

LIGHTFOOT'S ADDRESS TO JURY

HOW ATTORNEY DEALT WITH SHEBA

HIS INTERPRETATION OF PLAY AND JIJI TALK

Ticketing by Strikers Lawful Under Certain Conditions — What Negro Had to Do With Jiji as Editor.

The following is a continuation of Attorney Lightfoot's address to the jury in the conspiracy trial just closed. The portion today gives the continuation of the interpretation of conspiracy.

That of course is unlawful and anyone conspiring to bring that sort of thing about would be guilty of conspiracy of course.

But striking, as such, is not unlawful. The Japanese in the Territory of Hawaii have perfect right to say to their employers,

"Look here, you are giving us eighteen dollars a month for our services. You are getting two per cent a month on your investment, and we think we should have more money and if you don't pay us more money we shall quit."

They have the right to quit without saying a word to their employers so long as they are under no contractual relations to do otherwise. And by so doing they cannot be convicted of any crime punishable under the laws of the Territory of Hawaii.

I have, this I have referred to before.

"I instruct you, even if you should believe from the evidence, that certain crimes were committed, for instance, the assault on Gilch, or the riot at Waipahu, that nevertheless, unless you further believe beyond all reasonable doubt that said crimes were committed in pursuance of a conspiracy as defined in these instructions, you cannot on account of such crimes convict the defendants in this case."

Law of Picketing.

A great deal has been said about "pickets." Now the learned prosecuting attorney has sought to convey the impression to your minds, that "picketing" or the maintenance of "pickets" during a strike is a terrible thing. It isn't anything of the kind. It is as lawful for strikers to establish "pickets" as it is for strikers to eat.

It is lawful—and it isn't improper—to establish men on the highways leading to Aiea, or leading to Waipahu, or leading to any other place, for the purpose of interviewing returning strikers. That is the law. They must not, of course, use violence or intimidation. They can't say:

"Now look here, if you go back to work I will see that you are punished," or anything of that sort.

They can't do that. But they can go and say:

"Now, here, you are a Japanese don't you think that you better stay with your people in this 'war.' In this fight against the planters. Don't you think it will be better for us, as a people, as a nation, as laborers, that we should all hang together in this matter?" "And pursue our demands for higher wages? Don't you think it would be better for you? Of course it is hard on you just now, but stick it out, stick out, go back to the camp—that is, continue out on strike."

That is perfectly proper. And when learned counsel seeks to persuade you that these men are guilty because "pickets" have been maintained. There is no evidence that they have been maintained by these men. But "pickets" have been maintained. He has tried to draw the herring across the track.

The court instruct—will instruct you, as a matter of law, that maintenance by striking employees to establish "pickets" for the purpose of taking the names of persons remaining at work for their former employer those seeking to enter his employment, seeking by peaceable means without intimidation, to persuade them to join the strikers, is not unlawful. Nor does it render the organization encouraging the strike liable for the crime of conspiracy.

So you see gentlemen of the jury you aren't acting to find these defendants guilty because the Oahu sugar plantation laborers, or strikers, or the Honolulu plantation laborers or strikers, employed "pickets" and took up these tickets.

"The court will instruct you that you cannot find these defendants guilty except you are satisfied of their guilt beyond a reasonable doubt."

You as jurors have had this reasonable doubt thrown at you so many times that I don't propose to say anything more about it. You aren't to try this case, as I have said before, on what may be, it may be guilty of this thing or they may not—you must have an abiding conviction, as the court will instruct you, of the

guilt of these people, must be satisfied that they are guilty as charged in the complaint, or else you must acquit them. And in arriving at the true proposition you have to consider the evidence of the defendants as well as the evidence put in by the prosecution.

The other instructions which are given by the court to you it is not necessary to go into at this time.

Listen carefully to them, and I will say this to you gentlemen: If His Honor should read too fast when he is reading the instructions, he wouldn't be offended if you would ask him, "Please repeat that," he would rather be pleased than offended. Don't hesitate if you do not hear, or anything of that sort. If you will rise in the box and say "Please, Your Honor, I didn't quite catch that. His Honor will not be hurt or offended, but His Honor will be glad to read the instruction to you, or such part as you do not did not understand before. So, all judges read instructions quickly and not very loud tone of voice, jurors don't hear and yet they are "mimama" (hahahala) so that they don't hear—they will not be offended if you, in a proper way, ask that a certain instruction be repeated.

