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PORTLAND, OREGON, SUNDAY MORNING, JULY 16, 1905.

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### NO NEW TRIAL FOR JOHN H. MITCHELL

Judge De Haven Denies Motion of Defense.

That Motion Also Meets Negative Decision.

### **BELLINGER MADE NO ERROR**

Fact That No Evidence Was Given on Sixth Count Is Insufficient to Justify the Granting of

a New Trial.

"The motion in arrest of judgment will be denied.

denied.

'Is the defendant in court?' Senator John H. Mitchell was not in court when Judge De Haven pronounced the words quoted from his decision in answer to the motions made last week by his attorneys. Senator Mitchell was represented by Judge Bennett and ex-Senator Thurston, and while Judge De Haven did not say that he would have rendered judgment upon believed from the fact that he asked "the defendant was in court," that he would have done so. Senator Thurston, when Judge De Haven put his query, rose and stated that he wished further time in which to draw up a until a week from Monday morning to

present them. This means another ten days before Senator Mitchell will have judgment pronounced upon him. The Senator's counsel informed the court that by tomorrow they would have their bill of exceptions ready and in the hands of United States District Attorney Reney, so that he might in turn have his an-swer ready by the time that the case will again be taken up by the court. Judge De Haven seemed willing to grant the delay, and as there was no objection from Mr. Heney, His Honor set Monday, July 31, as the day for receiving the exceptions.

The news that Judge De Haven

ould render his decision in the Mitchell case spread rapidly. His Honor set the time for 1:30, and when that hour came the courtroom was filled with eager spectators. It was anticipated and the arguments for the two motions made by counsel for the defense that they would be denied, and there was little surprise manifested when the court ruled against both motions.
Judge De Haven announced when court
was convened that, ewing to a press
of work that he had on hand, that it his decision in writing and that he would render it orally. His conclusions were brief. His Honor drew attention to the defendant's plea of abatement which had been before the late Judge Bellinger. He stated that he had ex-amined "the learned and exhaustive" opinion which Judge Bellinger had rendered, and said that while he had no doubt but that it was within his power to set uside that decisio

Judge De Haven said that he had carefully considered the matters presented in the motion for the new trial. He held that no error had been committed by the court in giving or refusing instructions, nor was there any error committed to the legal prejudice of the defendant in the admission of the defendant in the admission of stimony. He called attention to the fact that as soon as his attention had been called to the statement by District Attorney Heney in argument regarding the second indictment against Senator Mitchell that the court had instructed the jury to disregard this statement. Judge De Haven's decision in full follows:

Admissions for the week, 15,222 Fage 1, 20.

Admissions for the week, 15,222 Fage 1, 20.

Infant foculator exhibit at the Fair, Page 31, 11 Illinois repreduces bome of Lincoln, Page 12, 12 Illinois repreduces whithis at the Exposition, Page 13, 12 Illinois repreduces whithis to the Fair, Page 3, 12 Illinois repreduces the Exposition, Page 12, 13 Illinois repreduces whithis at the Exposition, Page 1, 20.

### Judge De Haven's Decision.

Since the submission of the pending metion for arrest of judgment and for a new trail in the case of the United States vs. Mitchell, No. 292, my other duties have been such that I have not found time to prepare any written opinion covering the various points alleged in the argument of counsel, and I shall, therefore, briefly, orally, indicate the conclusion which I have reached on each of these motions. As to the motion in arrest of judgment upon the question presented by the defendant's plea in abatement, that matter was before the late Judge Beilinger, and received careful consideration by him. I have examined the learned and exhaustive opinion which he rendered in disposing of that plea, and, while I do not doubt but what the court at the present time would have jurisdiction to sell saids that decire that plea, and, while I do not doubt but what the court at the present time would have jurisdiction to set aside that decision if convinced that it was wrong still the court would not be justified in softing aside the conclusion reached by him unless it was made to clearly appear that there was error then committed; and it will be sufficient for the present purpose to say that I am not so entirely satisfied that the conclusion reached by him was errorseous as to justify me in setting his decision aside.

