THE SUNDAY OREGONIAN, PORTLAND, FEBRUARY 4, 1912.



(Continued From First Page.) jurors, who had been in the constant custody of a builiff since January 23, entered the courtroom and took their seats in the improvised jury box. This was significant from the fact that in other than a favorable disposition of the motion, the members of the jury would not have been permitted to be present

First Points Decided Against. There was nothing in the voice of

of Judge Kavanaugh as he manner began his delivery that gave the slightest suggestion of its effect. Taking up the three grounds on which the defense based its application for an instructed verdict, he discussed each separately. First of the points raised by the defense was that the statute of limitations had run against the felony slieged. This was disposed of by the court adversely. . The same dis-position was made of the second reason saigned by the defense. It complained

***************** CRONOLOGY OF WILDE CASE.

May 7, 1907 .- Date of alleged em-June 30, 1911 .- First indictment,

alleging \$90,000 embersiement, re-July 12-August 1, inclusive .-- Pro-ceedings for extradition of Wilds

pending before Governor Johnson, of California.

August 3, 1911 .-- Wilds returns to Portland. August 22, 1911 .-- Corrected indict-

ment substituted for original. August 25, 1911 .- Demurrer to in-

dictment overruled. August 25, 1911,-Wilds entered

plea of not guilty. December 23, 1911.—State furnished

defense with bill of particulars. December 23, 1911.-Indictment returned charging Wilde and Morria with embezziement of \$12,500 on another deal

January 1, 1912 .- Offices of District Attorney Cameron and Special Prose-cutor Clark robbed.

January 9, 1912 .- Special Prosecutor Clark mysteriously shot at Salem. January 12, 1912.-Case called for trial before Judge Kavanaugh January 25, 1912.-Jury completed. February 1, 1912.-State rests.

February 1-2, 1912 -- Motion for in-

structed verdict argued and sub-

February 3, 1912 .- Motion granted

of a material variance between the al-

SAN DIEGO PROMOTER ACQUITTED OF EMBEZZLEMENT ON INSTRUCTION OF JUDGE KAVANAUGH.

LOUIS J. WILDE.

actively interested in the case who was not present when the decision was giv-en. The instant the result was learned, en. The instant the result was deal not. E. Plowden Stott, partner of Mr. Ma-larkey, who was ill at his home, tele-phoned the news to his associate. As the jury filed out of the court-room, Mr. Wilde met each juror with a warm handshake and a hearty "thank war". Mrs. Wilde size shock hands

you." Mrs. Wilde also shock hands with most all the jurors. The fact that some of the jurors.

The fact that some of the picture joined in the applause following the announcement of the court's decision was not entirely a demonstration on their part that they were elated over the conclusion of the case, as was learned from the 12 men themselves.

But One Against Wilde.

The fact is that when the opening statements to the jury had been made, setting forth the line of prosecution and the contentions of the defense, the ing the concluded it to i for the defendant. Before the state had concluded its. case, the jury was a unit for the ac-guiltal of Wilde and would have re-ported such a verdict if the case had been submitted to them at the conclu-tion of the state's case without any sion of the state's case without any testimony being offered by the defense. It was a singular coincidence that Judge Kavanaugh selected Mr. Tanner Judge Ravanaugh science al. analysis as foreman of the jury, for it was Tan-ner who was the twelfth man to join his associates in the belief that Wilde was not guilty of the crime charged. Just what influenced the jurors in

reaching the conclusion they did probreaching the conclusion may do pros-ably will never be known except among themselves, for, other than to admit "we were virtually a unit for acquittal from the start," none would say any-thing of his deliberations with the other 11 men.

Special Prosecution Disliked.

After the jury had been dismissed, however, part of a conversation be-tween two jurors was overheard, in which one remarked that he did not like the idea of a "special prosecutor" appearing in the case and virtually conducting the prosecution, even though he was ably assisted by a dep-uty from the District Attorney's office.

owing his acquittal, and signed by the ecretary of the Newsboys' Association,

follows: "We, the newsboys of San Diego, send our congratulations." Having business affairs to attend to. Mr. Wilde and his lawyer, Mr. Sumner, will remain in Portland for several days before returning to San Diego.

Seven Lawyers in Case.

For the state, the prosecution of Mr. Wilde was conducted by District At-torney Cameron, Deputy District Attor-ney Fitzegrald and A. E. Clark, who was, employed as special prosecutor. Dan J. Malarkey was chief counsel for the defense. His associates were Jay Bowerman and Warren E. Thomas, of this city, and Charles E. Sumner, of San Diego.

