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SCHMITZ VERDICT IS DECLARED VOID

Court Says Grafting Is Not Crime.

DUNNE DENOUNCES DECISION

Threat to Hold Up Licenses Only Moral Wrong.

PROSECUTION WILL GO ON

Court, Which Dunne Says Has Relatives and Friends Among Indicted, Finds Very Many Errors. Schmitz to Be Tried Again.

DUNNE SAYS JUDGES BIASED.

SAN FRANCISCO, Jan. 9.—Superior Judge Dunne, before whom Schmitz was convicted and Ruef pleaded guilty, did not hesitate to criticise the action of the Court of Appeals. He said:

"It is to be regretted that the hearing of this appeal came up before a court whose members have relatives and intimate friends against whom many indictments were returned by the grand jury that returned these true bills. In view of these facts, I do not believe that the court was in the proper frame of mind to give this matter an impartial consideration and decide it strictly upon its merits. I am satisfied that the evidence and the law sustained the judgment and the verdict.

"I will further say that the jury which returned this verdict in accordance with the evidence and the law will be remembered with respect and honor in the community long after the court which set aside the verdict has been forgotten."

SAN FRANCISCO, Jan. 9.—"The judgment and order are reversed and the Trial Court is directed to sustain the demurrer to the indictment, and discharge the defendant as to such indictment."

This was the decision handed down today by the District Court of Appeals reversing the judgment of the Trial Court in the case of ex-Mayor Schmitz, sentenced to five years in San Quentin on the charge of extortion based upon the alleged "holding up" of the French restaurants in the matter of liquor licenses and setting aside the indictment on which his conviction was had.

The trial was made notable by the appearance of Abraham Ruef, the political dictator who controlled the municipal administration, and practically placed Schmitz in office, as a witness against the Mayor, testifying that he had paid to Schmitz $2500 of the $5000 received by Ruef from the French restaurants, in order that Schmitz would permit the Board of Police Commissioners to issue liquor licenses to them. Ruef had, previous to this, dramatically pleaded guilty to the same charge, at the same time making the enigmatical statement that he was innocent.

Schmitz' Threat Not Illegal.

On the ground that the indictment did not show that a public offense was committed, because it did not allege any threat to injure property, the court holding that a liquor license was not property but mere permission; that a threat to prevent the obtaining of a liquor license by one who had no authority in the premises did not constitute a threat against property, and because of numerous errors in the ruling of the trial judge—Superior Judge Frank H. Dunne—the Appellate Court held that the indictment was invalid and the conviction null and void. In effect, the court held that Schmitz was not given a fair and impartial trial.

Many Errors in Trial.

Among the errors of the Trial Court enumerated as cause for reversal by the Appellate Court, in its decision, containing about 12,000 words, are the following:

That the court under the defendant's objection, allowed the prosecution to challenge peremptorily two jurors after they had been accepted and sworn, without any proper cause being shown or even stated; that the court permitted the filing of affidavits disqualifying the Sheriff and Coroner as officers to take charge of the jury and appointed an elisor for that purpose before the affidavits were first served upon the defendant, and refused to allow the defense to file counter-affidavits showing the elisor named by the court was prejudiced, biased and a personal enemy of the defendant; the admission by the court of the hearsay evidence of five witnesses; that the court admitted the testimony of Ruef in rebuttal when it did not constitute evidence in rebuttal and upheld the prosecution in improper cross-examination of the defendant, and that the court erred in overruling the defendant's demurrer to the indictment.

While the decision was not wholly a surprise, even to the prosecution, and had been freely predicted by Schmitz' friends for some time, it did not fail to cause something of a sensation and was the sole topic of conversation today.

Heney Loses Hold on Ruef.

The decision will have the effect of invalidating the other four indictments charging Schmitz as well as Ruef with extortion, and renders void the plea of guilty made by Ruef, as the Appellate Court held that no crime was committed.

By this reversal it is feared that the prosecution has lost its hold upon Ruef, and it was freely predicted tonight that the former political boss would now refuse all overtures of immunity, wholly or in part, to testify in the bribery-graft cases, and fight every indictment against him.