(10:55—here follows recess until 11:00.)

THE COURT: I understand gentlemen of the jury, after consulting with counsel during the recess, that there is a possibility of having the case submitted to you today, and I mention the matter so that you might during the noon hour make arrangements for being honored guests at the Young hotel tonight.

MR. LIGHTFOOT: Now gentlemen of the jury, of course we want to approach this trial as I have said before in a common sense way. It would be ridiculous to approach it in any other way. Now there is such a thing as conspiracy. You have all heard about conspiracies, of various kinds. Those of you of English parents will have learned from your parents of the wonderful Guy Fawkes conspiracy, where on the fifth of November in the year Sixteen Hundred and Five (1605), I think it was, Guy Fawkes and five or six other conspirators conspired to blow up the Houses of Parliament in London. There are various kinds of conspiracies.

Now the court will instruct you, and it is the law, that the proof of a conspiracy may be made by the proof of various acts, that is to say, that it very seldom happens that you can get what is called direct proof of a conspiracy. It is not, for instance, like the crime of murder. Very often there is direct proof. "I saw the defendant fire the gun which killed the deceased." Direct proof. Now when people are going to conspire of course they don't ring a bell and say "Hear ye, hear ye! we are going to form a conspiracy."

No, that isn't the way conspiracies are usually formed, and I am not fool enough to suggest to you for a moment that that is the only proof that you can have of a conspiracy. You can infer a conspiracy where you prove other acts. Of course. The court will instruct you that that is not only the law but a common sense proposition. And the government gave to you, gentlemen, the government comes to you gentlemen with a bunch of facts which they say they will prove to you and from which you can infer a conspiracy. They say, "if we will prove to you these facts," and from these facts you can infer a conspiracy, these facts are—

Dening Again.

"First: We will prove to you that there was in Honolulu an institution called the 'HIGHER WAGE ASSOCIATION,' as Professor Denning puts it, 'THE HIGHER WAGE 'KISE' ASSOCIATION,'—CONSUMPTION ASSOCIATION," and his testimony being tinged by his partiality in that case, as in every other case in which he has testified, he said,

"That 'kise,' Aha, aha! I tell you, that is an awful thing, let us see what it means—'determination,' 'go on at all costs'—'kise,' 'kise.'" Just imagine! Oh, dear!

They say that this "Kise Association of Honolulu" has branch associations throughout the island of Oahu, and perhaps on some of the other islands, and these branches operating through the head higher wage association did certain unlawful acts in which, for which the respondents are responsible.

The court will instruct you that when a conspiracy is formed that act of one—and I wish to speak now and therefore put it in out of order—when a conspiracy is formed, the act of one conspirator is the act of all, and of course that is true.

We twelve men form a conspiracy to do a certain thing, for instance, to kill the governor. Now having conspired to do that, you go off and you take a shot at the governor in the night time.

"Well," I say, "I never told him to do that, that wasn't part of our plan at all. We were to kill the governor by poison, and this fool went off and did that, I didn't have anything to do with that."

You can't do that, Oh no. When we have entered into a conspiracy the act of one is the act of all. And you can see why it should be. But that is not the same as saying, that a set of men are responsible for the actions of another set of men when there is no conspiracy proven. I think we have gone at this case, put the tail before—the cart before the horse.

There should first have been a proof of the conspiracy, and then there should have been a showing of what was done in pursuance of that conspiracy. But we have in this case nothing of the kind.

"The act of one is the act of all" when a conspiracy is shown. But good gracious! these four men can't be held responsible for every crime committed in the Territory of Hawaii, can they? Here, it is a matter of common knowledge, the other day at Iwilei three shots were taken at a police officer, and the newspapers said these shots were presumably taken by Japanese—I don't know whether they said strikers or not. But now we aren't responsible for that, are we? We are not responsible for a criminal over in Iwilei taking a shot at a newspaper—at a police officer. Why, we can't be responsible for that. But if those shots were fired in pursuance of the conspiracy, then of course we should be responsible.