Diego. The jurors selected in the case, and who, according to their own admissions, would have returned a verdict of acquittal had the case been submitted to them, consisted of:

Hem, consuted of: H. M. Callwell, bill clerk Wells Fargo & Co., 309 San Rafael, J. H. MacDonaid, contractor and builder. 1070 East Forfieth South. O. F. Rampe, lineman, East Eighty-sixth and Rase Line road. Martin Sattler, contracting painter, 422

Mearthur, merchant, 4106 Sixtleth

W. O. Eaton, real estate broker, 78 East Sixteenth. F. E. Jackson, commercial traveler, 1282

Beimont. I. A. LaJoie, wholesale jeweier, 1251 East Morrison. Charles A. Kalus, retired, 140 East Forty-

seventh. J. H. Tanner, accountant, 520 Weidler. L. C. Batchelder, assistant foreman Amer-ican Car Company, 505 Borthwick. R. H. Raudolph. contractor and builder, 4903 Thirty-second avenue Southeast.

The text of Judge Kavanaugh's de-cision follows:

Limitation Period Not Run.

timitation Period Not Run. At the conclusion of the state's case the detendant interpresed a motion for a direct-et of the state of the state's case the state separate grounds: The state of the state of limitations had not before this indictment was returned to be the state of limitations. The state of the state of limitations are stated by the state of limitations. The state of the state of the indictment we be proof offered and that the indict-trate article of the property which it is allow the state of the other to be the state of the property which it is allow the state of the state of the the crime of the forther work of the state the crime of the state and. Third, that the facts proved, or tended to be crime of embed and that the indict the crime of embed and the stress was tail on the size ground, upon the fact that al-most five years had elipsed since the crime state alleged to have been committed, and that the picod the defondant at a group the defondant at a stress the direct of the strend the une within

is unique and lawyers hesitate to express themselves regarding it. So far as the records are concerned. Morris stands before the court a self-confessed stands before the court a self-confessed embezzier. He pleaded guilty to the in-dictment in which he and Wilde were which this indictment might be returned.

ACQUITTED PROMOTER THANKFUL, ATTORNEY BOWERMAN EXPRESSES VIEWS, PROSECUTOR IS SILENT.

Louis J. Wilde-Knowing my complete innocence and having confidence in the Oregon courts and juries, I never at any time expected any result except a verdict of acquittal and a complete vindication. Naturally I am deeply grateful that this unpleasant ordeal is over with. I have nothing to say now con-cerning those who brought about this prosecution. The victory achieved in this decision by Judge Kavanaugh and the further assurance on the part of the jury that their verdict would have been the same, is as complete a vindication as any innocent man could hope to receive. I am truly grateful to my friends who have stood loyally by me throughout this trial which naturally has been trying and burdensome. To the disinterested public I wish also to say I am

conscious of and appreciate the fair and impartial judgment which it has passed on this case. Jay Bowerman, of counsel for the defense-Before the commencement of this

prosecution no court had ever held that transactions similar to those for which Mr. Wilds was indicted constituted any crime whatever. Like transactions are matters of everyday occurrence and yet the most scalous prosecutors in the Eng-lish-speaking countries have never so far as recorded decisions as evidence that they see fit to brand as a folm any man who has done all the things with which by Wr. Wilds are abared. which Mr. Wilde was charged. A most careful search through the reports of the decisions of all the courts of the United States and all the British reports all the standard text writers fails to reveal even one decision or textand all the standard text writers rais to reveal even one one one which even indicates that the facts relied upon by the prosecution were ever considered a crime. As attorneys we are conscious that Judge Kava-naugh fairly and fearlessly discharged his plain duty. As one of Mr. Wilde's representatives, I also appreciate the cordial assurance given by the members of the jury that they indored the decision by Judge Kavanaugh and that they would have returned a verdict of not guilty at the conclusion of the state's eviwould have returned a verdict of not guilty at the conclusion of the states of denoe had the case been submitted them. The jury wase made up of good, sub-stantial and average citizens of this county. I regard the fact that the jury as business men unanimously concurred with Judge Kavanaugh's legal opinion in the finding that Mr. Wilde committed no crime is conclusive evidence of the complete justness of the legal principles involved and the correct interpretation of those principles by the presiding judge.

of those principles by the presiding place. District Attorney Cameron, representing the prosecution, declined to discuss the decision of Judge Kavanaugh. Neither would be intimate anything regard-ing the plans of the prosecution as to the remaining indictment against Mr. Wilde. In this indictment Wilde is charged jointly with Morris with the alleged embezziement of \$12,500 of the funds of the Oregon Trust & Savings Bank, growing out of a settlement between Wilde and the National Securities Company for whom he was acting as sgent.

embernied, there are a great number of au-thorities that support the contention of the defense and perhaps a less number that sup-port the contention of the presecution. There is a very instructive Ohio decision upon this subject which supports directly the conten-tion of the state. Embearlement Not Shown.