The other matters set forth and urged

### Motion for New Trial Denied.

Upon the motion for a new trial I have carefully considered the matters presented by this motion. I do not think that any error was committed by the court in giving or refusing instructions, nor do I think that any error was committed to the legal prejudice of the defendant in the admission of testimony.

The question upon which there may be court much may be arged, is that relating to the commission of other offenses than those named in the indictment; but I am satisfied upon a residing of the cases bearing upon that question, that the ruling which was made is correct. Nor do I think that any error was committed by the District Attorney in the remarks excepted to by the attorneys for the defendant. I

not able to do so, and that they did not in fact do so.

Upon the other point, in reference to the sixth count of the indictment, where it is conceded that there was no evidence justifying the verdict of the jury upon that count. I do not think that a motion for a new trial should be granted for that reason. A verdict such as this should be construed as a verdict finding the defendant guilty upon each and all of the counts in the indictment, and that being so, the court in pronouncing judgment can see that the defendant suffers no prejudice because of his conviction upon the sixth count. This point seems to have been directly involved in Ballew vs. United States (169 U. S., p. 185). The syllabus of that decision is:

A general verdict of guilty, where the in-dictment charges the commission of two crimes imports of necessity a conviction as to each, and if it appears that there was error as to one and no error as to the other, the judgment below may be reversed here as to the first, and the cause remanded in that court, with instructions to enter judg-ment upon the second count.

I suppose that upon the authority of that case the court would have the right here to arrest the judgment upon the sixth count and only render judgment upon the others. I do not think though, that that court is flecessary to pursue.

The motion for a new trial will be denied.

"Is the defendant in court?"

Counsel for defense asked for time treeper a bill of exceptions before sentence is pronounced, which was granted.

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# TO STOP INQUIRY

Equitable Trail Leads Direct to Him.

### PEOPLE DEMAND THE TRUTH

Hendricks Covered -Up Magnate's Shadiest Deal.

### HIGGINS SHIELDS HARRIMAN

Whole State Clamors for Legislative Inquiry, but Governor Is Obdurate and Hendricks Blocks Efforts of Jerome

NEW YORK, July 18.-(Special.)-Car Edward H. Harriman dominate the Em pire State? This is the cry that echoes throughout the commonwealth today, on the heels of a public uprising that clamon at the doors of the Legislature for an investigation into the scandalous graft in the Equitable Life Assurance Society that plundered widows and orphans of \$15,000. 000 to \$20,000,000 within three years.

Hidden secrets far more noisome that the disclosures in the Frick and Hendricks reports, creeping out through the publi-cation of the transcript of the evidence taken during the last inquiry, show that the revelations so far have been but a scratch on the surface. The trull leads to the millionaire railway magnate, and the fact that it has been abundened has plunged the state into an uproar. Petition on petition, supported by requests from the State Assembly for an investiguting committee, have fullen vainly of the ears of Governor Higgins

### Jerome's Work Thwarted.

District Attorney Jerome has been hwarted in his attempt to secure the transcript that would enable him to take the scandals to the grand jury. So far the as the researches of the Prick and the investigations were blockedby the mighty leverage moneyed interests exert socially and politically.

crets of the Equitable into the daylight:
On the very verge of a sensational disciple to discuss further the Equitable into the daylight:
On the very verge of a sensational disciple to discuss further the Equitable closure in the episode of the "Union Pacific preferred deal," which threatened to drag Harriman and his coteric before the public and perhaps into the courts, the investigation was abruptly territoria. Can Harriman thwart the entire state vestigation was abruptly terminated.

### Harriman's Chain of Influence.

Harriman controls B. B. Odell, ex-Gov ernor, and Odell, as chairman of the Reablican State Committee, dictates to Governor Huggins, Higgins, in turn erts pressure on Hendricks, the State Superintendent of Insurance, a chain of in fluence that made the Hendricks report a practical whitewash, with the name of Harriman carefully suppressed.

