NEW TRIAL WON BY BERGER, 4 OTHERS

Supreme Court Holds Landis Erred in Decision.

ACTION IS SPLIT 6-3

Judge Ought to Have Retired on Filing of Petition of Prejudice by Defense Is Opinion.

WASHINGTON, Jan. 31.—Victor L. Berger, socialist editor of Milwaukee, and four co-defendants who were sentenced to terms ranging from 10 to 20 years for violation of the espionage act, will receive a new trial, under a decision today by the supreme court.

Dividing six to three, the court held that Judge Landis of Chicago was ineligible to conduct the trial and should have retired on the filing of an affidavit by the defendants charging him with "personal bias and prejudice" because of the nativity of certain of them.

Berger's co-defendants are Adolph Germer, national secretary of the socialist party, a native of Russia; William Kruse, editor of the Young Socialist Magazine, whose parents were Germans; J. Louis Engdahl and Irwin St. John Tucker, writers and lecturers, natives of the United States and claiming to be not of immediate German descent.

Landis Held to Have Erred.

The sole question before the supreme court was whether Judge Landis had erred in continuing to sit in the case after defense counsel had filed a properly-drawn affidavit of prejudice. Six members of the court, including Chief Justice White, held that he did. Three other members, Justices Day, Pitney and McReynolds, held he did not and filed opinions dissenting from that of the majority.

Justice McKenna, departing from his written opinion, said it should be of no importance to a judge whether he sat in any particular case. He added that the section of the judicial code under which the affidavit was filed was drawn to assure that the court not only would be impartial but could be free from even a suspicion of partiality.

"We are of the opinion, therefore," he continued, "that an affidavit upon information and belief, satisfies the section and that upon its filing, if it shows the objectionable inclination or disposition of the judge, it is his duty to 'proceed no further.'

Facts Held Not Frivolous.

"The facts and reasons, the affidavit states, are not frivolous and fanciful, but substantial and formidable and they have relation to the attitude of Judge Landis' mind toward the defendants."

The affidavit filed by Berger and the other defendants set forth as alleged proof of Judge Landis' "personal bias and prejudice" remarks he made in passing sentence on August Weissenel, a German-American on November 1, 1918, Judge Landis was alleged to have said:

"One must have a very judicial mind, indeed, not to be prejudiced against the German-Americans in this country. Their hearts are reeking with disloyalty. This defendant is the kind of a man that spreads this kind of propaganda, and it had spread until it has affected practically all the Germans in this country."

Dissenting Opinion Given.

Justice McReynolds in his dissenting opinion said that "a public officer who entertained no aversion toward disloyal German immigrants was simply unfit for his place."

"And," he added, "while an 'overspeaking judge is no well-tuned cymbal,' neither is an amorphous dummy unspotted by human emotions a becoming receptacle for judicial power.

"The indicated prejudice was toward certain malevolent men from Germany, a country then engaged in hunnish warfare, and notoriously encouraged many of its natives who, unhappily, had obtained citizenship here. An intense dislike for a class, does not render a judge incapable of administering complete justice to one of its members."

Decision Is Regretted.

Confessing that he was unable to follow the reasoning of the opinion approved by the majority, Mr. McReynolds said it seemed to mean that "if an admitted anarchist charged with murder should affirm an existing prejudice against himself and specify the judge had made certain deprecatory remarks concerning all anarchists," the judge in question would have to retire from the case.

Justice Day, in dissenting for himself and Mr. Pitney, regretted the decision of court, saying it would have the certain result of impeding the operation of federal courts. It would make the presiding justice liable to attack, he added, by any defendant on the ground of alleged prejudice, simply as a means for obtaining delay.

Justice Day also said that a simple affidavit "on information and belief" and unsupported by further facts, was not in itself sufficient grounds to cause a trial judge to withdraw, and that Judge Landis was within the law in refusing to entertain it.

