

NEW TRIAL FOR JOHN H. MITCHELL

Judge De Haven Denies Motion of Defense.

NO ARREST OF JUDGMENT

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.

The motion for a new trial will be denied.

"Is the defendant in court?"

Senator John H. Mitchell was not in court when Judge De Haven pronounced the verdict 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 the Senator, had he been in court, it is believed from the fact that he asked if "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 bill of exceptions, and he was given 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 Heney, so that he might in turn have his answer 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 would 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 by those who had followed the trial 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, owing to a press of work that he had on hand, that it had been impossible for him to prepare 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 examined "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 aside that decision, yet the court did not feel justified in doing so.

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 testimony. 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 that statement. Judge De Haven's decision in full follows:

Judge De Haven's Decision.

Since the submission of the pending motion for arrest of judgment and for a new trial in the case of the United States vs. Mitchell, No. 3900, my attention has been drawn to the fact 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 Mitchell was before the late Judge Bellinger, 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 that the court at the present time has jurisdiction to set aside that decision, I have concluded that it was wrong, still the court would not be justified in setting aside the conclusion reached by him unless it was made to clearly appear that there was error then committed; and that will be sufficient for the present purpose to say that I am not so entirely satisfied that the conclusion reached by him was erroneous as to justify me in setting his decision aside.

The other matters set forth and urged for arrest of judgment do not require any separate consideration.

The motion in arrest of judgment will be denied.

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 some doubt, and against the ruling of the court, much may be urged, is that relating to the commission of other offenses than those named in the indictment; but I am satisfied, upon a reading 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

HARRIMAN TRIES 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 15.—(Special.)—Can Edward H. Harriman dominate the Empire State? This is the cry that echoes throughout the commonwealth today, on the heels of a public uprising that clamors 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 \$10,000,000 to \$20,000,000 within three years.

Hidden secrets far more noxious than the disclosures in the Frick and Hendricks reports, creeping out through the publication 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 trail leads to the millionaire railway magnate, and the fact that it has been abandoned has plunged the state into an uproar. Petition on petition, supported by requests from the State Assembly for an investigating committee, have fallen vainly on the ears of Governor Higgins.

Jerome's Work Thwarted.

District Attorney Jerome has been thwarted in his attempt to secure the transcript that would enable him to take the scandals to the grand jury. So far the entire movement has been blocked—even as the researches of the Frick and the Hendricks investigations were blocked by the mighty leverage of moneyed interests Equitable and politically.

Harriman's Chain of Influence.

Harriman controls R. B. Odell, ex-Governor, and Odell, as chairman of the Republican State Committee, dictates to Governor Higgins. Higgins, in turn, exerts pressure on Hendricks, the State Superintendent of Insurance, a chain of influence that made the Hendricks report a practical whitewash, with the name of Harriman carefully suppressed.

Hendricks Suppresses Worst.

The suppressions in the Hendricks report show the phenomenal influence Harriman, through Odell and Higgins, exerts on the State Insurance Superintendent. 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 smoothening iron over the revelations concerning Senator Depeu.

People Demand Investigation.

Still, Governor Higgins hesitates and refrains from asking for the investigation which would result in articulating "Equitable" skeletons and supplying the knowledge necessary to the drafting of a statute to remedy existing evils. Odell seems to have surrendered to popular clamor. He is now supporting 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 Executive.

Hendricks Stopped Short.

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 mammoth proportions the disclosure might assume. If this trail had been followed by District Attorney Jerome, the latter

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IN 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, 1224 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 own life.

Bert Sticks to Burglar Story.

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

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 449 Northrup street, where he has lodgings. To First and Morrison streets, devoid of all clothing save an undershirt. Crazed 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 3 o'clock this morning. Davis and his wife had broken down the door and entered the room. Mrs. Davis struck a light, while Davis approached the bed with a razor in his hand. Pfeiffer sprang from the bed with a scream, 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 in pursuit. Crazed with fear, Pfeiffer continued to run. Several people made ineffectual attempts to stop him along the 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.

Dew Promoted to Lapwal.

OREGONIAN NEWS BUREAU, Washington, July 15.—William Dew, superintendent of the Elmore Agency Indian school in Wooding has been made superintendent of the Fort Lapwal school in Idaho at a salary of \$1000. Dew will also act for the Nez Perce Indians. He will assume his new post August 1, relieving F. G. Mattson, who has resigned to enter the business world.

HIGGINS WILL NOT BUDGE

Hendricks Covered-Up Magnate's Shadiest Deal.

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.

Next Week the Movement to Force a Message from Higgins in Favor of the Appointment of a Legislative Commission Will Come to a Head.