The first inquiry, made by the H. C. Frick committee, resulted in suppression us far as Harriman was concerned. The report went into petty graft. The disures were sensutional enough at the time but subsequent developments indicate that Chicago wheat stronger on rumors of Rus-the Frick committee, instead of trying to sian shortage. Page 35. dive to the bottom of the morass, simply sought to gloss matters over by exhibit-Major Langfitt reports on river and harbor ing a choice lot of minor irregularities, improvements. Page 19. Why? Prick, multimilionaire thousand the control of the control is, is subservient to Harriman, and so not the slightest reference was made to Harriman's juggling with millions of the

### Hendricks Suppresses Worst.

The suppressions in the Hendricks eport show the phenomenal influence Harriman, through Odell and Higgins, exerts on the State Insurance Superiutendent. The report made no mention of Harriman's deals, yet the testimony tells of stock speculations with Equitable money; of the diversion and division of between \$15,000,000 and \$20,-000,000 in the last three years; of a \$50,000,000 Union Pacific blind pool, which is directly traced to Harriman by the testimony of James H. Hyde. The report even ran the smoothing iron in parsuit. Crazed with fear, Pfeiffer con-over the revelations concerning Sena-tinued to run. Several people made inef-

With these facts generally known to the public of New York State, the demand for a Legislative investigation has become well-nigh irresistible. sembly, now in extraordinary session, have declared for an investigation,

#### only 33 being opposed. People Demand Investigation.

Still, Governor Higgins hesitates and refrains from asking for the investi-gation which would result in articulating "Equitable" skeletons and sup-plying the knowledge necessary to the drafting of a statute to remedy existing evils. Odell seems to have surren-dered to popular clamor. He is now upporting the movement for a Legislative inquiry. Shrewd bankers and politicians surmise, however, that he has an "understanding" with Higgins whereby his change of front is not to affect the attitude of the State Ex-

Hendricks stopped short the moment the trail of corruption led to Harriman's \$10,000,000 syndicate in Union Pacific preferred, since the publication of the evidence showing what mamment proportions the disclosure might assume if this trail had been followed by District Aliconary Jerome the latter to enter the husiness work.

has made futile efforts to get a transcript of the evidence. Jerome wants to take the matter to the grand jury. but thus far he has been blocked by the refusal of the state authorities to hand over the necessary transcript.

### Higgins Will Not Budge.

Higgins refuses to budge an inch. He has been intrenched in his position by the appointment of Collector of the Port Stranahan as a director in the Equitable by the Ryan trustees. Stranahan is a member of the Governor's kitchen cabi-net. His advice has carried weight with net. His advice has carried time, it the Governor, and at this time, it the Governor, and at this time, it pointed out, any drastic action on the part of the Legislature would upset the plans

of Thomas F. Ryan. Next week the movement to sessage from Higgins in favor of the ap-cintment of a legislative commission will come to a head, when a petition calling for action will be circulated among the members of both houses of the Legislature and will be sent to the executive.

### Harriman's Biggest Squeeze.

The Union Pacific preferred deal- was built on the architectural lines that seem to have been a hobby with the financiers of the Equitable. Of all the schemes that "James J. Hyde and associates" used in squeezing from \$15,000,000 to \$20,000,000 out of the syndicates connected with the clety, this was perhaps the boldest point of execution and the greatest in scope and in the personnel of the talent nplicated in the deal.

This is the deal that led Harriman to use all the leverage at his command to stiffe inquiry, and is the transaction that is considered the fundamental cause of the whitewash by the Frick committee, the whitewash by the Frick committee, the lukewarmness of the Hendricks investigation and the attempt to thwart a probing by the State Legislature. During his imputry Hendricks consistently refrained from following up leads connected with the deal that might cause embarrassment to the Harriman clique of capitalists, and in consequence its innermost details are unknown.

### DEPEW'S FEELINGS ARE HURT

Insists He Resigned and Says Made Sacrifice for Equitable.