CLEMENCY IS DENIED DEBS

Refusal of President to Act Does Not Cause Surprise.

WASHINGTON, Jan. 31.—Recommendation by the department of justice that the ten-year sentence of Eugene V. Debs, long a prominent socialist leader and now serving a ten-year sentence at Atlanta for violation of the war-time espionage laws, be commuted, effective February 12, was rejected today by President Wilson and commutation refused.

The president's decision came as no surprise because of his previous refusals to intervene on the ground that Debs had sought to handicap the government through opposition to the selective service act and that the granting of clemency might encourage similar tactics by others in the event of another war.

The case was reviewed by a special board and their findings were indorsed by Attorney-General Palmer. The findings were understood to have pointed out that Debs would be eligible for parole August 11, 1922, and that his sentence, in case of good behavior, would expire December 28, 1925. The recommendation was understood to have suggested that Debs had been adequately punished. He was imprisoned June 15, 1919.

Petitions were presented several months ago by union labor and socialist leaders asking for the release of the man, now 66 years old, who four times has been a candidate for president. The case has been consistently and bitterly fought both in and out of the courts ever since Debs was indicted and then convicted by a federal jury at Cleveland September 12, 1918. The case was appealed to the supreme court, which sustained the lower court on March 10, 1919.

ATLANTA, Ga., Jan. 31.—Eugene V Debs, in the federal prison, expressed pleasure today on receiving the news of the decision of the United States supreme court in the case of Victor L. Berger and four other socialist leaders, but declined to make any comment on President Wilson's refusal to commute his sentence.

BERGER STICKS TO POLICY

Nothing Said or Written About War Is Retracted, Is Comment.

MILWAUKEE, Wis., Jan. 31.—"The conspiracy has failed, and I have nothing to retract from anything I have written or said about the war or about those who pushed us into this war," declared Victor L. Berger today when apprised by the Associated Press of the decision of the United States supreme court in its reversal of the decision in the case against Berger, who was tried before Judge Landis of Chicago on charges of violating the war-time espionage act.

Mr. Berger's statement in part follows:

"I hail this decision as the first real sign of returning sanity in our ruling class.

"The Chicago trial was simply a conspiracy of the 'paytrolteers' and the profiteers against the socialist party. I was picked out as the one member of the national executive committee who was of German extraction and because the socialist party is strong in Milwaukee, and, furthermore, because I dared to be a candidate for the senate against Woodrow Wilson's favorite.

"As to my patriotism? Well, I have proved my love for this, my country, by a life of labor in it and for it; by striving with all my energy to improve this condition of my fellow men.

"And finally, I have proved my love for America, my faith in America's justice, by risking my liberty in defense of the constitutional right of all American citizens to discuss freely the official acts and policies of their public servants."

JOBLESS IN CITY DOUBLED

UNEMPLOYMENT IN SPOKANE ALSO TWICE NORMAL FIGURE.

Wage Reductions Continue, 10 to 20 Per Cent Cuts Prevailing; January Good Financially.

WASHINGTON, Jan. 31.—Industrial operations have not increased sufficiently to affect a material reduction in the widespread unemployment prevalent a month ago, according to the review for January, issued tonight by the federal reserve board.

A slight increase in the activity of leading New England industries probably has brought some relief there, the review said, but in the south and west the situation has become more acute. In the San Francisco district, previously slightly affected, the board reported unemployment to be abnormally great.

Wage reductions have continued, the board said, and the curtailment has spread to sections where wage rates have been maintained at high levels.

Prices of certain staples, notably grains, cotton and other agricultural products, rose early in January, the board reported, but later declined. Other leading commodities, however, such as crude and refined oils and bituminous coal, not greatly affected in earlier months, were increasingly weak, and iron and steel continued to decline.

Portland unemployment was twice the normal figure and in Spokane nearly twice the normal. Wage reductions of from 10 to 20 per cent have occurred in various parts of the district, the board added.

