STATE CAPITAL NEWS

- **Pardon Deal.**
- **Capitol Plans.**
- **Reading Faster.**

By A. L. LINDBECK

Salem.—Interest in the pardon-peddling activities of Dan Kellaher as revealed in charges made by Ralph W. Moody, assistant attorney general in the course of the Banks' hearing here, has completely over-shadowed the possible fate of L. A. Banks, former Medford publisher now doing a life term in the state prison here for murder.

Moody threw a bomb-shell into the hearing before Governor Martin Friday afternoon when he charged that Kellaher while serving as state parole officer had entered into a contract with Banks to secure his release from prison for a consideration of $50,000. Copies of the contract signed by Banks and Kellaher as well as a number of letters relating to the deal were produced by Moody in support of his charges.

Neither Moody nor the governor would comment on rumors that revelations in the Banks case would be followed up by a thorough investigation into Kellaher's interest in other pardons and paroles while in the employ of the state prison.

Governor Martin has Banks' plea for a pardon under advisement but it is freely predicted here that he will refuse to extend executive clemency to the prisoner. In addition to the argument presented at the hearing by Moody in opposition to Banks' release a report was presented from Dr. R. E. Lee Steiner, superintendent of the state hospital, who declares that Banks is incurably insane and advises against his pardon.

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With the state's application for a federal grant of $1,575,000 toward construction of the new capitol in the hands of Public Works administration officials, efforts of the board of control and the State Planning board are now centered in completing tentative plans for the new building and in perfecting plans for financing the state's share of the cost that will not violate the constitutional inhibition against indebtedness. The application to the PWA specifies a fireproof building of 3,000,000 cubic feet capacity, to be located on approximately the same site as that occupied by the old building and costing approximately $3,500,000. The governor has said that he will call the legislature into special session as soon as the federal grant is approved and the terms of the gift are definitely known here.

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More than 1000 people attending the opening of the cornerstone of the old capitol building saw the last fragment of the capitol walls topple to the ground at the conclusion of the ceremony. F. G. Leary, foreman in charge of the wrecking operations expects to have all of the debris cleared away in another week or ten days.

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If Washington wants the Bonneville transmission lines on the north bank of the Columbia river it is welcome to them so far as Governor Martin of Oregon is concerned. Presence of the huge steel towers necessary to carry the power lines would detract from the scenic beauty of the Columbia gorge in the opinion of the Oregon executive. Governor Martin looks for the development of a large industrial area in North Portland as soon as the cheap power from the Bonneville plant becomes available.

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In the presence of a handful of state employees and newspapermen Secretary of State Snell Saturday morning opened the copper casket containing the mementos which had been placed in the cornerstone of the old capitol building 62 years ago. Old newspapers, coins of ancient vintage and official documents taken from the casket will be arranged for display in a case to be placed in the state office building where they may be viewed by the public.

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Standardization of the state payroll as worked out by the budget department has not met with unanimous approval by any means. Employees whose pay checks were subjected to reduction in the general readjustment were anything but satisfied with the result and a number who failed to receive expected pay increases have voiced their disappointment over the result. With the standardization task out of the way the budget department is now expected to turn its attention to the problem of married women in the employ of the state.

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In the 22 years of its existence the state highway department has paid out $22,333,140 in interest on its bonds. This amount is only slightly less than the $23,070,750 paid out in retirement of maturing bonds during the same period.

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In an opinion this week the state supreme court held that loan companies lending money on automobiles must qualify under the Motor Vehicle Finance act rather than under the Small Loan act. Loans under the former act are limited to $500 with interest charges limited to a maximum of two percent a month.

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Human nature does not change greatly with the passing of the years. Tastes and problems are pretty much the same today as they were several decades ago. This is revealed by a review of the records of the state library. These show that the popular books of 30 years ago were "Lorna Doone," "The Virginian," "The Hoosier School Master" and "Treasure Island." Incidentally every one of these titles is still in big demand today, according to Miss Harriet C. Long, state librarian. Debate topics of that period are strongly reminiscent of the problems that agitate the world today: corrupt practices at elections; industrial arbitration; old age pensions; workingmen's insurance; child labor; injunctions in labor disputes; forest preservation; income tax; liquor legislation; teachers' salaries; consolidation of rural schools; ship subsidies; food adulteration.

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County officials are not entitled to mileage expense in traveling from their home to the county seat or from the county seat back to their home, according to Attorney General Van Winkle. Legitimate travel expenses, in the opinion of the attorney general, are limited to expenses necessarily incurred while employed in the transaction of county business. Officials are presumed to reside at the seat of government and those who do not must stand their own expense in going back and forth between their homes and the county seat.

