

The Weather

Forecast: Occasional rain tonight and Friday. Little change in temperature. Highest yesterday 38. Lowest this morning 34.

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Twenty-eighth Year

MEDFORD, OREGON, THURSDAY, DECEMBER 28, 1933.

No. 238.

BANKS RETRIAL APPEAL DENIED

Klamath Falls Loses Opening Effort to Halt State Liquor Control

HIGH COURT HITS CLAIM OF ERROR IN MURDER TRIAL

Decision Ends Recourse to State Courts — Judges Deliberate But 15 Minutes After Oral Arguments

SALEM, Dec. 28.—(AP)—The appeal of L. A. Banks from his second degree murder conviction was denied today by the supreme court in refusing to grant an application for certificate of probable cause.

The decision ended recourse to state courts. Court Clerk Arthur Benson stated.

Banks was convicted in the Lane county circuit court of murdering Police Officer George Prescott at Medford. He was sentenced to life imprisonment in the state penitentiary, where he has remained pending appeal.

Circuit Judge George P. Skipworth was upheld by the oral order of the court. The case was tried in the Lane county circuit court on a change of venue from Jackson county.

Attorneys Frank Longenecker of Portland and Charles Hardy of Eugene represented Banks in the appeal. The state was represented by Attorney General I. H. VanWinkle.

The defense claimed errors were committed in the trial. A certificate of probable cause for retrial was denied by Judge Skipworth and today denied by the supreme court where it was appealed, after the judges had deliberated 15 minutes.

Above action by the state supreme court means that Banks has no ground for probable cause upon which to base an appeal, but the ruling has no bearing upon Banks' right to proceed with an appeal to the higher court if he desires, according to local attorneys.

If the writ of probable cause had been granted by the high court, Banks would have been amenable to liberty upon bonds, pending a decision on the appeal, lawyers say. As the matter now stands, he will remain in state prison.

It is understood that Banks' counsel will now proceed with preparation of their appeal.

Finances for Banks' legal efforts to gain release from his cell are provided by Charles F. Moran of Cleveland, Ohio, a brother-in-law and long time friend, it is said.

Mrs. Banks and daughter are now residing at Eugene, making visits to the penitentiary on visitors' day, every two weeks.

Banks based the writ of probable cause upon claims that he did not receive a "fair and impartial trial" that the court erred in its instructions to the jury, that the state attorney's characterization of Banks as a "moral coward, hiding behind his wife's skirts" was prejudicial, and that a woman bailiff was guilty of misconduct in the handling of women jurors.

TWO KILLED IN BORDER BATTLE

EL PASO, Texas, Dec. 28.—(AP)—A deadly exchange of shots between United States border patrolmen and Mexican smugglers in the slums of South El Paso—near the Rio Grande—resulted today in the death of Patrolman Bert G. Walthall and a smuggler identified by local police as Jose Estrada of El Paso. Another patrolman, Louis A. Smith, was wounded slightly.

In the ensuing search for smugglers, who fled after the fight late last night, officers captured three other Mexicans—two of them wounded. Officers also arrested an elderly man who lives in the house where the three were hiding.

ECONOMISTS ASK END DOLLAR MANIPULATION

PHILADELPHIA, Dec. 28.—(AP)—The executive committee of the economic national committee on monetary policy today adopted a resolution calling on the federal administration to "end manipulation of the dollar" and adopt "a definite policy of return to the gold standard."

The resolution, signed by 17 economists, disapproved "those aspects of the monetary policy of the government which are destroying public confidence in the value of the dollar."

LONDON, Dec. 28.—(AP)—Henry Warren Fowler, noted lexicographer, died today at his home in Hinton, St. George, Somerset. He was 75 years old.

Brutal Father Forces Son To Dance In Snow

CINCINNATI, Dec. 28.—(AP)—A father was fined \$100 and costs today for making his five-year-old son dance barefooted in a snow-covered street for what the court called "a few lousy dollars."