Some increase in the demand for labor in Massachusetts was noted in January, but the Boston employment office informed the board that the number of applicants was the greatest on record during the first days of the month.

Unemployment in the New York district increased by about 4 per cent in January, the review said.

In the Philadelphia district unemployment is prevalent, the board reported.

Financially the month has been encouraging, the board declared. Slackening in the demand for credit resulted in a material reduction in the outstanding volume of circulation amounting to about $50,000,000, while the gold holdings increased to about $25,000,000.

In private finance, the board said, the month has been a period of improvement of value in most classes of securities. Various minor issues of foreign public bonds have been floated with success and a number of relatively important private issues have been sold to the public.

INDIANAPOLIS, Jan. 31.—A crowd estimated at 300 men today was jammed around front and rear entrances of a local 10 to 20-cent store in answer to a newspaper advertisement for five persons.

DOGS RACE WITH DEATH

Alaska Physician Dashes Through Blizzards to Save Patient.

ANCHORAGE, Alaska, Jan. 31.—Dr. Beeson, who, with dog sleds, is racing for Iditarod to the bedside of Claude Baker, reported seriously ill, was reported to have reached Fort McGibbon, the half-way point, Friday night, three days ahead of schedule.

The party had covered more than 400 miles of the journey, through blizzards and low temperatures, traveling night and day.

Denton Checks Rouse Suspicion.

LOS ANGELES, Cal., Jan. 31.—Signatures on two checks for sums totaling $750, cashed by Mrs. Louise L. Peete, on trial for the alleged murder of Jacob Charles Denton, were "so markedly dissimilar" from those on checks he knew had been signed by Denton that they attracted the attention of Victor H. Rossetti, vice-president and cashier of the Farmers & Merchans National bank here, according to his testimony at Mrs. Peete's trial today.

S. & H. green stamps for cash. Holman Fuel Co. Main 353. 560-21.—Adv.

BARE JAPAN DEALING TO WEST, DEMAND

Tentative Treaty Is Held to Annul Alien Land Laws.

JOHNSON ANSWERS COLBY

Controversy Between Men Is Declared Not to Throw Any Light on Actual Dealings.

WASHINGTON, Jan. 31.—Senator Johnson of California, asked Secretary Colby today to make public the negotiations between the United States and Japan on the California land question. Mr. Colby replied that "if Senator Johnson expects to do a ghost dance on this subject he's got to do it without me as a partner."

Senator Johnson, in a statement, reiterated his declaration that Roland S Morris, ambassador to Japan, and Baron Shidehara, Japanese ambassador in the negotiations concluded, tentatively agreed on a treaty "which in effect repealed the California alien land law." Pointing to Secretary Colby's reply of Saturday that the California senator was progressing on an erroneous assumption, Senator Johnson asked that the report of Ambassador Morris be made public, asserting that "the people of the west . . . are entitled to know what that report contains."

Secretiveness Is Denied.

Secretary Colby, who replied informally, today asserted that "there is no indirection or concealment here (at the state department) and no secretiveness." The secretary intimated that the negotiations would be made public at the "proper time."

"If Senator Johnson expects to do a ghost dance on this subject he's got to do it without me as a partner," Secretary Colby declared today in an informal statement replying to the California senator's latest statement on the proposed American-Japanese treaty.

Refering to his own statement of last week and Secretary Colby's comment upon it, Senator Johnson said:

Erroneous Assumption Denied.

"The secretary of state says that my comment upon the tentative agreements made by Ambassadors Shidehara and Morris is based upon an 'erroneous assumption' and that the dangers which I suggest do not present themselves in these agreements. My comment was induced by press reports purporting to emanate from authentic sources.

"From these I stated a treaty had been tentatively agreed upon which in effect repealed the California anti-allen laws. The secretary of state says in substance this is not so. Either the press reports are erroneous or Mr. Colby is misinformed. I am constrained to believe that Mr. Colby is in error.