Now, as I say, they offer to show you that there was this Honolulu Higher Wage Kise Association,—that word, "kise" is worth two thousand dollars,—and that it had branches throughout the island of Hawaii—[island of Oahu, Now have they proven anything of the kind. I will put it to you, gentlemen, is there a particle of proof of that statement? Counsel said he proved it to you. You remember the testimony you heard, long days and days of examination and cross-examination, and re-direct and re-cross, and is there throughout that testimony a single scintilla of evidence, a particle of evidence that there was any connection whatever between the Higher wage associations of Ewa, Waipahu, Aiea, Waialuku (Waialua), Kahuku and that of Honolulu?

Of course the prosecution imagines that there was, and on imagination this complaint was brought, but there isn't a word in this case, from the fifteenth of June to the present day, that shows you that there was any connection between the so-called branches and the—as the prosecution calls them—throughout the island, and the Honolulu Higher wage association. Strange independence.

It is the testimony, and it is true, that the higher wage associations in the country and that in Honolulu had the same objects, to wit: the securing of higher wages. It is also true that they mutually assisted each other. When the strikers came in from Waipahu, and from Aiea, and from Kahuku, came into Honolulu, then the Honolulu Higher wage Kise association, and its associate—the relief society, rendered all the assistance they could to the strikers and those coming in, gave them food, lodging, medical attendance, did everything for them, provided for them. And it is also true that these people were in a sense bound together by a common purpose. But everyone of these societies on the outside had its own officer, had its own president, vice-president, secretary and treasurer, elected by themselves, and with the Honolulu higher wage association that had absolutely nothing to do. They didn't make any reports—the outside districts didn't make any reports to the Honolulu higher wage association; they were not represented in the councils of the Honolulu higher wage association, nor was the Honolulu higher wage association represented in the councils of the country district associations. They rendered no accounts to each other. Were absolutely, absolutely, independent organizations.

The object—the object of the prosecution in saying that these were branch organizations was this: To show you, or to argue to you, that they being branches, dependencies of the main organization in Honolulu, that these people in Honolulu—in the districts, country districts, were carrying out a conspiracy which the prosecution "dreams" existed between these four men. That is all. And I say to you gentlemen of the jury, that there isn't a word that warrants anything, any such proposition, not a word. There is plenty of testimony that they were absolutely separate and distinct.

Please take the Aiea plantation here, the laborers there must have higher wages, they must have higher wages, they form their association, they go out on strike, then when that is done they come into Honolulu and they get the officers of the Honolulu Higher wage association, and the officers of the NIPPU JIJI, and say:

"Won't you come out here and make speeches for us, tell us what to do?" And the Honolulu officers and the officers of the Nippu Jiji were invited, and accepted the invitation to go, but not until invited. There isn't an instance—Oh, there is one, but gentle-

men, the officers of the Higher wage association never visited the outside districts until word came in from the outside districts requesting them to go.

The prosecution has absolutely failed, has absolutely failed to show that there was any connection between the Honolulu Higher wage Association and the Higher wage Associations in the districts, other than that they had a common object and they assisted each other mutually, and so this fact that the, this fact upon which the prosecution told you it would rely they absolutely failed.

Now they say, the Higher Wage association had an organ, the NIPPU JIJI, that is to say, the conspiracy, it was a part of the conspiracy entered into by these four people that they should have in their conspiracy the NIPPU JIJI this newspaper. You see the object of that. That, on the doctrine I have last adverted to, would make the Honolulu Higher wage association responsible for everything that the NIPPU JIJI said or did,—if it was the result of the, as a result of the conspiracy, and if further the outside districts, outside district associations were branches of the Honolulu association, then not only would these men be responsible for the sections of the outside associations, but would also be responsible for the utterances of the Nippu Jiji. And so they say we will show you that the NIPPU JIJI is the organ of the Honolulu Higher wage association. Is it? They must show that to you by proof. Have you had any proof? Have you had any proof whatever of those facts? There is proof, and that is the only proof that we have, that the two institutions, the NIPPU JIJI and the Higher wage associations were separate and distinct.

Mr. Negro and Mr. Makino, two of the defendants had absolutely no stock in the NIPPU JIJI association, which is a corporation, don't own a cent of its stock, were not represented on its directorate, had absolutely nothing to do with dictating the policy of the newspaper. Isn't that the fact? Just see how soon Mr. Makino would have been actually, or metaphorically, thrown out of the window if he had gone to Mr. Soga and said:

"I don't want you to publish such and such an article."

