by a surgical operation performed 18 months ago.

Assistant District Attorney Heney stated for the prosecution that he had identical information. Instruction was given by the court to verify it.

The examination of grand jurors relative to claims by the defense that certain of them are disqualified by reason of expressed bias, was the next step in order; but the grand jury, being at the moment in session, this was temporarily passed.

C. M. Delmas and P. C. Coogan were present for Mr. Glass; A. A. Moore and Stanley Moore, for the United Railroad officials, and they were joined during

Queen Wilhelmina, of the Netherlands, Who Is Entertaining the Peace Conference at The Hague.

the proceedings by Earl Rogers, of Los Angeles; Frank Drew and C. H. Fairall, representing Mayor Schmitz. Assistant District Attorneys Heney and Harrison and C. W. Cobb represented the state.

Defect in Court Minutes.

During the hearing Messrs Coogan and Moore amended the joint motion to set aside the indictments on grounds which, they declare, establish firmly the illegality of the present grand jury and the invalidity of every act and indictment by that body performed and returned.

They called Deputy County Clerk Trefts to confess on the stand that he, acting as clerk of the court, failed to engross his court minutes and the order of the court discharging the previous grand jury, and failed to enter the fact that the present grand jury was sworn. From these admissions and from the proved absence of the entries, Mr. Coogan and Mr. Moore will argue and atempt to show that no such orders were by the court made and that hence the Oliver grand jury has no lawful existence and all of its official acts are void. Should this contention be upheld, the whole bribery-graft prosecution will fall and be swept aside.

"At the time when those orders should have been made," asked Mr. Moore of the clerk, "were you sitting so close to the Judge that you would have heard them if the court had made them?"

"Yes," replied Mr. Trefts.

Defects Can Be Cured.

A recess was then taken until 1:30 P. M. to allow investigation of the disputed point. The prosecution admits that the order of dismissal and the administration of oath were not engrossed in the minutes, but alleges this was merely an oversight of Mr. Trefts; that the old grand jury was discharged and a new grand jury was sworn, and that the minutes can be lawfully corrected by an order of the court.

At the resumption of the hearing this afternoon Judge Lawlor ruled that the omissions from the court minutes affecting the last and present grand juries could be cured by an order by Judge Graham for their correction. So far as the present hearing is concerned this does away with the claims that the Oliver jury is an illegal body.

Says Dunne Nodded Head.

One of the contentions of the defense is that the name of B. P. Oliver, the foreman, was twice drawn from the box. The attorneys for the indicted officials allege that Mr. Oliver's name was improperly returned to the box after it had once been drawn by Assistant District Attorneys Heney and Harrison without authority from the court. Replying to this charge, Mr. Heney angrily declared that Judge Dunne had given the necessary authority by nodding his head. Judge Lawlor refused to rule in the matter until the testimony of Judge Dunne himself can be secured. He is absent from the city on his vacation.

ATTACKS CREDIT OF THE CITY

Schmitz Denies Validity of Warrants Not Signed by Him.

SAN FRANCISCO, June 24.—On Saturday, Mayor Schmitz, from the jail where he is confined, notified the local agent of a New York surety company that he would hold that company responsible for any money paid by City Treasurer Bantel without the signature of Schmitz as Mayor.

Bantel will therefore be informed this morning that as a matter of precaution he must have the authority of Schmitz as well as that of Gallagher, for the payment of funds, or the surety company will cancel his bonds.

The purpose of this latest move on the part of Schmitz, is, it is said, to weaken the claim of Gallagher.

CLOSE THE DOORS TO CONSUMPTIVES

Radical Order of Texas Startles All.

WASHINGTON DOUBTS POWER

Supreme Court Would Not Sustain Quarantine.

CLASSED WITH SMALLPOX

Quarantine Against Tuberculosis Is Held to Be Violation of Constitution—Doctors Hold It Unnecessary for State's Protection.

WASHINGTON, June 24.—(Special.)—Federal officials having to do with the regulation and control of the public health were exercised today to learn that the public health officials of Texas will soon issue a proclamation of permanent quarantine against all persons affected with the advanced stages of tuberculosis. The proclamation will place tuberculosis in the same category with smallpox and yellow fever, according to report, and is being issued because of the increased immigration of tuberculosis patients to the dry climate of arid Texas.

It was said here today that under the Federal statutes tuberculosis is not a quarantinable disease, either under the maritime or interstate immigration laws, but immigrants can now be kept out of the United States when afflicted with tuberculosis, under the new immigration law. The opinion was given that it may be difficult to sustain such a quarantine before the Supreme Court under the provision of the constitution guaranteeing the right of every citizen of the United States to go from one state to another.

In each case the state authorities will be compelled to prove absolutely that the person denied entrance to Texas is suffering from tuberculosis in the advanced stage, and the cost of such a quarantine will be large.

On the question of public policy involved in such a quarantine no opinion of officials could be obtained for publication, but it is known to be the opinion of some of the individual experts that the study of tuberculosis has progressed so far that a state of quarantine is unnecessary and that immigration of this kind might be treated at tuberculosis colonies if protective steps are necessary.

The issue raised in Texas has never been heard of before by Federal officials, although Colorado a few years ago agitated a somewhat similar step.

Texas Shuts Out Consumptives.

CHICAGO, June 24.—A dispatch to the Record-Herald from Austin, Tex., says:

All persons suffering from tuberculosis in an advanced state are to be debarred from entering Texas.

Dr. W. H. Brumby, State Health Officer, said last night that within a few days he would issue a proclamation establishing a rigid quarantine against all persons afflicted with the disease in an acute degree. In doing this he classes tuberculosis in the same category with yellow fever and smallpox.

Dr. Brumby has just returned from a trip of investigation to points in Southwest Texas, where he says he found many health-seekers who has just entered the state suffering from tuberculosis.

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