"But a controversy between the secretary and myself as to what is contained in the report of Ambassador Moris is of no consequence. The contents of the report are all-important. Mr. Colby has the report, and the people of the west, to whom this subject is of paramount importance, are entitled to know what that report contains.

Let People Know, Is Demand.

"Yesterday it was discussed at length in Japan. Our people should not have to await its detail through Japanese news channels.

"It is not sufficient that the representatives from California or the foreign relations committee under a promise of secrecy should finally know what disposition is intended to be made of the agricultural lands of California and other western states. The people of these western states are entitled to know it and entitled to know it now.

"The grave question here is not whether I am right in saying that a treaty has been presented which in effect repeals our alien land laws, or whether Mr. Colby is right in saying that no such draft of a treaty has been presented. The matter is far beyond any personal controversy. The question is what has been done on the subject in which the west is most interested and which most intimately concerns the west's future, and the west should be told forthwith."

THEFT OF WIFE ADMITTED

(Continued From First Page.)

dence of O. S. Witherell and delayed making the call until the police had been sent to the pay station, where they arrested A. J. Carr just as he was concluding a delayed conversation which he had promised relatives in a letter sent them Saturday.

The police said they found chloroform and other articles in the automobile they believed had been used in decoying the woman from home.

At the police station A. J. Carr, it was said, confessed that he had passed Saturday night outside of Los Angeles afraid to communicate with the Witherells, as he had agreed by letter, Floyd Carr, according to the confession of his cousin, was the leader in the kidnaping.

The police said A. J. Carr told them that Floyd went to the Witherell home last Tuesday night and told Mrs. Witherell a friend had been injured in an automobile accident and was calling for her.

Floyd Carr, according to the police, escorted her to an automobile, where A. J. Carr was waiting. When she became suspicions the two men chloroformed her. They took her to a small house on a sheep ranch and put her in a room with only a cot and two blankets. Mrs. Witherell told the men who rescued her the men bought her candy and treated her "with every respect."

The police and Mrs. Witherell's husband and father started for the kidnapers' house at 2 o'clock, prepared for any emergency. The officers surrounded the house and after closing in on it smashed the door and widdows. A man said to be Floyd Carr was caught off his guard and handcuffed.

Mrs. Witherell and her husband rushed into each others' arms. She sobbed and called him "lambie, lambie," over and over again.

The scene between Mrs. Witherell and her father, John C. Kratz, was affecting.

Mother Yearns for Baby.

"I want my baby, I want my baby," Mrs. Witherell cried repeatedly on the two-hour drive from the cabin on a lonely sheep ranch in Santa Ana canyon and about 70 miles southeast of Los Angeles, where she was found.

When she again had her arms clasped about her 18 months' old son Jack, she regained her composure.

Police Captain Alfred T. Slayton of Los Angeles was the first to break into the house. He said Mrs. Witherell, in a room bare of furniture, except a cot and two blankets, sat up in bed when he entered.

"Don't hurt me," she cried. "I haven't done anything. I am Mrs. Witherell and I want my baby. Please take me away from here, if you are a friend."

Slayton said he heard a noise behind him. He turned and searched the room with his flashlight. A man with a revolver in his hand was emerging from a closet.

Carr Puts Up Fight.

"Throw up your hands," Slayton called. The answer was a rush. A struggle followed. Other officers dashed into the room and the man was overpowered. He gave his name as Floyd Carr.

The police said further arrests were possible as the result of disclosures by the Carrs. They planned a fuller questioning of the men, meantime sending telegrams to various cities to learn if they had police records elsewhere.

Extra guards were placed about the city jail, where the Carrs were held.

The Carrs were said to have directed the relatives of the woman to deposit the ransom money of $20,000 on a lonely mountain road at a designated spot, promising to release Mrs. Witherell on the roadside so she could be found after payment of the money.

$3600 Reward Put Up.

