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HENEY'S CASE AGAINST SCHMITZ REVERSED

APPELLATE COURT OF CALIFORNIA GRANTS GRAFTER MAYOR FREEDOM

ERROR IN INDICTMENT SAVES FORMER MAYOR

Prosecution Seemed to Fear Something Would Happen When the Defendant Changed His Lawyers—District Attorney's Office Much Provoked by Decision—Will Re-arrest Boodler.

San Francisco, Jan. 9.—The district court of appeals this morning handed down a decision not only reversing the case of ex-Mayor Eugene E. Schmitz, convicted of the crime of extortion and sentenced to serve five years in San Quentin penitentiary by Judge Dunne, but ordering the trial court to sustain the demurrer of the defendant upon the ground that the indictment did not state a public offense or an unlawful injury, and ordered that the defendant be discharged upon this indictment.

It is probable that as a result of the decision Schmitz will never again be tried upon any of the extortion indictments and that the other four now resting against him will be dismissed in the near future.

He will probably be rearrested on indictments on other counts.

There was not much consternation at the district attorney's office, but it was plain to be seen that the prosecution was out of sorts over the decision, as it will mean a tedious retrial. The office had frequently hinted that there was likelihood of "something going wrong," as there was sudden shifting of the lawyers of the defense toward the time for arguing the appeal.

Schmitz was tried for extortion in the cases of the French restaurants. He was accused of receiving part of the boodle money collected by Abe Ruef, and Ruef, in rebuttal of the defense's testimony, was put on the stand and told the story of having given Schmitz his share of the graft collection.

During the trial it was generally feared that Judge Dunne sustained Heney too often and came dangerously near to the line of prejudice. The evidence in the case, however, seemed conclusive of guilt and the jury promptly returned a verdict of guilty. The defense then drew up their papers to present before the appellate court, alleging prejudice and errors in objections upheld by the superior court.

The French restaurant case upon which Schmitz was tried was only one of the many indictments against him and probably the weakest; at least Heney had said that he believed it so.

Although not willing to give an interview on the case until he could get the complete text of the decision, Abe Ruef was apparently pleased at the news.

Whether or not the decision of the appellate court will in any way affect the standing of Abraham Ruef, who pleaded guilty to the same charge upon which the appellate court has ordered Schmitz to be set at liberty cannot be stated.

Ruef Has Chance.

However, the fact remains that Ruef has pleaded guilty to an act which the appellate court has decided is not criminal in its nature and the only point to be decided is whether or not in pleading guilty Ruef forfeited all right of appeal. Ruef at the time he pleaded guilty to the charge declared his innocence of any crime, but admitted that he was willing to plead guilty.

The decision of the appellate court reverses nearly every important ruling made by Judge Dunne during the trial of the case.

Before entering into the merits of the case the appellate court first denied the motion made by the district attorney's office to dismiss the appeal upon the technical ground that it was prematurely filed before the entry of the judgment had been made. One of the first grounds given by the court for the reversal is the fact that Judge Dunne allowed the prosecution to peremptorily challenge certain jurors after they had successfully passed their examination at the time the box was filled.

Biggy Prejudiced.

The refusal of Judge Dunne to allow the attorneys for the defense to make a showing to the effect that William J. Biggy, the elisor, appointed to take charge of the jury, was prejudiced against the defendant, was declared to be entirely erroneous.

"Fair dealing and the right of the defendant required that he should be heard upon this proposition," is the way in which the decision reads.

Another strong reversal was upon the mass of hearsay evidence admitted by Judge Dunne. Especially was this so in regard to the testimony of Loupy Blanco, Malfanti and Debret, the French restaurant keepers, who claimed that Ruef and Schmitz had blackmailed them.

Another point made by the appellate court was the fact that Judge Dunne allowed the prosecution to ask Schmitz during his cross-examination whether or not he had received any part of the $5,000 fee which the testimony had shown, had been give nto Ruef by the French restaurant keepers.