Why, Mr. Soga would have said in a moment,

"Mr. Makino, you mind your own business, you mind your own business and I will mind mine. I am running this newspaper, you go run your drug store, or run your Higher wage association, but don't you bother, monkey with my business, I will not stand it."

Isn't that the case? What is the fact, that they were urging the same benefit to the Japanese, does that make the one a part of the other?

Why the EVENING BULLETIN, we will suppose, a newspaper here is in favor, is favoring the side of the prosecution. Does that make the EVENING BULLETIN and the Attorney General's office partners? Such a thing is top absurd.

Gentlemen of the jury, there is absolutely no connection proven in this case, or existing proof, or no proof, that the NIPPU JIJI was connected with the Honolulu Higher wage association, or with any of the higher wage associations in the country. It is true that they advocated higher wages. It is true that Japanese sending their letters to the Honolulu Higher wage association would some times send them in care of the NIPPU JIJI. That was the address that they knew, and they didn't know the address of the Honolulu Higher wage association. It is true also that the people very often sent money to the JIJI office for the cause knowing that it would be turned over to the proper officer, just the same as some times in the newspapers there is an appeal to charity for assistance of some poor families in distress, something of that sort. Editors very kindly say,

"Well, I will—this paper will receive subscriptions for this object."

And you send your subscription to the newspaper, who turns it over to the proper channels.

Now isn't that just exactly what took place, what the relation was between the Honolulu higher wage association and the JIJI? The JIJI was a corporation and had absolutely no connection, as appears from the evidence in this case, with the Honolulu Higher wage association, or to that or any other "Kise" association. It was a newspaper attending to its own business, publishing its own articles, and doubtless for its own purpose.

But Negro, in these books that was brought—that was taken by—Mr. Kinney says from his responsibility—taken by the police officers of this Territory when their rightful custodian was in jail. Among the books was a cash book, and that cash book shows that the sum of Thirty Dollars (\$30.00) had been paid to Mr. Negro for several months last past and had been charged under the "editing account." Now what of it? Does that make Mr. Negro responsible for everything that appears in the JIJI? Does that make Mr. Negro responsible for every utterance of the editor of the JIJI? Why, how can it?

Some times, for instance, during the trial of a case a lawyer wishing to present his side to the public will

write out an account of the proceedings in court, and have them published in its newspapers. Some lawyers will do that—not all of them. But would such a lawyer be responsible for all the utterances of that newspaper, for all the utterances that newspapers should make forever afterwards?

Suppose, for instance, that I am leaving, I am to leave this court room today, and I write out my speech, and I take it and go to the EVENING BULLETIN for publication, which I have a right to do. Now suppose tomorrow morning or tomorrow evening the BULLETIN comes out with a libel, for instance, it says:

"Mr. Brown has committed a certain crime."

Would I because I have done this very crime of having given my speech or reported my speech to the newspaper would I be responsible for that libel?

Gentlemen, it is silly, isn't it? Just silly, that is all. Sensible men can't think of such things without grinning. It is an insult to your intelligence to present any such argument to you, that I would be responsible for that libel.

Now carry it further. Suppose the EVENING BULLETIN says to me:

"Now Mr. Lightfoot, you are going into this long trial, you have your stenographer constantly in attendance on the court, she takes telegraphic notes of the proceedings, you give me a copy of that for publication and I will pay you thirty dollars a month."

I say, "Yes, all right, I will do that." I do it. Or suppose they say:

"You write us out your view, your point of view of the evidence as it comes in day after day before the jury, and we will give you thirty dollars." While I may say:

"I will do that until His Honor sticks me for contempt, or the court sends me to jail, but I will do that, I will take your money."

Then the following day there is a libel. Am I responsible for the libel because I have taken that money? I say it is too absurd, to think—

Now Negro was interested in the higher wage association; he was giving his time to the purposes of that association, probably working like a nigger—I prefer to say "working like a nigger" to "working like a fanatic"—No business of counsel's on the other side to think Mr. Negro a fanatic, he is not being tried for being a fanatic, he is being tried for conspiracy.