Embealement Not Shown. In this case the defense demanded and received a bill of particulars which i must sature, since there was no complaint to the contrary, identified the particular transac-tion which was the subject of dispute. We have provisions in our statute that no the accuracy in the indictment should be deemed material unless it has actually misled the diverse party to his injury, and in view of this bill of particulars and these statu-tory provisions I think the second ground. The motion should also fail. The third ground, that the facts proved the motion should also fail. The third ground, that the facts proved the motion should also fail. The drawn from them, do not constitute has proved to be a much more serious quest. ...

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of more modern business methods. Origin of Law Cited. It occurred once that a bank clerk ab-stracted some of the money which came into his possession, and upon trial in the English Courts he was acquitted for the reason that the old common-law crime of larceny in-volved the principle of treepasse or unlawful gaining of possession, and be could not be convicted because the money or other property came lawfully into his possession. Following that decision, an act was passed, the first act of emberalement in English, and that, from time to time, has been enlarged in the course of the English practice. In this country, our crime of onbezzle-

In this country, our crime of embessie-ment is purely statutory, and the different statutes are almost as various as the different states.

Oregon Laws Not Broad.

Oregon Laws Not Broad. . The Federal statutes upon this subject and the statutes of many state which I have ex-amined, are much brander in their terms than the statute of the State of Oregon. In our time and quite recently we have found that the statute of this state was not suffic-lently broad to cover many questions that arose So it has been amended to include the concrete case, and related cases, of an insur-ance agent who collected premiums in which he had a commission interest, for the reason that he sould not be convicted under the old statute because the insurance com-pany was not the sole owner of the prop-erty. Another question arose about the ming-ing of the property of the accused with the property of the owner, and this has been provided for by amendment.

provided for by amendment. There are some general expressions in the sutharities where they attempt to define em-bendement, that it includes all wrongful appropriation by a servant of the property of the master, and these expressions would seem at first to be sufficiently broad to cover the facts of almost any case where a serv-ant directly or indirectly had betrayed his reast relation. trust relation

Offense Not Indictable.



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and the proof offered by the state. It was when Judge Kavanaugh reached the third and last ground urged by the defense in support of its motion that the effect of the decision was learned. With breathless attention was the remaining and deciding part of the dectation received.

Jury Members Applaud.

At its conclusion there was a pause for an instant and then the audience and at least four members of the jury, Messra. Kalus, MacDonaid, Randolph and Tanner, applauded earnestly. The demonstration continued for a few sec-ends, neither Judge Kavanaugh nor Balliff Scott attempting to restore order. Bailiff Scott attempting to restore order. Mrs. Wilde and her constant com-panion and inlimate friend, Mrs. Sum-mers, of San Diego, wife of associate counsel for Mr. Wilde, neither of whom had missed a session of the court since the trial began, no longer were able to repress their feelings and wept for tor.

joy. "Mr. Thomas, you will please prepare a verdict in accordance with the court's decision," said Judge Kavanaugh, ad-dressing Warren E. Thomas, associate counsel for the defense.

counsel for the defense. The "not guilty" verdict was pre-pared by Mr. Thomas who handed it to Judge Kavanaugh who immediately designated J. B. Tanner as foreman of the jury. He signed the document which was then read by Court Clerk Pields.

Throughout the examination of venire men in selecting the jury and in the subsequent cross-examination of the state's witnesses, Mr. Malarkey, of subsequent cross-examination of the state's witnesses, Mr. Malarkey, of counsel for the defense, overlooked no opportunity repeatedly to remind the jury of the presence of a "special prose-cutor," and the fact evidently had something to do in developing the opin-tons of the jurors respecting the case

ions of the jurors respecting the case and its merits. The action of Judge Kavanaugh in directing the jury to return a verdict acquitting Mr. Wilde finally disposes of that particular indictment against Wilds. The original indictment in the case, however, is still on file, but its dismissal is merely a matter of form.

Another Charge Pending. The indictment on which Mr. Wilde

was tried was an amended and cor-rected copy of the original, the only difference in the two being that the first charged Wilde and Morris with

being officers of the Oregon Trust & savings Bank, while the one on which Wilde was tried charged that Morris was an officer of the bank and that Wilde aided and abetted him in com-mitting the emberglement.

mitting the embersilement. There is pending against Mr. Wilde another indictment in which he and Morris are jointly charged with em-bersiling \$12,500 of the funds of the Ore-gon Trust & Savings Bank in connec-tion with another telephone bond deal.