Higgins refuses to budge an inch. He has been entrenched 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 cabinet. His advice has carried weight with the Governor, and at this time, it is pointed out, any drastic action on the part of the Legislature would upset the plans of Thomas F. Ryan.

Next week the movement to force a message from Higgins in favor of the appointment 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 syndicate connected with the society, this was perhaps the boldest in point of execution and the greatest in scope and in the personnel of the talent implicated in the deal.

This is the deal that led Harriman to use all the leverage at his command to stifle inquiry, and is the transaction that is considered the fundamental cause of the whitewash by the Frick committee, the lawlessness of the Hendricks investigation and the before and after arrangement to the Harriman clique of capitalists, and in consequence its innermost details are unknown.

DEPEU'S FEELINGS ARE HURT

Insists He Resigned and Says Made Sacrifice for Equitable.

CHICAGO, July 15.—(Special.)—A special cablegram to the Daily News from Paris says: Senator Depeu, who left for Aix in Chapeau, made the following statement to your correspondent: "I have resigned as a member of the Equitable. I have made no statement that I resigned as Equitable director. I still hold that office and propose to keep it. My role from beginning to end in connection with the Equitable will be set forth through 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."

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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 stand in his own behalf, and when Judge De Haven adjourned court until Monday morning, he had passed 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-examination, tangled the witness up several times.

Heney's Rigid Cross-Examination.

From the beginning of his testimony to the end, Biggs contended that he was innocent of any wrongdoing, and he denied having 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 knowledge of the Williamson-Gesner deal in school lands in the Blue Mountain reserve. Biggs had stated in his direct testimony that he did not know what Biggs' business was, although he occupied his office for a short time. Mr. Heney brought out the fact that Biggs was employed by Williamson and Gesner in getting something like 13,000 acres in the Blue Mountain reserve. Judge Bennett objected to bringing in this testimony, 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 the court.

Heney's Clever Questioning.

Mr. Heney, by clever questioning, managed to get Biggs into any number of tight places, and he forced him into making answers that were shallow and evasive. When he denied that he knew what Biggs was doing, notwithstanding that both stated in his direct testimony that he did not know what Biggs' business was, although he occupied his office for a short time. Mr. Heney brought out the fact that Biggs was employed by Williamson and Gesner in getting something like 13,000 acres in the Blue Mountain reserve. Judge Bennett objected to bringing in this testimony, 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 the court.

Canal Laborers Leaving

Disgusted With Slow Pay They Take to the Woods.

PANAMA, July 15.—(Special.)—Dilatory methods of paying laborers, a general exodus of workmen is taking place among the employes of the canal. Reports from Culebra indicate that, because they cannot get paid, laborers are quitting in scores, and have taken to the woods for bananas and other tropical fruits to ward off starvation.

Rain Ruins Indiana Wheat.

INDIANAPOLIS, Ind., July 15.—(Special.)—Reports to the News from all counties of Indiana show that continuing rains have prevented almost entirely the threshing of wheat in this state so far. Two weeks ago Indianans 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 of 20 bushels to the acre. The Indiana corn crop will be tremendous.

PAIN DRIVES TO ATTEMPT TO END LIFE

Another question of Mr. Heney's which worried the witness was the fact that he had four times been subpoenaed when so many entrymen were filing on claims for one firm, and when that same firm was lending the entrymen money and taking mortgages on the land at the same time. Biggs was remarkably cool under the constant fire of questions, and in spite of the incredulous smile which came over District Attorney Heney's face when he asked him to state the names of the entrymen who were lending the money and taking mortgages on the land at the same time, Biggs answered that he had read the oath to his office to file on claims for one single firm. Neither did it occur to him that there was anything irregular or illegal when he made out the mortgages and received checks in payment for the filing fees from Mr. Gesner.

Another Question of Mr. Heney's

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Counsel for the Defense Took up the Names of Each Entryman in Turn

Counsel for the defense took up the names of each entryman in turn when he testified for the Government, and asked Biggs if he had sent them to Dr. Gesner. He said that he did not remember having sent any one to the woods, and as each name was mentioned by Attorney Woods, Biggs made the same reply. Mr. Wilson asked the witness if he knew whether Henry Hudson was acquainted with the contents of the sworn statements that he had made at the time of filing, and Biggs answered that he had read the oath to his office to file on claims for one single firm. Neither did it occur to him that there was anything irregular or illegal when he made out the mortgages and received checks in payment for the filing fees from Mr. Gesner.

Biggs Admitted Having Once Told Hudson

Biggs admitted having once told Hudson, just before the coming trial, that "if they clinched one they would clinch us all." Biggs admitted that he thought he could get money from Dr. Gesner, but he denied having told him that he had better set the money from this source.



EUGENE F. BERT, OF SAN FRANCISCO, PRESIDENT PACIFIC COAST BASEBALL LEAGUE.