CHICAGO, July 15.—(Special.)—A pecial cablegram to the Daily News

special cablegram to the Dally News from Paris says:

Schator Depew, who left for Aix la Chappelle, made the following statement to your correspondent:,

"There seems to be some confusion about my resignation as counsel to the Equitable. Paul Morton cannot deny that: I called before salling and placed my resignation in his hands but I my resignation in his hands, but I have made no statement that I resigned as Equitable director. I still hold that office and propose to keep it. Reports that I agreed to make good any possible Equitable loss through the Depew Improvement Company are completely false. No loss was foreseen. I would not have done so in any case. My role from beginning to end in con-section with the Equitable will bear thorough investigation. When I get

home. I may make a statement which will show that my relations with the Equitable were not only honorable, but even involved self-sacrifice."

Depew is deeply wounded by the assertions printed on this side regarding the Equitable row. It cause the first tain on his public character. "I do

## FLEES FOR LIFE HALF-GLAD

LODGER DRIVEN FROM ROOM AT NIGHT BY LANDLORD.

Because Pfeiffer Could Not Pay Rent, Davis Pursues Him Through Streets With Razor.

At 2 o'clock this morning Bruno Pfeiffer was forced to run for his life from 460 Northrup street, where he has lodgings, to First and Morrison streets, devoid of with fear, he was taken into custody by Special Officer Austin and conducted to the police station, where he told his story, Pfeiffer rooms with Joseph Davis at the address mentioned. Davis runs a restaurant at Eleventh and Northrup streets,

Pfeiffer owes Davis room rent, and this has been the cause of trouble between them. Last night they had a heated discussion over the matter. At 11 o'clock Pfeiffer went to bed. He was awakened by a crash about I o'clock this morning. Davis and his wife had-broken down the struck a light, while Davis approached the bed with a razor in his hand. Pfeiffer rushed past Davis, who, he says, struck at him with the razor, sprang through a window and ran screaming down the street. Davis left the house and started way. He was trying to find the police station, but missed his way, and finally brought up at First and Morrison streets. Save for the undershirt, he had not a stitch of clothing on him. He was physically exhausted.

exhausted. cer Austin obtained some clothes for Pfeiffer and then took him to the station, where he told his story. He is wn to the police as a hard-working and honest man. He has not been able to pay rent because of hard luck in get-

Before Pfeiffer was taken to the station several calls came into the police station from the vicinity of .440 Northrup street, stating that there was trouble there. Officer Kellar was sent to investigate. The reports were that Davis was intoxicated and attempting to clean out

### Dew Promoted to Lapwai.

OREGONIAN NEWS BUREAU, Wash

# E. F. BERT TRIES TO KILL HI**m**self

**Baseball Magnate Aims** Pistol at Heart.

### DIE OF THE WOUND

Crazed by Pain, He Tries to Deaden It by Drink.

### TERROR OF OPERATION

Well-Known San Francisco Lawyer Tells Tale of Attack by Burglar When Found Lying in His Home.

SAN FRANCISCO, July 15 .- (Special.)-Eugene F. Bert, the well-known lawyer and baseball magnate, shot himself at his home, 1423% California street, at 7 this morning, and is in a critical condition. The mystery surrounding the shooting was cleared tonight by Andrew J. Clunie, an intimate friend of Bert, in a statement made to Captain Burnett, of the police detective department, that Bert, in a fit of temporary mental aberration, due to illness and the dread of a critical operation, had attempted to take his

At first it was thought that the wound inflicted by the half-crazed man was not serious, and Bert might recover, so an effort was made to hush up the affair, but as the day passed and Dr. Guy Manning, who had been summoned to attend Bert, saw that his condition was becom ing very low, and death might result, it decided, upon second thought, state the facts to the detectives and by admitting the truth save the police a f-uitless investigation. It was then that Andrew Clunie went to the Hall of Justice and volunteered the information that Bert had attempt suicide.