"The cross-examination was entirely improper," the decision says, "and especially so in regard to the question addressed to the witness, Ruef, in regard to whether or not he had ever given part of his $5,000 fee to the defendant. It was not confined to the matters upon which the defendant had been examined during his direct examination."

The court here refers to that section of the penal code which declares that a witness when taking the stand in his own behalf can be cross-examined by the prosecution only in regard to all matters upon which he testified on direct examination.

In regard to Judge Dunne's refusal to allow the defendant's attorneys to cross-examine Ruef in regard to his alleged immunity bath, the court has the following to say:

Cross-Examination.

"The rulings in regard to this cross-examination were erroneous and highly prejudicial to the defendant. The defendant could not have been convicted upon the testimony of Ruef without corroborative evidence, and it was not fair to the defendant to refuse to allow him to investigate the motive of the witness."

Taking up the question in relation to the validity of the indictment which perhaps is the most important portion of the decision, the court absolutely knocks out all contentions made in regard to the validity of the indictment. It not only holds that the indictment is insufficient upon the ground that it did not show that the specific injury threatened was an unlawful injury, but also that the indictment does not state a public offense.

"The judgment and order of conviction are hereby reversed and the trial court is directed to sustain the demurrer to the indictment and discharge the defendant upon this indictment," are the closing words of the decision which was written by Presiding Judge Cooper and concurred in by Associate Justices Hall and Kerrigan.

It must be borne in mind that the state appellate court is regarded by many as a Herrin machine.

HEALY ESPOUSES HOME RULE

(Special Dispatch to The Journal.)

New York, Jan. 9.—A Dublin cable says: Timothy Healy, Irish Nationalist, member of parliament, declares that there is absolutely no help for Ireland until she is separated from England. Mr. Healy says that all of the relief measures formed for the betterment of conditions in Ireland have proved more or less of a failure and that the country is just as oppressed and harrassed with objectionable laws as ever. Ireland's safeguard lies in her ability to govern herself and this she can do and do well. The Irish race is masterful in all of its accomplishments and wherever an Irishman goes, unhampered by the bonds of thralldom, he makes a mark for himself.

In America Irishmen have shown their power to govern well, have made great lawyers, fine business men and brave and patriotic citizens.

SECOND HOMESTEAD BILL GIVEN BOOST

(United Press Leased Wire.)

Washington, Jan. 9.—The senate committee on public lands has authorized a favorable report on the "second homestead" bill which is a step interesting to every state where public lands are located. The bill permits a homesteader who makes an unsatisfactory location through a mistake to make another entry providing he has not relinquished his claim.

ANXIETY FELT FOR SCHOONER

The Lucy, Captain Petterson, Out 42 Days for Umpqua.

(United Press Leased Wire.)

San Pedro, Cal., Jan. 9.—Anxiety is felt for the safety of the schooner Lucy, Captain Petterson, now out 42 days from this port, bound for the Umpqua in ballast.

The schooner Caroline, which left this port at the same time as the Lucy, has since made a round trip, and is once more on her way north to load. The last report from the Lucy came several weeks ago when she was sighted by the Caroline off Umpqua, as the latter was bound south for San Pedro.

Since that time terrific storms have prevailed off the Oregon coast and it is possible the Lucy may have been blown many hundred miles to sea.

U. S. SENATOR CLARK'S OFFICE FURNITURE ATTACHED BY MINER

(United Press Leased Wire.)

New York, Jan. 9.—W. A. Clark, former United States senator from Montana, owner of the richest copper mine in the world, part owner of the Los Angeles & San Pedro railroad, and several million dollars' worth of other things, was served with a writ of attachment on his palatial office furniture here to satisfy part of a judgment of $44,894, which Mining Expert George Treadwell has obtained against him.

Deputy sheriffs are awaiting a chance to seize the rich collection of paintings which the Montana magnate has stored in his apartments at 175 West Fifty-eighth street.