Fields. Mr. Malarkey Not Present. Judge Kavanaugh followed the read-ing of the verdict by formally discharg-ing Wilde. The court also dismissed the jurymen, after thanking them for their patience and faithful service un-der the circumstances, which required that they be kept together during the progress of the trial. Dan J. Malarkey, chief of counsel f- the defense, was the only lawyer

JURORS SIGN TESTIMONIAL PRAISING WILDE AND PLEAD WITH HIM TC MAKE PORTLAND HIS HOME.

immediately after returning their verdict of not guilty under instructions from Judge Kavanaugh, each of the 12 jurors in the Wilde case affixed his signature to a strong testimonial expressing his confidence in the integrity of Mr. The same testimonial embraced a hearty invitation to Mr. Wilde to Wilde. rmanently in Portland, with the assurance that at all times he would have the "hearty interest and co-operation" of the signers.

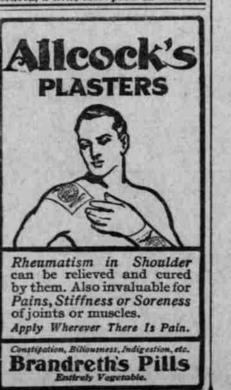
In affixing their signatures the jurors inclosed their names within a brace and added this notation on the margin: "Jury. Our own verdict." The testi-monial, which was submitted to the members of the jury by H. E. Gilbert, a. close personal friend of Mr. Wilds, was prepared and circulated among Port-land business men prior to the commencement of the Wilds trial. The text of the testimonial follows:

"As citizens who are proud of the growth of Portland and glory in its fair name and fame, we emphatically protest against any and all attempts prejudice or poison the minds of our people against Louis J. Wilds, who is one of California's most highly respected and representative business men. We believe he has been wrongfully taken from his home, family, friends and business affairs and brought here for political and mercenary purposes. We be-lieve the charges brought against him were unjust and malinious and should not be tolerated by any reputable and self-respecting community. We understand that Mr. Wilde was never at any time an officer or director of the Oregon Trust & Savings Bank and had nothing to do with its management in any way. All his transactions with it appear to be open and above board and he was commended by our best citizens for his untiring efforts and his financial skill which enabled the depositors to realise the money they have received and we believe that had the liquidation been conducted as outlined by Mr. Wilde not a depositor would have lost a dollar. We invite new blood and capital to come to our city to build homes and establish business and we know that Mr. Wilds would be an invaluable asset to any community. Deploring the attacks that have been made, we now, in order to show our perfect confidence in his integrity, request him to make his home in our midst, with the assurance at all times of our heaving interest and co-operation."

<text><text><text><text> jointly charged with embeaulement of the \$00,000 and became a witness for the state against Wilde. It was ad-mitted at the outset of the case that before Wilde could be convicted. Mor-ris would have to be proved guilty of the embezalement independent of his the embezziement independent of his confession. It is admitted by some law-yers that while Morris could be proved guilty of embezziement without involv-ing Wilde, the fact that the court held the evidence produced by the state in the Wilde trial did not prove that the orime of embezziement had been com-mitted by him at all, leaves a serious tooth of the status of Morris. It is doubt as to the status of Morris. It is true he pleaded guilty to the embezaletrue he pleaded guilty to the embeand-ment. At the same time the state, ac-cording to the decision of the court, failed to prove that an embeariement had been committed so far as Wilds was concerned. The situation as to Morris raises what is believed to be a condition that was never before pre-sented in the courts of this state.

Congratulations Storm Wilde.

Congratulations Storm Wilde. Within a few hours after Judge Kav-anaugh had announced his decision yes-terday afternoon, Mr. Wilde was in re-ceipt of approximately 100 telegrams of congratulation from friends in San Diego and other Southern California cities. Of the large number received, he places an especial valuation on one forwarded to him by the newsboys of San Diego whom he considers his forwarded to him by the newsboys of San Diego, whom he considers his chums. Annually on Thanksgiving day and Christmas, during his residence in San Diego. Mr. Wilde has given these lads a turkey dinner, and at no other time in the year has a deserving news-boy's wants not received immediate and substantial response from the banker-promoter. The telegram prized so high-ly by Mr. Wilde and forwarded from San Diego at 3:46 o'clock yesterday af-ternoon, a little more than an hour fel-



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not guilty. (Applause.) Genilemen of the jury, you are instructed now, in view of these considerations, to re-turn a verdict of not guilty as to this de-fendant.

Lane County Pioneer Dies.

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SPRINGFIELD, Or., Feb. 3 .- (Spe-



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cial.)-Benjamin G. McPherson, a pio-neer of Lane County in 1853, died at his home here today, aged 67. He crossed the plains with his grandfather and settled first in Marion County, but