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Office space actually occupied by state boards, commissions and departments in Salem increased 85 percent during the past ten years, according to a survey made by W. H. Crowell, engineer employed by the State Planning board. Space requests filed by state departments with the planning board call for an increase of 35 percent over that in use at the time of the capitol fire last April. Crowell has recommended the construction of a group of three state buildings, rather than a single larger unit. The planning board, however, has not endorsed the suggestion, withholding its recommendations until the question of site and other matters have been determined.

New Wheat Plan Ready; Davis Urges Big Signup

With general features of the new wheat contracts now decided upon, including the rate of reduction to be asked in 1936, the campaign for signing up farmers under the new four-year plan will be launched in Oregon and other states soon, probably in August.

The decision to go ahead with the new program and attempt to sign up from 50,000,000 to 53,000,000 acres of wheat land, was announced from Washington recently. The Oregon State college extension service was informed by the Washington officials concerning many of the details of the new four-year program.

A reduction of 20 per cent below the base acreage has been decided upon for 1936, which is the same amount asked the first year the old contracts were in force. Lack of export markets and continued prospective production beyond domestic requirements makes acreage control necessary, if farmers are to receive anything like a fair price, the Washington officials declare.

Features of the new contracts are in line with decisions reached by producers and the AAA officials in conference in Washington early in July. In a general way the new contracts follow the plan of the old, although some important innovations are included. One is that instead of there being a fixed rate of benefit payments, decided upon at the start of each crop year, the rate will be left more or less flexible to conform to changing market prices.

Under this plan approximately two-thirds of the prospective benefit payment will be made as soon as contracts are approved. The second or final payment for each crop year will not be made until the market price record for that year is complete. The amount of the second payment will then be determined according to the amount needed to bring parity return to farmers for their allotments.

Growers need not hesitate to sign these new contracts for fear of adverse decision on the constitutionality of the AAA, says Chester C. Davis, administrator. It is impossible to wait until after a decision by the supreme court to launch the new program, because fall grain for 1936 will be planted in the near future. He gives assurance, however, that anybody signing a contract will be paid for compliance as long as it stays in force, regarless of whether the act is upheld as not.

Mr. Davis points out that the new amendments to the adjustment act, as passed by both senate and house, removed many of the objections to to the processing tax provisions found by a federal circuit court which gave a divided decision against the act. He points out also that the new contracts permit cancellation by the secretary at the end of any year and allow the grower to withdraw at the end of the first two years if he so desires.

"Even if an adverse decision by the supreme court should materialize at some future time," Mr. Davis said, "the contract in its present form is admirably devised to protect both the farmers and the government."

"Para-di" Kills Prune Borers.

Dallas—Excellent results from using paradichlorobenzine, more commonly known as "para-di," in killing root borers in their orchards have been reported to County Agent J. R. Beck by numerous prune growers of Polk county. Mr. Beck, accompanied by O. T. McWhorter, O. S. C. extension specialist in horticulture, recently put on a number of demonstrations in various parts of the county on methods of applying this chemical. It is best applied between August 16 and September 15—a later date being best in a dry fall, Mr. Beck says.

Soy Beans Tried in Malheur

Ontario — To determine their adaptability as feed crops and their value as green manure crops, 16 varieties of soy beans have been planted, in cooperation with the county agent, on the farms of Geo. Lang on the west bench of the Vale irrigation project and Harry D. Wells on the east bench. The plantings on the Lang farm are on land that has been cropped for three years to grain and clover and heavily manured, and the plantings on the Wells farm are on land just cleared from sage brush.

BACKGROUND OF NEW DEAL DECISIONS

The Coinage Clause. Banking and the Gold Clause Decision.

II.

The Second Central Bank and the Issue of Constitutionality.

By JAMES H. GILBERT.

Five years packed full of financial chaos followed close on the heels of the demise of the First United States Bank and in 1816 a Second United State Bank with much larger capital but with similar provisions for part ownership and control by the United States was set up. Although the expediency of the new bank was widely recognized, the jealousies of state banks were still alive and ready to assert themselves.

The new bank through its twenty-five branches entered into active competition with state banks and vested interests were bound to give rise to antagonisms. Moreover, the second United States Bank exercised a steady pressure in the direction of forcing state banks to a sounder basis of note issue.

The term "wildcat bank" originated in this period due to the fact that banking offices were often located in remote and solitary places "inhabited only by wildcats." From these obscure locations notes were issued and then taken to financial centers where they were lent at interest and passed into general circulation. By this device an initial "capital" was supplied for an indefinite series of loans.

If holders of the notes of the wildest banks wanted to present them for redemption it was difficult to find the "counter of the issuing bank." The second central bank specialized in the business of gathering up notes that had strayed too far from the issuing bank and sending them back for redemption. In the eyes of many bankers accustomed to the financial license of the times this practice was little short of sinful.