The $44,000 judgment which brought on all the turmoil dates back to the day that, Treadwell claims, he discovered the $300,000,000 United Verde mine in Arizona. Treadwell says he was paid for his prospecting for the owners and presented with 100 shares of the company's stock. At that time the stock was quoted at $10. A little later, being cramped for cash in London, Treadwell hypothecated the 100 shares.

Then Senator Clark stepped into the situation. He knew that there were hundreds of millions of precious metal in the United Verde. Even then the shares had risen from $10 to $100. But Treadwell says the senator reorganized the company and froze him out completely.

CUPID, CANTEEN AND MORE COIN NEEDED BY AMERICAN ARMY

(United Press Leased Wire.)

Washington, Jan. 9.—Cupid, the canteen and more pay are suggested by Franklin Bell, chief of staff, as the only three things that will induce experienced soldiers to remain in the army. General Bell says so in an important report, bubbling over with recommendations for the betterment of the conditions of the soldiers, which he has submitted to President Roosevelt.

"To hold a man in the service 30 years and deny him the privilege of normal life, which is married life, is impossible," says General Bell. "To permit all to marry is equally impossible. In my opinion, the restoration of the canteen feature would operate for greater efficiency and contentment."

Then the general suggests that the government provide quarters for married noncommissioned officers, and give them a general increase in pay. He also recommends that a new grade of warrant officers be created to be above that of a noncommissioned officer.

General Bell thinks more clothes should be allowed the army men; that their rations should be improved; that they be given better quarters, more amusement, and that the tax of 12½ cents for the support of the soldiers' home should be abolished.

TALBOT REFUSES TO CHANGE HIS STORY

(United Press Leased Wire.)

San Francisco, Cal., Jan. 9.—F. Talbot again took the stand this morning in the trial of his millionaire brother's suit for divorce and was severely cross-examined, but like other witnesses for the plaintiff staunchly refused to contradict his former testimony. He repeated several times that Mrs. Talbot had complained to him that her husband was a "brute" and a "fiend."

DEMOCRATIC CLUB IS ORGANIZED AT SALEM

(United Press Leased Wire.)

Salem, Jan. 9.—The Salem Jefferson Democratic club perfected its permanent organization last night at the office of W. A. Liston by the election of the following officers: P. L. Frasier, president; T. L. Davidson, vice-president; A. M. Dalrymple, secretary; D. J. Fry, treasurer.

A constitution and by-laws were adopted, the main provisions of which are the maintainance of Democratic principles and the possession of a good moral character and a dollar on the part of the members.

LOCAL M-O'S AGGREGATE MILLIONS

Portland's Money Order Business Largest in History of Postoffice—Increase Over Preceding Year of 19.26 Per Cent.

Total Number of Orders Issued 413,375—Hundreds Used Government Means of Exchanging Money During Recent Flurry.

Portland's money order business at the postoffice for 1907 amounted to more than $11,000,000.

This is much the largest annual report in the history of the office. Last year's business shows an increase over 1906 of 19.26 per cent. During the year just past 413,375 postal orders passed through the office, the exact amounts aggregating $11,013,174.92. This is an increase of $2,121,297.35 over the business of 1906.

The international money business last year was also unusually large. Japan heads the list of countries to which money was sent from Portland. Italy is second, with Germany and Russia following in the order mentioned.

The last two months have been unusual ones in the money order department of the postoffice, not only in Portland, but all over the country. This was due to the legal holidays which were in effect several weeks and during which time many persons transacted their business through the government system of money exchange.

The international money orders issued last year amounted to $895,042.48. For 1906 they were $713,673.34. During the currency famine the business in Portland was all that the officials could handle. Many of the customers were foreigners, sending money home.