Although the court ordered Schmitz discharged from custody on the extortion indictments, neither Schmitz nor Ruef can take advantage of the reversal for 60 days, and even then there is little likelihood that either of them will be able to get the enormous bail required for their release. There are still pending against Ruef 126 indictments charging bribery, on which the total bail is $1,170,000, and Schmitz would have to get bonds for $450,000 on the indictments that remain against him. The prosecution has 20 days in which to ask the Appellate Court for a rehearing of the appeal and the court has 10 days in which to decide the motion. The appeal would then go to the Supreme Court, where the same length of time would be required before the decision of today can go into effect.

Refuses to Dismiss Appeal.

The judges of the court which rendered the decision are: J. A. Cooper, Frank H. Kerrigan and Samuel H. Hall. The decision was written by Justice Cooper and reads in part as follows:

The defendant was tried and convicted of the crime of extortion. After the verdict of the jury on July 8 he made a motion for a new trial, which was denied, and thereupon the court pronounced judgment, sentencing

Eugene E. Schmitz, ex-Mayor of San Francisco, Whose Indictment for Extortion Is Declared Invalid on Appeal.

him to the state prison for five years. Thereafter, on the same day, the defendant served upon the District Attorney a notice of appeal from the judgment and from the order denying the motion for a new trial, and then immediately filed the same with the clerk.

The District Attorney moved to dismiss the appeal on the ground that the notice was served before it was filed, and also because the appeal was taken before the judgment was entered.

The court dismisses both of these motions after lengthy treatment of the matter.

Then the decision goes on to examine the alleged error of the lower court during the trial. The opinion comments on Judge Dunne's ruling and says he erred in admitting hearsay evidence.

"In our opinion," says Judge Cooper, "the cross-examination was entirely improper and was not confined to the matters on which the defendant was examined in chief."

This has reference to the answer Schmitz gave in regard to the payment to him of part of the $500 contributed by the restaurants.

Questions Wrongly Ruled Out.

The attorneys for Schmitz had at the trial questioned Ruef as to whether he was testifying in expectation of immunity. Judge Dunne refused to permit any of these questions to be answered.

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SOON ANNOUNCE HARRIMAN SUIT

Bonaparte to Proceed Against Merger.

STRONG EVIDENCE AT HAND

Can Prove Union and Southern Pacific Did Compete.

MONOPOLY REACHES OCEAN

Steamer Competition on Oriental Route Killed—If Criminal Charge Is Made Against Harriman It Will Be Separate.

WASHINGTON, Jan. 9.—(Special.)—Attorney-General Bonaparte will in a few days make an official announcement regarding the Government's position towards the control of the Union Pacific through stock ownership of the Southern Pacific Railroad. He is awaiting the return from Europe of the special counsel employed in the case, who was unexpectedly called abroad by private business. From information obtained at the Department of Justice the statement will probably be the announcement of the filing at Omaha or some Western city of proceedings to test the lawfulness of the arrangement.

As With Northern Securities.

As with the Northern Securities Company, when the Department of Justice, upon information collected by the Interstate Commerce Commission, accepted the recommendations of that commission and successfully directed proceedings through the courts which eventually resulted in a dissolution of that arrangement, so as to the control of the Union Pacific of the Southern Pacific, the Department of Justice will follow the lead set by the Interstate Commerce Commission, it is said. The control of the Northern Pacific and the Burlington by the Union Pacific was prevented by a decision of the Supreme Court of the United States, in which it was held that the arrangement was in violation of the Sherman act, the court stating that the Union Pacific could not control these railways, as they were competing lines.

Proof Lines Are Competitors.

Before the acquisition of its stock by the Union Pacific, the Southern Pacific Company, with its lines of rail and steamships, was engaged in competition with the Union Pacific. Prior to the enactment of the interstate commerce law, the Union Pacific and Southern Pacific Company belonged to the transcontinental pool, in which each was regarded as a competitor of the other and was accordingly awarded an allotted percentage of transcontinental business. Numerous citations are made by the Commission in its report in the line of evidence obtainable to prove that the Union and Southern Pacific Companies are competitors.