The father, Raymond Miller, 31, of Newport, Ky., was fined \$50 and costs for street begging, and \$50 and costs for abusing a child. Police testified the man was begging from passersby as the half-frozen boy danced. They said they found the boy's shoes and stockings and \$6.21 in the father's pockets.

PROGRESS MUST SERVE SENTENCE IS COURT RULING

SAN FRANCISCO, Dec. 28.—(UP)—The state supreme court today reaffirmed a prison sentence for Olive Clark Day of Hollywood, convicted of contributing to the delinquency of minors in providing young girls for wealthy men at parties.

Ramifications of the sensational case included trials in which Alexander Pantages, millionaire theater man, and other wealthy southern California residents, were involved.

Mrs. Day appealed from a conviction at her second trial on October 18, 1932, in Los Angeles, alleging that a young girl involved in the morals case, Clarice Tauber Plaudabo, was not produced at the trial by the prosecution. The supreme court held that a deposition given by the girl at her first trial made her appearance unnecessary.

Pantages, who once was tried and convicted on a charge of attacking Eunice Pringle, and later was acquitted in a retrial, was arrested in March, 1934, by San Diego authorities. He was charged with moral offenses against Alice Blake, a minor.

Mrs. Day, Jesse Shreve and William Jobelmann were co-defendants with Pantages. The state alleged that Mrs. Day and Jobelmann took Miss Blake and Helen Livingston to a San Diego hotel where Pantages and Shreve allegedly were guilty of misconduct.

The charges were dismissed when a jury failed to return a verdict after deliberating for 19 1/2 hours. Pantages' acquittal in the second Pringle trial followed.

Subsequently, the state arrested Mrs. Day on a morals charge involving Clarice Tauber, who later married. Co-defendant was John P. Mills, San Diego senator. Charges against Mills were dismissed. Mrs. Day was convicted.

NEW MILK BOARD WILL HEAR IDEAS

PORTLAND, Dec. 28.—(AP)—The first public meeting of the Oregon state milk control board will be held here tomorrow, following nearly two weeks preliminary conferences and fact-finding sessions.

E. G. Harlan, chairman and administrator of the control board, who resigned as secretary of the Eugene Chamber of Commerce to take over these duties, said representatives of producers, distributors, stores and any other groups interested in the dairy industry will be heard at tomorrow's meeting.

"Naturally," he said, "the reports will have to be brief and we would like them in writing so we can keep them for reference. Figures on the cost of production and distribution of milk are what we want most."

Tentative minimum prices to producers and to consumers will be set as soon as possible after the hearing. "Any price we set now," Harlan said, "will necessarily have to be temporary due to the state of the industry."

Stern Fu-Chu Whacks off Curls of Shantung Women

TEINAN, China, Dec. 28.—(AP)—A firm military man is General Han Fu-Chu, a man notably unamenable to the blandishments of Shantung women who wear their hair in foreign fashion curls.

A large number of Chinese girls and women of modern tendencies, whose freshly shaved heads today were bald and shining as so many eggs, offered evidence of the general's old-fashioned ideas on the subject.

Han Fu-Chu is governor of Shantung province, and he rules with an iron hand. The modern fashion of wearing the hair in curls was espe-

HOME RULE IN LIMITED DOSE LIQUOR POLICY

Chairman of State Board Outlines Plans—City Officials, Sheriffs Will Be Consulted On Licenses

EUGENE, Ore., Dec. 28.—(AP)—A measure of home rule will be granted cities and counties in the issuance of licenses for permission to sell alcoholic liquors of 14 per cent and under, it was revealed here today by George H. McMorrin, chairman of the state liquor control commission.

Mr. McMorrin also declared that no liquor stores would be installed in any community till the commission had conferred with local authorities.

In issuing licenses for the sale of wines and beers, the commissioner said that local governing units, city councils in cases of incorporated cities, and county sheriffs for localities outside cities, would be asked to pass on the applications before they reached the commission.