The statement of George F. Whitehouse, superintendent of the money order department at the main office, made his report to Postmaster John W. Minto this morning. In detail it is as follows:

Number—		
93,146—Domestic. orders issued		$ 1,422,768.52
Fees on same		7,629.72
22,019—International orders issued		895,042.48
Fees on same		6,980.89
26,291—Certificates for M. O. funds received		5,587,351.87
270,730—Domestic orders paid		3,053,193.58
1,189—Interuational orders paid		40,207.86
		11,013,174.92

COMPARATIVE STATEMENT.

Transactions—		Amounts.
1907	413,375	$11,013,174.92
1906	320,620	8,891,877.57
Increase	32,755	$ 2,121,297.35
Gain, per cent	7.92	19.26

SCHUEBEL STANDS IN HOT WATER

Appointee to Federal Attorneyship Flies Around Like Decapitated Chicken Trying to Determine Who's Who and What's What.

Spine-Shattering Visions of Governmental Laws Covering Millions of Pages, Lack of Assistance and Stenographers.

WHAT CHRIS SCHUEBEL WANTS.

W. C. Bristol as ex-officio district attorney and confidential advisor.

James Cole to remain as assistant district attorney until Schuebel has studied federal procedure and learned the routine of the office and the unfinished business.

Bristol's stenographers to remain on duty because of their knowledge of the office work.

Bristol's library on federal law and procedure and immediate possession of the official instructions and code of conduct.

General instruction in how to conduct the office of United States district attorney.

WHAT SCHUEBEL WILL GET

No help from the retiring district attorney.

No assitance from the resigned deputy district attorney.

A new corps of stenographers.

His own library and possession of government instructions when he is sworn in.

A self education in federal procedure and federal court practice.

Chris Schuebel of Oregon City, Senator Bourne's choice for the position of United States attorney for Oregon, and President Roosevelt's nominee, is up against a hard row of stumps and sees no friendly stump puller to clear his pathway to official success.

Admitted to practice before the federal courts on April 19 last, but as yet without a case before that august and red tape bound tribunal, unversed in the methods of federal court procedure and somewhat unprepared in the tech-

(Continued on Page Five.)

PUTNAM IN COURT FOR JURY ROAST

Medford Editor's Case Called at Jacksonville Today—Prominent Attorneys Volunteer Services to Clear Defendant.

Dragged Off Train and Thrown in Jail When Indicted by Grand Jury He Criticised—Charges He Implied Bribery.

(Special Dispatch to The Journal.)

Medford, Or., Jan. 9.—Editor G. Putnam of the Medford Tribune is on trial at Jacksonville today charged with having criminally libeled the deputy district attorney and grand jury in a criticism published concerning their failure to indict President W. S. Barnum of the Rogue River Valley railroad for attacking Mayor J. F. Reddy with an ax. Putnam was indicted December 21, and hauled from his berth in a Pullman while en route to Portland to spend Christmas with his mother and landed in the Douglas county jail at Roseburg. He was denied communication with friends and kept there until noon the next day when friends, hearing of his arrest, secured his release. Although the indictment was returned early enough in the afternoon to have arrested the editor before his departure, it was kept secret until he was speeding north.

A motion to quash the indictment upon the grounds that the grand jury was disqualified by reason of personal interest and prejudice, and a demurrer were both overruled by Judge Hanna. Putnam is represented by W. I. Vawter, M. Purdin, H. Withington, Robert G. Smith and E. E. Kelly, all of whom volunteered their services. The prosecution is being conducted by District Attorney A. E. Reames.

The prosecution apparently rests upon the construction of the words, "secure immunity" in the alleged libelous article, as meaning bribery. The defense will attempt to prove the truth of the publication, and to this end have subpoened many witnesses of Barnum's escapade with the ax, including State Railroad Commissioner Oswald West.

Attack on the Press.

Great interest throughout this section and indeed throughout the state, has been aroused by this case, as it is generally regarded as an attempt to muzzle the press and secure for public officials immunity from criticism.