The importance of the charge brought against the Union Pacific is emphasized by the Commission in its bearing upon our Oriental trade. The Attorney-General is reported to be greatly impressed by the showing which the Commission makes to sustain its assertion that control by the Union Pacific of the Southern Pacific has resulted in the elimination of all steamship competition from Pacific Coast ports to the Orient.

The Attorney-General, while reticent as to the contents of the statement which he contemplates shortly to issue, gives the impression that it will not disclose the attitude of the department with regard to criminal prosecution of Mr. Harriman, and that, should such proceedings be undertaken, it will be by separate motion and at another time.

DENY ALL FISH'S CHARGES

Harriman's Directors Say They Did Not Vote in His Interest.

CHICAGO, Jan. 9.—With the implied purpose of controverting the charges made by Stuyvesant Fish in his suit to enjoin the voting of 281,231 shares of the Illinois Central Railroad Securities Company, an answer by the Illinois Central Railway Company was filed in the Superior Court in this city. Accompanying were affidavits from Mr. Harriman, Walter Tuttgen, John Jacob Astor, Alex G. Hackstaff, Cornelius Vanderbilt, John W. Auchincloss, Robert W. Goelet, and Charles A. Peabody.

The documents admit the existence of hostility toward Mr. Fish, but it is declared that this hostility is due to the actions of Mr. Fish in beginning litigation. Mr. Goelet and Mr. Peabody each denies that Mr. Harriman dominates and influences him. Mr. Harriman avers that he does not dominate or influence them or any other directors.

Each of the affiants denies having voted prejudicially to the interests of the Illinois Central Company, and declares that the only dealings between that company and the Union Pacific Railroad Company within the last two years have been agreements for connecting their tracks and the use of the station of the Union Pacific at Omaha, both of which were recommended by Mr. Fish, and for the interchange of traffic and division of rates, in which, it is said, no change has been made or proposed within a year.

MAY ABSORB GREAT WESTERN

Canadian Pacific Proposes to Take Over Embarrassed System.

ST. JOHN, N. B., Jan. 9.—A special from Winnipeg says that the Canadian Pacific Railway may take over the Chicago Great Western system which yesterday was placed in the hands of receivers. The dispatch states that if the embarrassed road is acquired the Canadian Pacific will enter Chicago from the east via the Pere Marquette road and continue to St. Paul over the Great Western and thence to the Coast by the Soo Line, now controlled by the Canadian road.

No More Porters on Chaircars.

OMAHA, Jan. 9.—The Union Pacific and Burlington Railroads will take porters off chair cars and do away with flagmen on some of their passenger trains. This reduction is made as a matter of retrenchment.

HUGHES' POWER WILL BE TESTED

Fortune Is Staked on Two Measures.

IN NEW YORK LEGISLATURE

Heads Fight for Ballot Reform and Against Gambling.

WADSWORTH OPPOSES HIM

National Politics May Be Affected by Governor's Stand on Unpopular Issues That Will Be Stubbornly Contested.

NEW YORK, Jan. 9.—(Special.)—A legislative session that promises to be full of interest, lobbying and National politics, is now under way in this state.

Governor Hughes has pinned his fortunes to two measures, one calling for ballot reform, and the other for the abolition of racetrack gambling. As matters look now, neither one will become a law. But the Governor is a resourceful fighter, even if his ways are quietly polite, and he has no doubt of ultimate success. Under the present construction of the law it is perfectly legal to bet on a horserace if you go to the track, neither is a bookmaker in any danger of punishment. But a man who accepts bets in a poolroom, a saloon, or anywhere except on the track, has committed a felony, and is liable to a long term of imprisonment.

The Governor does not see why these conditions should exist. If gambling is a crime, and it is gambling to bet on a horserace on one side of a fence, it certainly is gambling to bet on the horses on the other side of the fence, he asserts. And he calls upon the Legislature to stop it.

Country Profits by Betting.