Councils and sheriffs know more about the character of persons seeking licenses and their recommendations should be obtained before any licenses were issued, Mr. McMorrin said.

It was felt this policy of the commission will prevent undesirable persons from receiving licenses. In many cities of the state, McMorrin said, complaints have been made regarding certain beer parlors which have degenerated into "dives."

The question arose as to whether licenses would be issued over the protest of local authorities, he said. He emphasized the point that he believed the commission would never countenance the sale of liquor where it conflicted with the will of local authorities.

TURN IN ALL GOLD IS ORDER ISSUED BY U. S. TREASURY

PORTLAND, Ore., Dec. 28.—(AP)—A resolution urging that "every voter in the state of Oregon who has the interest of . . . boys and girls at heart, work and vote for the sales tax" in event the referendum is invoked, was adopted by the Oregon State Teachers' association at the opening session of its annual convention here.

Scientific temperance instruction for the Oregon public schools was recommended in another resolution, and the delegates approved a resolution urging steps to provide work for unemployed teachers of the state.

"At a wage commensurate with the training and skill required," Charles H. Boyd of Portland succeeded to the office of president of the state teachers' association from his post of vice-president. He succeeds Miss Jane Barnett of Jennings Lodge.

Officers elected included: H. W. Adams, Corvallis, superintendent, vice-president; Superintendent Chas. A. Rice of Portland, member of the board of trustees for district 2; Superintendent E. H. Hedrick of Medford, board of trustees for state at large; Superintendent R. E. Turner of Dallas, board of trustees for district No. 3.

Gold bullion held under federal license.

Unmelted scrap gold and gold not exceeding \$100 in the hands of any one person and gold in fabrication for industrial professional or ornamental use.

Gold coin, gold bullion and gold certificates owned by reserve banks or the RFC.

Gold bullion and foreign gold coin now in the Philippine Islands, Hawaii and other possessions of the United States not in the continental United States.

President Roosevelt's previous order permitted the holding of gold and gold certificates up to \$100 by a single person.

BANK HOSTAGES FREE SELVES FROM BONDS

MARLIN, Texas, Dec. 28.—(AP)—Five persons, taken prisoners by robbers who looted the Marlin First State bank of \$41,000, freed themselves about 7 p. m. last night from a padlocked prison. The two robbers escaped.

WASHINGTON, Dec. 28.—(AP) The public works administration today allotted \$83,931,892 for both federal and non-federal projects, reducing to \$143,966,905 the amount of money left in the \$3,300,000,000 fund.

The non-federal projects totaled 125 in 36 states and received \$19,771,867.

Fair Fliers Near Record



These two young women won't return to earth until 1934 if everything goes well. Mrs. Frances Marsalis (left) and Helen Richey are out to break the unofficial women's endurance mark of eight days and four hours. Their plane is the "Flying Boudoir" and the attempt is being made at Miami, Fla. (Associated Press Photo)

MIAMI, Fla., Dec. 28.—(AP)—Frances Marsalis and Helen Richey battled new foes today—raw nerves and trouble fraught imaginations—as the minutes that separated them from a new women's refueling endurance record were clipped off by their whirling propeller.

Their "flying boudoir," if all went well, was to cross the old mark of 8 days, four hours and five minutes at 5:08 p. m., today and a new record was to be officially established one hour later.

TEACHERS PLEAD FOR SALES TAX IN ANNUAL MEET

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BUDGET SURPLUS ROOSEVELT'S AIM IN COMING YEAR

Hopes to Prevail Upon Congress for Provision of \$800,000,000 Above Ordinary Operating Costs

WASHINGTON, Dec. 28.—(AP)—High Democratic spokesmen described President Roosevelt as determined today to concentrate the primary attention of the 73rd congress upon a budget designed to provide an \$800,000,000 surplus above ordinary federal operating costs in 1934-1935.

