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WEEKLY AND SEMI-WEEKLY.

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CORVALLIS, OREGON, APRIL 22, 1905.

R. P. IRVING, Editor and Proprietor

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BRICK STABLE
WEDNESDAY APRIL 26, 1905.

PLEA FULLY ARGUED

COURT WILL ANNOUNCE ITS DECISION ON ABATEMENT PLEA NEXT MONDAY.

Technicality of Defense—It Causes District Attorney Heney to Remark Upon the Contentions and Causes Bennett to Become Sarcastic.

Portland, April 19.—The second day of argument in the Mitchell abatement proceedings has been ended and the question has gone to Judge Bellinger for his decision, which will be announced upon the opening of court on Monday next. At the opening of the morning session United States District Attorney Heney asked permission to introduce citations which he had overlooked the day before in support of his contention that the plea in abatement had been filed too late to be of effect. The permission was given, and he cited the Cobban case, by Judge Deady, and the Agnew case in 185 United States to maintain his point. He showed that by these decisions he stood on solid ground, as in the latter case it had been held that a plea filed in six days after the return of the indictment had been filed at too late a date and the plea should not be entertained.

Attorney Bennett in beginning his argument, like O'Day in the Pater-Watson case, prefaced his remarks by a quotation, and interspersed them with sarcasm.

"Consistency thou art a jewel," he stated at first breath. "The other day Mr. Heney objected to the filing of these pleas in abatement on the ground that they had been filed too late, and now before the words are hardly cold in his mouth he is objecting because we did not file them before we were arraigned."

The speaker then proceeded to argue his side of the plea of abatement, and occupied the whole of the forenoon in discussing the questions at issue. He insisted that Mr. Heney had failed to produce the promised statutes governing the procedure in federal courts in the matter of pleas in abatement, especially as regarded the offering of affidavits, as was done the day previous by the government attorney in regard to the citizenship of Geo. Giustin and the prejudice of himself towards the defendants. Bennett insisted that since a great part of the old settlers of the state had come from Missouri their descendants were bred of their disposition and would like to be shown, rather than to take the word of any one for a thing so serious in effect as the production or nonproduction of the statutes desired.

Senator Mitchell's attorney argued that the common law and not the statutes of a state governed the selection of a jury by federal courts. The common law recognized the plea of abatement as the proper means of testing the legality of a grand jury and upon this fact the defense based in part its claim.

The defendant, argued Bennett, had the right to a trial by jury on the questions of fact as raised by the plea. The irregularity alleged in the creation of the grand jury brought out questions of fact, and therefore the defense claimed the right to try the case by jury, and not before the court alone.

It was also contended by the speaker that the court had no right to allow Peebles and Buffum to be sworn on the jury after that body had been impaneled and that this act invalidated the action of the jury.

In the afternoon H. S. Wilson resumed the argument for the defense, stating to the court that he was appearing for Marion R. Biggs, and Dr. Van Gesner. Inasmuch as there was a slight difference in the plea of abatement filed by him for his clients he wished to speak on the plea. His plea differed in that there was no allegation of bias or prejudice against the descendants on the part of the district attorney.

Wilson held it to be a fact well known that the state practice did not authorize a change in the panel of a jury after that panel had been sworn, except it be for the serious sickness of a member or for some other reason disqualifying him for service. The court had no power to change the panel for any pur-

pose. It was his opinion that if the law allowed such a change to be made the court could call men to serve on the jury after the excuse of certain members until the jury could be influenced to bring any indictment desired by the prosecuting officers. It was a rule of law that those things which might be of bad effect and dangerous should be guarded against.

It was also argued by Wilson that unless there was especial power conferred upon the court to charge a juror the court must abide by the statutes and could not alter or change unless they authorized it so to do.

Citation was shown in a case where what was recognized to be a good jury in regard to the individual qualifications of the jurors was invalidated for the reason that men had been added to the panel subsequent to the time the first jurors were sworn. The attorneys held, therefore, that the recent grand jury was illegal and its acts void for the reason that Peebles and Buffum had been sworn after the body had been impaneled.

Wilson further argued that it was contrary to the notions of justice prevailing for a man to be sent into the state from another district and here hold a quasi-judicial position.