### Bert Sticks to Burglar Story.

Still low as Bert was, late at night, he victim of a robber, whom he confronted at the back porch of his flat. When Detective Ed Gibson went to Bert's hor in the afternoon to investigate the shooting, that up to that time had been care fully guarded from publicity, he was in formed and led to believe that the wounded man had been attacked by a startled burglar on the porch. Gibson reported to him, with an apparent correctness of detail which could hardly be doubted.

The captain of detectives was arrang-

ing for dealing with a mystery and to put the machinery of his department in motion with a hope of discovering a clue to the murderous burglar, but Clunie intervened in time to save himself and the family of Bert from the disagreeable charge of deceiving the police,

From the statement of Clunic, Bert has suffered intense agony for ten days from his trouble, and the mental strain over the operation which he was told was absolutely necessary to save his life. He had to give up active work and stay at home under the care of his wife. Fri day night, however, he could stand the strain no longer, and he went down town and buried his troubles in drink.

### Comes Home at Midnight. Bert returned home after midnight

and told his wife that he had been followed by two men. He was excite! and insisted that the men meant him | corn crop will be tremendous

#### harm and he fancied he heard them outside the house. His mind dwelt or this for some time, but he finally went to sleep.

About 7 o'clock this morning Bert teard a noise on the back porch and rot up to investigate. Mrs. Bert heard shot and running to the door found er husband lying on the floor with

bullet wound in his left breast. He declared to his wife that he had been shot by a burglar, Mrs. Bert immediately telephoned to Clunic and summoned Dr. Guy Manning. The latter at first believed that the wound was not serious and that the injured men would recover.

### Bullet Aimed at Heart.

That the bullet was aimed at the heart was apparent to the physician and Mrs. Bert, for it entered the breast above the left nipple, and, passing through the left lung, came out under the left abdulder blade. The bullet was of 38 caliber, and having been fired from a rifled barrel, it revolved, tearing a probably fatal wound through the lung. In his statement to

Captain Burnett, Clunie said:
"Bert and I have been intimate friends for a long time, and after this affair it was at my recommendation that nothing was said about it to the police or press We thought that, as the doctor did not a first have any fears for his patient, we had better keep the shooting quiet, and if Bert should recover, nobody would be the wiser. But when the doctor changed his mind and told us that Bert was likely to die, I concluded to give the facts to the

police and press. "For some months Bert has suffered terribly, and sometimes he said he could hardly stand it much longer. He was under the treatment of Dr. Gallwey advised him that an operation would soon be imperative, and the sooner it was held the better.

Agony Was Intense. "About ten days ago he grew rapidly orse, and since then he has been almos. beside himself with intense pain in his home. He stayed at home at the urgent solicitation of friends. He went out last night and did not return until I A. M. He indulged in liquor to overcome his agony.
"July 4, Bert asked Sig Simon to get him revolver, which he said he wanted when roing hunting. Simon bought a cheap pistol from Erin Heringhi, at 129 Powell street, and gave it to Bert. The revolver with one chamber empty was found where

it had been thrown by Bert today. "Dr. Manning gave his opinion that the wound was not serious. Bert told me that a burglar had shot him. I went to the back of the flat and found that the shot could not have been fired from the outside There was no hole in the door, as would have been the case had the shot come The revolver lay on the

floor, and one chamber was empty. . Tale evening Dr. Manning was surorised to notice the development for the worse in the patient, whom he said was in an exceedingly low condition and in grave danger of death. Seeing that it would be futile to try to shield my friend longer. I determined to tell the truth to tce and the press."

### CANAL LABORERS LEAVING

Disgusted With Slow Pay They Take to the Woods.

PANAMA, July 15 .- (Special.)-Owing to dilatory methods of paying laborers, a general exodus of workmen is taking place among the employes of the canal. Rethey cannot get paid, laborers are quitting in scores, and have taken to the woods for bananas and other tropical fruits to

ward off starvation. Unless a speedy change is made in the method of paying wages, the canal will be

### Rain Ruins Indiana Wheat.

INDIANAPOLIS, Ind., July 15 .- (Specountles of Indiana show that continsed rains have prevented almost entirely the threshing of wheat in this state so far. Two weeks ago Indianians apparently had the greatest yield of wheat in many years, but since harvest there has been rain practically all the time. Returns so far indicate a yield. time. Returns so far indicate a yield of 20 bushels to the acre. The Indiana

### PAIN DRIVES TO ATTEMPT TO END LIFE



EUGENE F. BERT, OF SAN PRANCIS TO PRESIDENT PACIFIC COAST BASE-BALL LEAGUE.