Horseracing is entirely a sport of city men and ordinarily the voters from the rural districts could be counted upon to aid in suppressing it. But the men who drew the present statute were far-seeing politicians. They inserted a provision that 5 per cent of the gross receipts of the tracks should be held out, and divided pro rata among the various agricultural societies of the state. And so great is the business of the tracks that this 5 per cent amounts to over $200,000 a year, which shows that the tracks admit this income is $4,000,000 a year. And this does not include receipts from various privileges, including the money that is taken in from the bookmakers, which amounts to many thousands of dollars every day.

Naturally the farmers do not want to lose this revenue. The Governor proposes that the state make it up to them by direct appropriations. Senator Raines throws cold water on this by insinuating that it is a mighty hard matter to get an appropriation bill through every year.

So there you are. If the farmers were convinced that they would not suffer financially, it is safe to say that the bill would pass. As it is, the matter is very much in doubt. Various societies of ministers are getting busy and doing what they can to uphold the Governor in his stand. The trouble is, however, that, although they can pass numerous resolutions, they are shy when it comes to the question of controlling the votes of legislators.

Leaders Against Ballot Reform.

If the Governor succeeds in passing his Massachusetts ballot reform bill, he will do it despite the open opposition of practically all the leaders in both houses. A majority of practical politicians believe that the present ballot is preferable to the reform measure because it gives the party voter rather than the independent the advantage.

As a general thing the head of the ticket, if he is popular, drags through undesirable running mates. Of course 1906 was a remarkable exception to this, when Hughes had 50,000 plurality and all his associates were beaten by from 1000 to 3000.

H. M. Whitney, Leader of One of the Massachusetts Democratic Factions Which Will Send Contesting Delegations to the National Convention.

But this case is really one of the strongest arguments made by party men in favor of keeping the present ballot.

"If the voters had been required to mark each candidate," said a New York County leader, "Hughes would have had 150,000 over Hearst, and the other Democrats would have won by from 75,000 to 100,000. As it was, party regularity hurt Hughes and aided the men who ran with him."

Even before the Legislature met, John Raines, president pro tem of the Senate, declared he was opposed to what is known as "ballot reform." Now Speaker Wadsworth has come out with a similar statement.

Opposed by Strong Men.

There is, then, a complete analogy between the legislative situation this year and that of last, so far as the chances of a break with the Governor are concerned. Yet there is one striking difference, so far as present conditions are concerned. It was the "old guard," the discredited political hacks of the Senate, who challenged the Governor's programme last year. The very character of his opponents then gave the fight that peculiar quality which so quickly aroused public indignation. But the case of Wadsworth is entirely different. He has administered the difficult office of Speaker for two years in such a fashion as to command respect.

Naturally he has made errors of judgment which have provoked justified criticism, but under his direction the clean and the decent men in the Assembly have exercised potent influence. The men who have been his loyal supporters, who stand with him today, are an entirely different set of men from those who stood about the former Speaker. While at some time each of his principal lieutenants has found himself at variance with the Speaker, in sum total they are all solidly behind him. Consequently it is not possible to hint at sinister motives because the Speaker does not agree with the Governor's recommendations as to legislation.

It is a case of two honest men who have taken radically different positions on the same subject. And because the Speaker is not open to any oblique attack, he brings much moral strength to the cause he has championed. On direct nominations and on some other things, Mr. Wadsworth has already followed a course opposed to that of the Governor, yet under great temptation and much urging, he last year declined to participate or lead, for that was what it amounted to, any wholesale warfare upon Governor Hughes.

And this was true, in spite of the fact that his personal political following was much assailed by some of the Governor's policies.

Wadsworth Practical Politician.

Wadsworth, in temper and in training, represents an entirely different ideal of public life and party method from Governor Hughes. He is not unlike Herbert Parsons in general terms, in his view of public affairs. He believes in party organization and party discipline, in regularity, in patronage and in other details of practical politics. But quite as firm is his stand against "graft," against personal profit, and against the unclean things which have so damaged the Republican party, as a whole, in the state at large. In general terms, he is not unlike Herbert Parsons in his views of public affairs.