Heney followed Wilson with his answer to the arguments of both Bennett and Wilson:

"It seems to me," concluded Heney turning to Bennett and speaking in the direction where sat the silent figure of Senator Mitchell, "it seems to me that instead of wishing an early trial and an immediate one, as has been claimed by some of the defendants here, there is a great desire to try out questions of technicality rather than either guilt or innocence of the charges brought under the indictments."

Heney in closing his argument called as an illustration the case of the *Wagoner*.

"It is required in the statutes," he said, "that the governor shall reside at the capital. There is no allegation made that his official acts are invalidated because his family remains in Portland or because Governor Chamberlain makes an occasional trip to Portland to visit them."

"We are willing to try the case of Giustin," continued Heney, "but we want to try it before the court. It is absurd to think of trying such a case before a jury. Such action will be unjustifiable."

Bennett was allowed through the courtesy of the court to answer Heney on some points.

"The manner in which the jury was impaneled was one of the most serious things in the case," continued Bennett. "The first two men were excused and others were put in their places contrary to the statutes. Then another man was added which shows the body to have been a shifting and variable one. It seems, therefore, that if we are entitled to trial on the validity of jurors the delay should be taken."

Salem, Or., April 18.—Governor Chamberlain sides with the minority of the United States supreme court in the decision upon the ten-hour labor law, and thinks that the law should not have been held unconstitutional. After reading the synopsis of the opinion of the court and the dissenting opinion written by Justice Holmes, Governor Chamberlain said:

"I do not think there is any escape from the opinion of Judge Holmes. It has always seemed to me that the regulation of the hours is a question which involved the health of the state and its several municipalities, and the question of the adoption of laws for the regulation of the hours of labor is one over which the legislature had entire power and authority."

"It ought to be assumed that the members elected to the legislature have a more intimate knowledge upon questions involving the health of those engaged in every vocation, and that, with such knowledge, they are in a position to act with more intelligence upon the subject, than are the courts, state or federal. To my mind, it seems clear that the question is one for the legislature, and not the courts."

Broke into His House.

S. LeQuinn of Cavendish, Vt., was robbed of his customary health by invasion of chronic constipation. When Dr. King's New Life Pills broke into his house, his trouble was arrested and now he's entirely cured. They're guaranteed to cure. 25c at Allen & Woodward's drug store.

MAY WAR WITH FRANCE

JAPAN PROTESTS AGAINST VIOLATION OF HER NEUTRALITY BY RUSSIA.

Russian Fleet Must Either Leave Kamranh Bay or Fight the Battle in Harbor—War With France Means British Aid to Japan.

Tokio, April 20.—Japan is contemplating declaring war on France and calling on Great Britain for support. This action follows the sending of a formal protest to France against the use by the Russian Baltic fleet of Kamranh Bay as a rendezvous and the coupling therewith of a statement that if France refrained from acting Japan will send a fleet of war vessels to attack the Russians in the shelter of a neutral port.

A conference of Elders was held last night at which the entire situation was discussed. Immediately afterward the Mikado was notified that the elders believed that the time had come when France should be forced to live up to her declarations of neutrality, and the note of protest was drafted and forwarded.

It is felt here that the situation is extremely grave, and there is no doubt that if France does not act quickly the consequence will be far reaching.

A dispatch from Sasebo states that a Japanese squadron is getting in readiness there to sail for Kamranh Bay and attack the Russians there, while Admiral Togo continues to hold the passage toward the Pacific.

It is reported that an American with a British passport is in touch with the Russians, watching for violations of neutrality or the endangering of British and American shipping. The belief is growing here that the stay of the Russian fleet in Kamranh Bay is prearranged.

London April 19.—The British public is now only beginning to realize how much depends on Togo's skillful conduct of the approaching naval contest. Until Vice-Admiral Rojevsky actually arrived in the Straits of Malacca there was a disposition to ridicule the efforts of the Russian squadron, but now that there is seen to be a growing likelihood of Vice-Admiral Nebogatoff joining Rojevsky before the fatal struggle opens, interest is deepening into anxiety.

According to the Tokio correspondent of a news agency, a momentous war conference lasting five hours was held there Wednesday, attended by the elder statesmen, the premier and ministers. It is not difficult to conjecture the nature of the deliberations.

Tokio correspondents state that Japan has addressed a protest to France on the Russian Pacific squadron's presence in Mamranh Bay, but France has not yet replied. The Telegraph's correspondent at Tokio declares that a Japanese fleet is ready to sail for Kamranh Bay.