In several states the animus toward the central bank broke out in the form of unreasonable taxes imposed on branches of the United States Bank at the instance of local bankers. A tax of this kind imposed on the Baltimore branch of the central bank by the State of Maryland gave rise to one of the most important decisions of the Supreme Court in which the constitutionality of the central bank was definitely upheld.

McCullock, the cashier of the Baltimore Branch, refused to pay the state tax and was assessed with penalties. The case came up to the Supreme Court with the eminent Chief Justice, John Marshall, writing the opinion.

Marshall, the reader will recall, was a thoroughgoing federalist. His political enemies, in fact, had accused him of being a "self appointed committee of one on the revision of the Constitution." Still another had asserted that "Marshall would never learn the difference between **expounding** and **expanding** the Constitution."

It was extremely unlikely that this arch federalist of the time would fail to find justification for a central bank in his conception of federal sovereignty.

The opinion, upholding the constitutionality of the bank and declaring it to be a necessary instrumentality of the national government, followed along the lines laid down by Hamilton in his defense of the first bank in 1791.

The Chief Justice granted that "among the enumerated powers we do not find that of establishing a bank or creating a corporation" but went on to invoke, as Hamilton had done before, the doctrine of implied powers. Marshall argued that the presence of limitations implied that powers not limited resided in a sovereign government such as he conceived the national government to be.

The power to lay and collect taxes, to borrow money, to regulate commerce, to declare war, to raise and support armies and navies were cited as indications of the sweeping nature of federal powers.

"The sword and the purse, all the external relations and no inconsiderable portion of the industry of the nation are entrusted to its government," he contended.

The government, he said, must have ample means for the execution of these far-reaching functions and the "choice of means" must rest with Congress.

The "choice of means" implies a right to choose a national bank in preference to state banks and Congress alone can make the selection.

Having decided that the Bank was a necessary instrumentality of the national government and the act under which it was incorporated "a part of the supreme law of the land," Marshall denied the state a right to tax it for the "power to tax is the power to destroy." The exercise of such power by the states would undermine the sovereignty of the central government, he pointed out.

As the Negro bailiff in the Supreme Court once expressed it, "When this Court rules against you there ain't nobody you can appeal to but the Lord."

Andrew Jackson was, however, loath to accept the verdict as final especially when that verdict had been rendered by John Marshall whom Old Hickory held continually in contempt. Jackson came to the presidency in 1829 with a complex against banks and Nicholas Biddle, then president of the Central Bank, was soon embroiled in a political feud with the chief executive.

Jackson, convinced that the Central Bank was dangerous to democratic ideals and institutions, arraigned it in his message of 1829 on the ground that its expediency and constitutionality had both been questioned.

Twice he repeated his indictment of the bank and in three successive messages the constitutionality of the bank was questioned despite the fact that Marshall had ruled it a necessary instrumentality a dozen years before.

Space will not permit the dramatic story of the campaign of 1832 in which Henry Clay championed the bank's charter against Jackson's veto. It was no time for the championship of financial institutions or of centralization. The spirit of Jacksonian democracy was abroad in the land and Clay and the bank's charter went down to inglorious defeat.

Following the panic of 1837 the treasury lost millions which had been deposited in state banks following the failure of the Central Bank to function as "fiscal agent."

On the recommendation of Van Buren an independent treasury was set up to care for federal funds. The independent treasury was short-lived and was immediately abolished when the Whigs came back into power in 1841.

The new Congress sought manfully to revive the Central Bank but were kept from doing so by the opposition and oft repeated vetoes of John Tyler. It is interesting to note that Tyler, the Whig, like Jackson, the Democrat, refused to accept the verdict of the Supreme Court as final and based his opposition to the proposed federal bank largely on constitutional grounds.

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II.

THE DOCTRINE OF JUDICIAL REVIEW IN THE UNITED STATES

By WAYNE L. MORSE.

The doctrine of judicial review in the United States has not been gained without a struggle.

Walker in his book "Law Making in the United States," points out that a "somewhat similar power was exercised by the privy council in declaring void the acts of the colonies which seemed to be in conflict with the provisions of the royal charters."

As is pointed out by Corwin in his excellent book, "The Twilight of the Supreme Court," Lord Coke's views undoubtedly influenced the development of the doctrine in this country for it should be remembered that the American colonists were in conflict with both the crown and Parliament. They looked upon Parliament as an unsympathetic body in whose deliberations they had no representation.

Coke's isfluence is shown in the case of Trevett v. Weeden decided by the superior court of Rhode Island in 1786. An act of the legislature had imposed penalties on all who refused to take the state's paper money at its face value, empowering any justice of the superior court or the court of common pleas to try an offender summarily without jury.

The court held that the act took away trial by jury which was contrary to the Magna Carta and fundamental rights and the court quoted Lord Coke in support of its decision holding the act of the legislature void.