To Parsons and to Wadsworth, Hughes stands as a man who has broken down the Republican party. They concede that what he has done he has done honestly, and admit that

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ABYSSINIA TAKES TOWN FROM ITALY

Captures Lugh and Massacres Garrison.

MENELIK CLAIMS TERRITORY

Italian Merchants Robbed, Killed, Imprisoned.

SQUADRON SENT TO COAST

Furthest Interior Post in Italian Somaliland Destroyed After a Bloody Siege—Doubt Whether Menelik Ordered Assault.

ITALY'S TROUBLED COLONIES.

Eritrea and Italian Somali-Land are Italian dependencies on the east coast of Africa. The former has an area of 88,500 square miles, and the latter an area of 100,000 square miles. The combined population is 850,000, about equally divided. Both Eritrea and Italian Somali-Land border on Abyssinia, Eritrea lying to the north on the Red Sea, and Somali-Land southeast on the Indian Ocean.

ROME, Jan. 9.—News has been received here of serious trouble in Italian Somaliland, on the east coast of Africa, which has resulted in pitched battles between the Italian forces there and the Abyssinians near Lugh, the furthermost Italian station in the interior, the Abyssinians robbing, killing and imprisoning many of the merchants.

Lugh is garrisoned by only about 125 natives under command of Captain B. Giovanni, and the attacking party laid siege to the town. In a number of engagements that followed, both sides, according to the reports, suffered heavy losses.

Squadron Sent to Scene.

The Italian government has ordered the squadron now in the Red Sea to proceed to the coast of Somaliland, in order to protect the towns along the coast, as the entire territory is garrisoned by not more than 2000 natives under the command of Italian officers.

At the same time the government has telegraphed to the Italian Legation at Adis Abebba, the capital of Abyssinia, instructing the Italian Minister to present a protest to King Menelik against the violation of the status quo. Italy holds Lugh through an arrangement concluded with the Sultan of that territory in 1885, which, however, was never ratified by King Menelik, who considered Lugh a portion of his own territory. Lugh is nearly 30 days' march from the coast.

Town Taken, Garrison Slain.

Later dispatches received here indicate that the trouble is of a more serious nature than at first supposed. It is learned on good authority that Lugh was besieged by the Abyssinians and destroyed after a desperate and unequal fight and that the defenders were killed.

It is believed here that the Italian government is concealing a severe reverse in order to prepare the public for graver news. The importance of the situation lies in the establishment of the fact as to whether the King of Abyssinia ordered the attack.

NO WEDDING WITH OSBORN

MOCK CEREMONY BETWEEN HIM AND MISS MALONEY.

Millionaire Declares That Fictitious Names Were Given and Couple Never Lived Together.

NEW YORK, Jan. 9.—Martin Maloney, of Philadelphia, made known through a formal statement given to the Associated Press tonight that proceedings had been instituted to obtain in a court judgment declaring that there was no marriage between his daughter, Helen Eugenie, and Arthur Herbert Osborn, the young New York broker, who, according to the county records, were technically united in matrimony at Mamaroneck, December 28, 1905. Fictitious names were given by the parties to the ceremony, and the two never lived together.

Mr. Maloney does not go into details in his announcement, but it is understood that the present court action is based upon the admissions of the young people that the idea of their union was conceived in a spirit of fun and that the marriage was a mockery.

JURY CENSURES MOTHER

Child Died of Mental Healing, Which Is Called Neglect.

KALAMAZOO, Mich., Jan. 9.—The Coroner's jury at Plainwell, which has been inquiring into the death there of Walter Neeley, aged 2½ years, son of Mr. and Mrs. David N. Neeley, of Sacramento, Cal., brought in a verdict this afternoon that the child died of pleuro-pneumonia and declaring the mother guilty of gross negligence for failing to secure the services of a physician or to call in medical attendance.

The child was treated by two members of a sect of mental healers.

MONTANA'S BOSS GAMBLER IS A BIG MAN IN BUTTE, BUT—

IN WALL STREET IT'S A BIT DIFFERENT.