Now he writes these articles in the JIJI and he gets paid, but he says:

"I have got nothing to do with the policy of the paper, I am in no sense an editor. When my manuscript goes in it is submitted to Mr. Negro and he can put it in or cross it out or change it—"

The Court: Mr. Soga— Mr. Lightfoot: Mr. Soga—I thank your Honor—

"My manuscript is submitted to him, and no manuscript is submitted to me for my approval. The NIPPU JIJI can publish what it likes, and it would be an impertinence on my part to attempt to interfere with the policy of that newspaper."

But yet, from the books that were taken from NIPPU JIJI office it appears that we did get thirty dollars a month for some months and therefore Mr. Negro is responsible for everything that the NIPPU JIJI said. Not that he is shirking any responsibility, not that we are ashamed or afraid of anything that the NIPPU JIJI said, but it shows you upon what a weak foundation the prosecution rests when they have to claim that Mr. Negro was one of the editors of the NIPPU JIJI; as I understand that term, namely, one of the people responsible for every article that appeared in the JIJI.

Now then, their second showing disappears; the NIPPU JIJI was in no sense the organ of the Higher Wage Association. Now then, the next thing that the prosecution serves you up, fricassee or otherwise, was that beautiful play, the "Higher wage play." It was read to you. Was there anything wrong in it? The funny part of it it wasn't the play that was played at all, but some other play. It was merely a skeleton or suggestions upon which a play should be built.

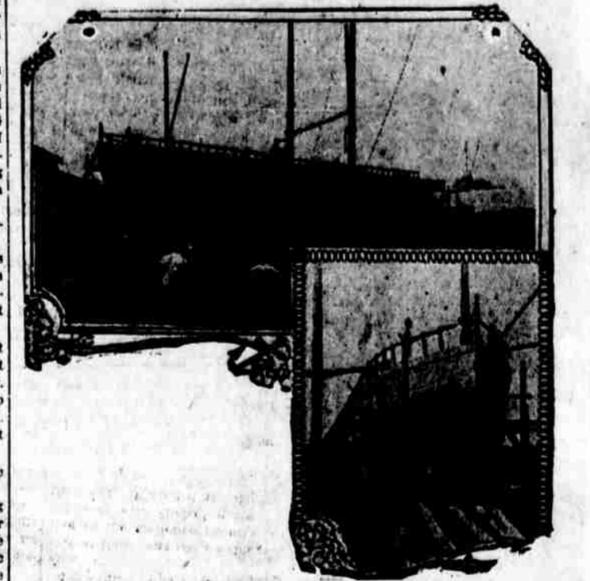
Here is a company of actors, Mr. Saito at their head, Mr. Saito goes to Mr. Negro and says:

"I want to put on a play, plays that will be popular, and we presume a play that will be interesting to the people will be on the present question that is so exciting their minds, namely, the question of higher wages."

Mr. Negro says, "Yes, I will draft you that play."

So he jotted down, jotted down a few sketches for the foundation on the basis of what he thought would be a good play, and gave it to Mr. Saito. I don't know whether Mr. Saito paid him for it or not. I don't think it is in evidence, I hope he did. But what in the name of Fortune has that to do with the Honolulu Higher Wage association. It is sought to fasten the guilt of a conspiracy upon these four men because Mr. Negro wrote a play. That is all. And the play itself, there is no word that even Mr. Kinney could object to. Not a word. Ah! but what is it? Look here, Mr. Makino—Mr. Negro not only wrote the play but he conducted the rehearsals. Now he is a man not in the actor business—a good-looking fellow and might make a good actor I suppose, but he says that is not in his line and he don't know

Replica Of Fulton's Steamboat Soon To Plow Hudson



New York, July 10.—The replica of Robert Fulton's first steamboat, the Clermont, which is to steam up the Hudson during the Hudson-Fulton celebration in September, was launched at Mariners Island today with appropriate ceremonies. There were speeches and a salute of cannon, and when the hull of the odd looking craft sped down the ways and struck the water gracefully all the tugs and vessels in the neighborhood greeted her with tooting whistles and dipping flags. The steamboat when complete will be an exact duplicate of the first steam craft ever built. When she steams up the Hudson next autumn she will be accompanied by a great flotilla of war vessels and other craft and cheered by hundreds of thousands of people who will line the banks of the river.