Although reconciled to a present-year deficit well above the billion mark because of emergency expenditures, the administration was said to have set down tentative budget estimates reading: Income, \$3,400,000,000; ordinary outlay, \$2,600,000,000.

May Need Six Billion

The total to be requested of congress has been described in some quarters as possibly reaching the \$6,000,000,000 mark, including emergency spending. Sources close to the administration, however, spoke of at least a partial "pay-as-you-go" basis without major tax boosts through RFC loan repayments estimated to total another \$700,000,000.

As the president continued today to shape his program for the coming session, there were authoritative indications that he intended to press ahead with gold buying-commodity dollar plans.

Trade Balance Grows

Administration officials interpreted late figures, showing American foreign trade in November to have the largest favorable balance in months, as at least a partial result of the gold buying program, with its accompanying dollar depreciation abroad.

During November the dollar fell from \$4.70 to the pound to \$5.50, before returning to \$5.13 on December 1. The dollar-franc trend was similar.

Meanwhile, although the content of the president's annual message remained known only to him, it became apparent that Mr. Roosevelt, in addition to resubmitting several unfinished items from his extra session program might make suggestions for permanent railroad legislation, regulation of stock exchanges and a communications control plan.

Much Unfinished Business

Among the unfinished business is the St. Lawrence seaway pact ratification, and legislation to grant the president power to appoint a non-resident governor of Hawaii and declare arms embargoes against shipments of munitions to belligerents. In addition, the chief executive will send to the senate scores of recess appointments.

JUDGES WILL EYE CHRISTMAS LIGHTS

Judging for lighted Christmas trees and lighted homes will take place tomorrow evening, commencing at 8 p. m., it was announced by the Chamber of Commerce this morning.

The committee, composed of Mrs. Leulu Ulrich, Mrs. Ralph Woodford and Col. W. H. Payne will do the judging and two prizes will be awarded for the best two trees and a similar number for the best lighted homes.

The C. E. Gates Auto company is providing a car for the use of the committee. Everyone is asked to see that lights are on by 8 o'clock in order to participate in the event.

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Anniversary of Wilson's Birth Is Commemorated

WASHINGTON, Dec. 28.—(AP)—With President Roosevelt taking a leading part, nationwide commemorations of the 77th birthday anniversary of Woodrow Wilson today were centered in the national capital.

As a prelude to an address tonight by the president, associates and friends of the war time chief executive arranged to place a wreath upon his tomb in the Bethlehem chapel of the Washington cathedral during the afternoon.

Meanwhile, throughout the country, other observances were planned by members of the 124 Woodrow Wilson clubs.

Champagne Pops As Grand Opera Gets Under Way

NEW YORK, Dec. 28.—(AP)—The ice cream-and-lemonade era of the Metropolitan Grand Opera tied gracefully but unannounced last night.

The opening night of the pop of champagne cork and the cheerful rattle of the cocktail shaker, as Emil Katin at the bar served as he used to for the 20 years before prohibition.

Intermissions at the Chicago Grand Opera performances were similarly enlivened as wine booths—an innovation—made their appearance.

BRIDGE BUILDING STARTS SOON ON LOCAL STREAMS

The local office of the State Highway commission announces that D. A. Smith, the resident bridge engineer for Oregon, has arrived in Medford to arrange for starting work on the concrete bridges over the Applegate and Williams creeks. Mr. Smith states the contractors, Mountain States Construction Co. of Eugene, will establish camp at Applegate next week and commence work on the bridges.

The local highway office also states work will begin on the widening of South Riverside by Contractor Ernest Hall of Eugene early in January.

Work is progressing on the survey for resurfacing and widening the Crater Lake highway between Medford and Little Butte creek and contracts will be let early next year. Contract for the same work on Little Butte to Elk creek has been let and work will start as soon as the spring season opens.