The indictment follows:

"George Putnam is accused by the grand jury for the county of Jackson, state of Oregon, by the indictment, of the crime of libel, committed as follows, towit: That the said George Putnam on, towit, the 19th day of December, 1907, in the county of Jackson, state of Oregon, then and there being, did then and there wilfully publish, by means other than words orally spoken, towit, by printed matter in a newspaper, called the Medford Daily Tribune, and then and there of general circulation in said county, the following false and scandalous matter of and concerning Wallace Woods, Joel Hartley, J. R. Robison, C. H. Vaupel, Adam Schmidt, T. E. Pottenger and J. L. Garvin, then and there composing and constituting the grand jury for said county, and Clarence L. Reames, then and there a deputy prosecuting attorney, representing the state of Oregon in said matters before said grand jury, towit:

The Alleged Libel.

"The grand jury is composed of the following men: Wallace Woods, J. R. Robison, C. H. Vaupel, Adam Schmidt, T. E. Pottenger, J. L. Garvin. It took them just 15 minutes to indict a friendless horsethief, a poor old woman and a penniless forger. They spent three days on the Barnum case and then justified the murderous assault. Deputy District Attorney Reames is a most relentless prosecutor, when a man drops a nickel in the slot machine or takes a drink on Sunday, or a poor fallen creature is caught sinning. Such heinous crimes must be punished; they are dangerous at once to life and limb. But any one can try to brain a man with an ax and secure immunity from the blindfolded representatives of justice." That said publication was made with the intent to injure and defame said Wallace Woods, Joel Hartley, J. R. Robison, C. H. Vaupel, Adam Schmidt, T. E. Pottenger, J. L. Garvin, composing said grand jury, and said Clarence L. Reames, deputy prosecuting attorney, and that said matter so printed is false and untrue. That the words 'Deputy District Attorney Reames,' in said publication, were intended to and referred to said Clarence L. Reames as deputy prosecuting attorney, and the said false and scandalous matter was published of and concerning all of said parties by said George Putnam with the intent to injure and defame each thereof.

"Contrary to the statutes in such cases made and provided and against the peace and dignity of the state of Oregon."

MAXIM SAYS JAPAN IS PREPARING FOR WAR WITH AMERICA

Washington, Jan. 9.—"Japan is rushing preparations for war and may strike us at any minute." This was the startling statement made today by Hudson Maxim, a member of a big company that manufactures arms, who is visiting in Washington.

"It is a sad mistake to think that Japan is financially embarrassed," he continued. "It's Japan's old game to rush war preparations and complain about being poverty stricken at the same time."

St. Peersburg, Jan. 9.—Men high in Russion court and army circles, as well as the St. Petersburg press, are openly ridiculing Okuma's repudiation of the version given of his Kobe speech in which he was quoted as urging India to rise against British rule.

The reports of the speech fell into the hands of Russian diplomats directly after Okuma delivered his utterances and were forwarded to the capitol. It is said they do not agree with the press reports in which Okuma declares he was misquoted.

TWO CENTS IS THE PRICE

The price of The Daily Journal on the streets is 2 cents a copy—or 10 cents a week, delivered by carrier. The street price and the carrier price are about the same—as near together as such things can be. In other words, to buy a copy of The Journal each day for six days on the streets will cost one 12 cents—that's all, or about the same as it would cost to have it delivered at your house or office for six days—10 cents. There are any number of accommodating, reliable newsboys who will sell you The Journal at 2 cents a copy and "make the change," or, if you prefer, have it delivered at your house or office by carrier at the rate of 10 cents a week; or, better still, have a copy delivered at your house regularly and pay 10 cents a week for it, and buy an extra copy on the streets for 2 cents—both at a cost of less than 5 cents a day, which you are so called on to pay for a single copy of other daily papers. The Journal is the best circulated and most popular paper in consequence.

Warehouse Burns.

(United Press Leased Wire.)

Minneapolis, Minn., Jan. 9.—Fire this morning destroyed the seven-story warehouse of the Hartman Furniture company, causing a loss of $100,000.