Even prior to this, the Virginia court of appeals in 1782, in the case of Commonwealth v. Caton, ruled that the court had power to declare any resolution or act of the legislature—or of either branch of it—to be unconstitutional and void. John Blair, one of the signers of the federal constitution in 1789, was a member of the Virginia court and concurred in the opinion.

Also in a North Carolina case decided in 1787, the Coke doctrine of judicial review was set forth.

Some critics of the doctrine of judicial review point out that the power is nowhere specifically granted in the federal constitution and that the United States supreme court has usurped the power.

However, Charles Beard, in his excellent treatise, "The Supreme Court and the Constitution," answers satisfactorily the usurpation argument by setting forth in great detail the known opinions of a majority of the framers of the constitution as to judicial review. He concludes:

"In view of these discussions and the evidence adduced above, it cannot be assumed that the Convention was unaware that the judicial power might be held to embrace a very considerable control over the legislation and that there was a high degree of probability (to say the least) that such control would be exercised in the ordinary course of events."

Although John Marshall, in his famous decision in Marbury v Madison in 1803, was the first formally to declare an act of congress unconstitutional, the issue of judicial review was before the United States Supreme Court in several previous cases.

In Hylton v. the United States, decided in 1796, the court exercised the right to pass upon the constitutionality of an act of congress imposing a duty on carriages. In that case, counsel for the appellant argued that the law was unconstitutional and therefore void; but the court, then headed by Chief Justice Ellsworth who had been a member of the constitutional convention—as had also one of his associates. Justice Paterson—sustained the law as constitutional.

It is interesting to note that as one of the attorneys in the Hylton case, John Marshall took the position that the supreme court did not have the power to declare congressional legislation unconstitutional, but in 1803 as judge Marshall reversed his thinking on the subject.

Hayburn's case in 1792, was another early decision in which the judges of the supreme court took the position that they were not bound to enforce a law which they deemed beyond the power of congress; and a still more important case was probably Calder v. Bull, decided in 1798.

In that case Justice Iredell stated: "If any act of congress or of the legislature of a state violates those constitutional provisions, it is unquestionably void; though I admit, that as the authority to declare it void is of a delicate and awful nature, the court will never resort to that authority but in a clear and urgent case."

However, it was for Marshall in 1803, in the case of Marbury v Madison, to apply for the first time in the name of the Supreme Court the principle that the federal judiciary has the power to pass upon the acts of Congress.

In the course of his decision, Marshall states these now famous pronouncements:

"It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it; or that the legislature may alter the constitution by an ordinary act.

"Between these alternatives there is no middle ground. The Constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it.

"If the former part of the alternative be true, then a legislative act contrary to the Constitution is not law; if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power in its own nature illimitable.

"Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and, consequently, the theory of every such government must be, that an act of legislature, repugnant to the Constitution, is void. . . .

"It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each."

Marbury v. Madison was followed in 1810 by Fletcher v. Peck, and in 1819 by McCulloch v. Maryland in which cases the supreme court of the United States first held state legislation to be unconstitutional.

All of the state supreme courts have now assumed the same power, so that in effect, in the United States, the judiciary has the final word as to the validity of legislation.

I have dealt at some length with the development of this theory of judicial review as contrasted with legislative supremacy, because it has served as one of the most important legal controls for adjusting and harmonizing conflicting and overlapping desires and claims under our constitutional government.

It has appeared as a political issue which has agitated the country at intervals ever since it was definitely applied by Marshall. Through the Dredd Scott decision it must take part of the blame for the Civil war.

Weatherford Unmatched In Educational Service

In the death of J. K. Weatherford of Albany the state of Oregon has lost a citizen who has probably devoted more years than any other to advancement of education in this state. His record of 50 years on the school board of his home city and 44 years as a regent of Oregon State college is believed by educators to be unmatched in the United States.

Dr. Weatherford was, before his death, the second oldest living graduate of O. S. C., the oldest being Mrs. Mary Harris Whitby of Benton county who was graduated in 1871, while Dr. Weatherford belonged to the class of 1872. He is also claimed by the class of 1923 as it was at that commencement that he was given the honorary degree of Doctor of Laws, being one of the first two to receive that honor from his alma mater.

Appointed first by Governor Z. F. Moody when Corvallis college was taken over completely as a state institution in 1885, Dr. Weatherford served continuously through the administration of five successive governors. After 16 years he became president of the board and continued in that capacity until the single boards were abolished in 1929. He had served on the board 22 years and as its president six years before Dr. W. J. Kerr was made president of the college in 1907.

The influence of Dr. Weatherford is recognized throughout the institution to which he devoted so much of his time and talents. As a special monument to his devotion stands beautiful James K. Weatherford hall, the men's dormitory, one of the last and finest buildings authorized by the regents under his direction.