Starting a campaign, which it is hoped will extend to all infected and abandoned orchards of the valley, Howard Warner, horticultural inspector, started a crew of 25 men to work this morning, cleaning up some infected orchards, taken over by the county, the county court announced this afternoon.

The county is able to furnish men for a few days of such work, which is deemed very necessary by all orchardists of the valley. The crew is cutting down infected trees and burning the brush to protect adjoining lands from the infection.

The property on which the work is in progress has been taken over by the county for payment of taxes.

Owners of other infected and abandoned orchards are asked to cooperate in the drive, which will mean much to horticulture in the Rogue River valley if carried to the desired conclusion.

W. M. Clemenson, prominent member of the Medford city council and proprietor of the Hotel Jackson, who suffered a cerebral hemorrhage yesterday at the hotel, was reported in a slightly improved condition this afternoon.

Hope of his recovery was maintained by his physicians this afternoon, his many friends throughout the state will be glad to learn.

CLEMENSON CONTINUES SHOW IMPROVEMENT

WASHINGTON, Dec. 28.—(AP)—President Roosevelt today was presented a jeweled key of the international legion of fraternity, Phi Delta Phi, of which he is a member.

WILL ROGERS BEVERLY HILLS, Cal., Dec. 27.—I got my berries mixed up yesterday. I mentioned Statesbury when I meant Atterbury. Now I don't know which one to apologize to.

They say Japan imitates us in everything, but they certainly didn't get this idea from us: "In appointing an ambassador to the U. S. at this important time, with the 1936 crisis ahead, such consideration as dignity, past career and sentiment must be discarded and a man of ability appointed."

Then they wonder why that country is going ahead. They appointed a fellow named Saito who hadn't contributed a cent to the last campaign. That's political treason.

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TEMPORARY STAY UNTIL ARGUMENT DENIED BY COURT

Judge Lewelling Holds Large Part State Without Regulation and Court's Duty Is to Assume Act Valid

SALEM, Dec. 28.—(AP)—Circuit Judge L. G. Lewelling today denied a temporary restraining order against operation and enforcement of the new state liquor law, which was asked by the city of Klamath Falls.

Arguments on merits of the case will be heard Tuesday when the state's demurrer to the Klamath Falls complaint comes up in circuit court.

Attorney Eiton Watkins, representing the city of Klamath Falls, argued for a temporary restraining order on the grounds the liquor act passed by the special session of the legislature was unconstitutional, as well as being a revenue raising measure automatically prohibiting attachment of the emergency clause. He contended the act could not become a law for 90 days because of the revenue raising purposes, even if held constitutional.

Argument is Hilt.

Jay Bowerman, representing the state liquor commission, held the act did not violate the constitution because cities were limited to own regulation of liquor subject to the criminal laws of the state. He held the Knox bill, as passed by the legislature, was constitutional, but if there was a doubt in the mind of the court the commission did not protest a restraining order until a definite decision is taken.

Judge Lewelling, in denying the temporary restraining order, declared the large part of the state's population outside of the cities would be without regulation and it was the duty of the court to assume the act valid until it was proved otherwise. He urged the plaintiff and defendant, in the event the circuit court held against either, to take the matter to the supreme court.

Demurrer Filed.

Attorney Bowerman today filed his demurrer on the original complaint filed by the city of Klamath Falls.

In opening arguments for the restraining order, Watkins read the complaint of the city, filed late Saturday, which alleged the act violated both the federal and state constitutions.

He declared further the act violated the 14th amendment to the federal constitution by depriving people of life, liberty and property without due legal process.

It violated the federal constitution, which gives exclusive power to congress to regulate commerce between states.

It repealed, illegally, all conflicting municipal enactments.

It increased the taxation burden to all people in the state and to the city of Klamath Falls.

Opinion Cited.

Watkins also read the attorney general's opinion, handed down during the legislative session, in which he declared the Knox liquor bill was unconstitutional because it

(Continued on Page Eight)

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