Rewards totaling $3600 had been offered for information as to Mrs. Witherell's whereabouts. Witherell's former business partner and former stenographer, Charles Beverly and Mrs. Eleda Westrem Tenney, were killed early Saturday in an automobile accident while detectives were following them into Los Angeles from a suburb. Why they were followed was unexplained.

The police said "Jack" Carr told them he and his cousin kidnaped Alice Clark in Spokane, Wash., several years ago and a woman whose name was not made public in Denver. In both cases, he said, they "were forced to drop the girls before they went through with the job," and so received no ransom.

SPOKANE HAS NO RECORD

Police Know of No Alice Clark, Reported Kidnaped.

SPOKANE, Wash., Jan. 31.—Police department officials said today they could find no record of the kidnaping here several years ago of an Alice Clark.

Los Angeles dispatches said "Jack" Carr had confessed in that city.

LEWISTON FILES PROTEST

Proposed Elimination of Commissioner of Education Opposed.

LEWISTON, Idaho, Jan. 31.—(Special.)—The Lewiston commercial club today sent a telegram to Representative Carpenter opposing threatened action by the state legislature to destroy the state educational system by abolishing the office of commissioner of education, now held by Dr. E. A. Bryan.

The telegram is as follows: "By authority of the Lewiston commercial club, we desire to protest against the bill which intends to overthrow the present system of education by eliminating the office of commissioner of education. The present system being more economical and more efficient gives Idaho a unique place educationally among the states and should not be discontinued."

The telegram was signed by E. A. Cox, F. S. Randall, Miles Johnson, W. B. Stainton, Mark Means and E. M. Ehrhardt.

SEATTLE HELD BUNKOED

(Continued From First Page.)

better transportation for shipyard workers, which the company asserted it was unable to furnish, the report stated. It added that "on every occasion when there seemed to be a deadlock between the company and the city, pressure was brought to bear on the mayor and city council by intimation of drastic action by the United States government, meaning thereby the withdrawal of contracts for the building of ships from Seattle yards."

The report stated that records showed the city was paying 5 per cent interest on a property which never paid its private owners more than 2 per cent on the investment involved.

Socialists Get Paper.

SHEBOYGAN, Wis., Jan. 31.—The Sheboygan Telegram, an evening newspaper, has been transferred to the Farmers' and Laborers' Publishing company, all of the officers and directors being members of the socialist party, according to announcement today.

Read The Oregonian classified ads.

Out to-day

New Victor Records for February

Though Heifetz and McCormack are abroad, both are heard in new and delightful numbers in this list of Victor music. And here is Kreisler playing the favorite "Love Nest," investing it with a new and exquisite charm. Added to this month's program are the first records by Sothern and Marlowe whose dramatic achievements parallel the musical triumphs of the great singers and instrumentalists who make Victor Records. Look over this list and you will appreciate the wealth of new music and entertainment presented. Mark the numbers you would like to hear and have any Victor dealer play them for you.