### BIGGS TESTIFIES FOR DEFENSE

Vigorously Denies Any Thought of Fraud.

### HOLDS TIMBER DEALS LEGAL

Advised Dr. Gesner, He Says, When Consulted.

### WILLIAMSON NOT A PARTY

Witness Tells a Connected Story, but Is Slightly Tangled During Mr. Heney's Rigid Cross-Examination.

This coming week, unless some unforeseen accident should occur, will see the end of the Representative Williamson, Dr. Van Gesner and Marion R. Biggs trial. Yesterday Marion Biggs, who is the United States Land Commissioner, took the stan in his own behalf, and when Judge De Haven adjourned court until Monday norning, he had Assed through the hands of the District Attorney. On the whole, he made a fair witness for himself and the two defendants charged jointly with him in the alleged conspiracy. Under the skillful hands of Attorney Wilson, Biggs told a plausible story, but District Attorney Heney, during the course of an extremely rigid cross-examnation, tangled the witness up several

From the beginning of his testimony to the end, Biggs contended that he was innocent of any wrongdoing, and he denied wing any part in the alleged conspiracy of suborning entrymen to commit perjury. One of the most important features developed during his cross-examination, when District Attorney Heney attempted to get from the witness his knowled, the Williamson-Gesner deal in school had stated in his direct testimony that he dld not know what Boggs' bus although he occupied his office for a short time. Mr. Heney brought out the fact that Boggs was employed by Willi and Gesner in getting something like 13,000 acres in the Blue Mountain reserve. Judge Bennett objected to bringing in this estimony, and also objected to questions asked of the witness regarding the two claims that Biggs and his wife filed upon. Both objections were sustained by

### Hency's Clever Questioning.

Mr. Heney, by clever questioning, mantight places, and he forced him into maksive. When he denied that he knew what Boggs was doing, notwithstanding that both were in the same office, and when he was confronted by the District Attorwith his own statement upon stand that he had never dreamed that Representative Williamson was interested in the lands of which Dr. Gesner was seeking to obtain the pasturage, and on rial.)-Reports to the News from all which he was lending money, he became palpably confused and worried. Mr. Heney pressed him very close on this point called his attention to the checks he had received in December, one amounting to system, and the other for something like 2800. Biggs stated that he had not examined the names on the check, and refused to admit that a little thing like the triple signatures of Williamson, Wakefield and Gesner would have attracted his

> Another question of Mr. Heney's which worried the witness was the fact that he could see nothing suspiclous when so many entrymen were filthat same firm was lending the entrymen money and taking mortgages on the land at the same time. Biggs remarkably gool under the constant fire of questions, and in spite of the incredulous smile which came over Dismade some of his answers, he bore well. He denied that he noticed the sudden influx of entrymen which ca to his office to file on claims for one single firm. Neither did it occur to him that there was anything irregular gages and received checks in payme for the filing fees from Mr. Gesner. Counsel for the defense took up

names of each entryman in turn who

asked Biggs if he had sent them to Dr. Genner. He said that he did not remember having sent any one to the woods, and as each name was mentl ed by Attorney Woods, Birgs made the same reply. Mr. Wilson asked the witwas acquainted with the contents of at the time of filing, and Biggs answered that he had read the oath to Hudson and believed that Hudson ki and understood its meaning. He also denied that he had told Hudson to destroy the notes and mortgage so that they might not be found in case an in-spector put in an appearance. Biggs admitted having once told Hudson, just before the coming trial, that "If the ferson Evans that he thought he could get money from Dr. Gesner, but he desied having told him that he had better get the money from this source.

(Concluded on Page 15.)