The Telegraph's Hongkong correspondent states that two steamers which passed close to Kamranh Bay on Sunday report that no Russian vessels were then visible. No news, however, has yet reached London to show that the Russians have vleft Kamranh Bay, and it is assumed that they are still there.

The Post, commenting on the situation, contends that it is a matter of importance, considering Great Britain's worldwide naval interests, to endeavor to secure a more definite agreement on the question of the use of neutral waters by belligerents.

Moscow, April 19.—Kalieff, the assassin of Grand Duke Sergius, was tried here today. He was condemned to death.

The public was not admitted to the trial. The prisoner refused to plead, declaring he was not in the position of a criminal before judges, but was a prisoner taken in a civil war.

New York, April 18.—Eighteen year old Lillian Bartles, for an hour and a half last night fought a giant orang-outang, which had escaped from its cage. Her father, William Bartles, is an importer of

wild animals, and runs a store in Greenwich street. The huge orang-outang which stands four feet six inches in height and weighs 110 pounds, is one of a consignment recently received from India. Reinforcements in the shape of three men at the end of a fierce struggle saved the girl from being injured, aside from scratches on her hands.

The ape acted mostly on the defensive while seeking freedom, as long as the girl was his only adversary, but when the men appeared he turned savagely upon them and hit one so badly that his hand may have to be amputated. Before the ape surrendered he was badly beaten with clubs, and was carried back to his cage in a condition suggesting an argument with an entire squad of police.

St. Petersburg, April 18.—Perhaps the most romantic feature is the fact that Mlle. Leontieff converted two pieces of Governor-General Trepoff, Mlle. Trepoff and Princess Danisheff, to the doctrine of assassination, and that after the arrest of her Mentor, Mlle. Trepoff actually attempted the life of her uncle, firing two shots at him, both of which missed. Thereupon the two girls became panic stricken and attempted suicide. Mlle. Trepoff throwing herself under a train and Princess Danisheff shooting herself. Neither of them succeeded in killing herself. The family has since tried to make it appear that the girls' acts were the result of a mutual pact for self-destruction, both being in love with the same man, an officer of the guards.

About 100 male and female students of the Conservatory of Music who have been connected with the agitation in favor of Rimsky Korsakoff, who was removed from his professorship in the conservatory because of his attitude toward the striking students, have been arrested and sentenced to a month's imprisonment.

THE SITUATION.

Benton Farmer Gives His Views on Pending Public Matters.

As our much esteemed local has but little to say of the political aspect of our glorious commonwealth, it is thought that a brief suggestion as an item may not be amiss at this season, when nature appears in so gratifying an aspect. I would refer to the Initiative and Referendum. Who would have thought Oregon, "my Oregon," would have risen to the lofty height of granting this boon to her people. Let us try it when occasion seems to require it. Let the people speak and be satisfied with their own verdict. Representative government is good, but should never be used to defeat the wishes of the majority of the people. I would call attention to Chicago next, as an example of what a city ought to do. Also to the prosecution of the trusts too long neglected. Yours for true Jeffersonian democracy.

G. R. HALL.

Saves Two From Death.

"Our little daughter had an almost fatal attack of whooping cough and bronchitis," writes Mrs. K. W. Haviland, of Armonk, N. Y., "but, when all other remedies failed, we saved her life with Dr. King's New Discovery. Our niece, who had consumption, in an advanced stage, also used this wonderful medicine and today she is perfectly well." Desperate throat and lung diseases yield to Dr. King's New Discovery as to no other medicine on earth. Infallible for coughs and colds. 50c and \$1.00 bottles guaranteed by Allen & Woodward. Trial bottles free.

Blocks for piers at Whitney's,

"Short" on Peruna but "Long" on prunes. Italian prunes, 50-pound boxes, \$1.50. F. L. Miller.

Are you going to build? See Whitney about concrete blocks, or that rock or brick.

For Sale.

Cigar clippings of our own manufacture, Rose & Son. m25 ff

Notice to Contractors.

Notice is hereby given that sealed bids will be received by the Sewer Committee until the 8th day of May at 12 o'clock noon for the construction of a sewer through blocks 31 and 32 Avery's Third addition to the city of Corvallis according to the plans and specifications now on file in the office of police judge. A certified check on a responsible bank must accompany each bid. P. Avery, Alex Rennie, Ed Buxton, Sewer Committee.