		Number	Size	Price
A Dream	Enrico Caruso	87321	10	$1.25
The Fountain (Jeux d'Eau) Piano	Alfred Cortot	74659	12	1.75
Passepied (From "Le Roi s'amuse") Violin	Mischa Elman	64903	10	1.25
Si j'étais Jardinier (Were I Gard'ner)	Geraldine Farrar	87322	10	1.25
Come Ye Disconsolate	Mabel Garrison	64920	10	1.25
Sicilienne and Rigaudon Violin	Jascha Heifetz	64917	10	1.25
Love Nest Violin	Fritz Kreisler	64924	10	1.25
'Tis an Irish Girl I Love and She's Just Like You	John McCormack	64925	10	1.25
Romeo and Juliet—Balcony Scene—Part I	E. H. Sothern and Julia Marlowe	74662	12	1.75
Romeo and Juliet—Balcony Scene—Part II	E. H. Sothern and Julia Marlowe	74663	12	1.75
Eighth Symphony in F Major—Allegretto Scherzando	Philadelphia Orchestra	74661	12	1.75
Spinning Song (Mendelssohn's "Songs Without Words") Piano	Sergei Rachmaninoff	64921	10	1.25
O Primavera (Spring Time)	Renato Zanelli	64923	10	1.25
Deep in Your Eyes	Lucy Isabelle Marsh	45214	10	1.00
Once Upon a Time	Lambert Murphy			
When You're Gone I Won't Forget	Peerless Quartet	18705	10	.85
There's a Vacant Chair at Home Sweet Home	Charles Harrison			
I'm a Lonesome Little Raindrop	Victor Roberts	18709	10	.85
For Every Boy Who's on the Level	Victor Roberts and Harmonizers Quartet			
Broadway Rose	Henry Burr and Peerless Quartet	18710	10	.85
Mother's Lullaby	Sterling Trio			
Uncle Josh in a Cafeteria	Cal Stewart	18711	10	.85
Uncle Josh and the Honey Bees	Cal Stewart			
Oh Gee! Say Gee! You Ought to See My Gee Gee from the Fiji Isle	Billy Murray	18712	10	.85
My Home Town is a One Horse Town (March Song)	Victor Roberts and Harmonizers Quartet			
Twelfth Street Rag—Fox Trot	All Star Trio	18713	10	.85
Dotty Dimples—One Step	All Star Trio			
Tip Top—Medley Fox Trot	Six Brown Brothers	18714	10	.85
If a Wish Could Make It So—Medley Fox Trot	Six Brown Brothers			
If You Could Care—Medley Waltz	Joseph C. Smith's Orchestra	18715	10	.85
Happy—One Step	Joseph C. Smith's Orchestra			
My Isle of Golden Dreams—Waltz	Blue and White Marimba Band	18716	10	.85
Let the Rest of the World Go By—Waltz	Frank Ferera-Anthony Franchini			
Margie—Medley Fox Trot	Original Dixieland Jazz Band	18717	10	.85
Palesteena—Fox Trot	Original Dixieland Jazz Band			
Just Snap Your Fingers at Care—Darling—Medley Fox Trot	Paul Whiteman and His Orchestra	35704	12	1.35
Caresses—I'm a Lonesome Little Raindrop—Medley Fox Trot	Paul Whiteman and His Orchestra			

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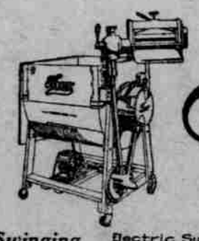

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months of Stomach-Kidney Troubles, Constipation. My wife was cured of Headache, Constipation, with Dr. Burkhart's Vegetable Compound. It is the best medicine on earth. Try it.—J. W. Avery, Nicholson, Mich.

Dr. Burkhart wants you to write for a treatment, pay when cured. Address Dr. Burkhart, 621 Main st., Cincinnati, O. For sale at all druggists. 30 days' treatment, 25c; 70 days, 50c.—Adv.

Mrs. SELCHERT'S DAUGHTER

Was Restored to Health by Lydia E. Pinkham's Vegetable Compound

Horicon, Wis.—"My young daughter had been troubled for several months with backache and a bad feeling in her stomach. She did not want to eat anything, while before she was so hungry she could hardly wait for her meals. The doctor gave her medicine but it did not help her. One day I was reading a little book of yours and it reminded me that when I was a young girl I took several bottles of Lydia E. Pinkham's Vegetable Compound. So she went to the drug store and got a bottle, and after taking the second one she could eat and has not had backache since. In all she took six bottles of it. She goes to school and on Saturdays helps with the housework. She is a normal, healthy girl now and we recommend your medicine. You have my permission to publish this letter as a testimonial for the Vegetable Compound.—Mrs. FRANK SELCHERT, 150 Larabee St., Horicon Wisconsin.

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