anything about actin. What a fool proposition it would be for Mr. Negro to have a rehearsal of his play in his room, as testified to by that worthy gentleman who was eavesdropping, said Negro was rehearsing. But let it be granted for the sake of argument that Mr. Negro did write the play, let it be granted that the play was produced just as he wrote it, or just as he wrote it, or just as he suggested it what under Heaven was the matter with the play? They say, "Why, per sonated Sheba!" Well, is poor little Mr. Sheba's feelings so dreadfully thin, is his skin so thin that he cannot be personated. Why I think it is rather an honor some times, unless he is caricatured, and there is no evidence that he was caricatured at all there. He was dressed properly, "Just like Mr. Sheba, he acted like Mr. Sheba, he talked like Mr. Sheba, danced like Mr. Sheba." Mr. Sheba danced the hula-hula, which it is said Mr. Sheba does. I never saw him dance the hula-hula. It is all right if he can.

Now this man was on the stage, let it be granted he did personate Mr. Sheba. Why the President of the United States is sometimes personated on the stage. All the great men of history are sometimes personated on the stage, while we might give Ek's performances and his Honor personated on the stage in a proper way, and there would be nothing wrong.

Was there a crime in personating Mr. Sheba? Of course not, gentlemen. It is silly to think there was. There wasn't any evidence that there was any improper personation of him any more than there was any improper personation of Mr. Negro. He got it in the "neck" too. He was personated there too, and yet he looks pretty good today. He has not lost flesh that I have noticed since that occasion, and I don't think he is worrying very much about it.

Now there was some evidence, some fool in the audience shouting out

"Down with Sheba" or something of that sort. Wasn't it harmless? There was no harm done? They didn't go and pull Sheba down, and didn't do anything to Sheba. It was some person who was feeling in good spirit probably, or felt somewhat excited and gave utterance to a foolish remark.

But is there anything whatever to connect it with these defendants? Let it be granted that the whole house of those two thousand people had gone perfectly wild and said:

"We will go and 'bukumetsu' Sheba." Unless it is shown that it was done in pursuance of a conspiracy entered into by these defendants it has absolutely nothing to do with this case. All the acts of Mr. Negro aren't the acts of the other defendants in the absence of a showing that they were in pursuance of the conspiracy which the prosecution seeks to fasten on them.

Now while the police visited the private apartment of Mr. Negro while Mr. Negro was in jail, they took along a plan—a plan, sketch of an organization. They had it translated. "Now we have got it"—(flourish). "Now we have got the real cheese." "We have got those fellows how so tight that they will never get out of jail for forty years. Here is a plan of the Honolulu Higher Wage association, so we will get Mr. Sheba to translate it."—the same as he had translated the books of the NIPPU JIJI—he being in that business too. And what was it? They came in here and said that this was a plan of the higher wage association. It wasn't anything of the kind. It was a plan of an organiza-

tion that Mr. Negro had in mind, or organizations which are now probably being formed throughout the Territory of Hawaii, name, a labor union, and had nothing whatever to do with the Higher Wage association.—Now that wakens Mr. Kinney up—a labor union. That was the idea.—Not the Higher Wage association. And that labor union, gentlemen of the jury, if it is being formed today throughout the islands, is being formed legitimately, because laborers have just the same rights to combine together for their mutual good as the planters of the Hawaiian Islands have the right to associate themselves together for the purpose of keeping wages down, and there is no crime, no crime on God's green earth, in the formation of a labor union.

Some people have different opinions about the advisability of labor unions. Some people say that they aren't a good thing, the body politic, but I think it is the general consensus of opinion that labor unions are a blessing to the labor men,—laboring men, for were it not for labor unions, capital would become so arrogant that they would continue with their enormous profits,—even two per cent, a month; as on one plantation on this island,—three and a half per cent, per month, and would keep the poor slave of a laborer down. Nothing illegal in a labor union! But let it be a labor union, let it be a labor union even though illegal, even with an illegal object or to be brought about by illegal means. Has it anything

And so again, these facts upon which they rely in establishing a conspiracy, absolutely fails to the ground.

MILLIONS FOR NEW OFFICE BUILDINGS.

Skyscrapers to be Constructed in Chicago's Business District.

Chicago, August 6.—Two more skyscrapers, enhancing the rapidly improving appearance of the reconstructed downtown district and adding a new impetus to this year's unprecedented building boom in Chicago, are to be erected as soon as the plans announced today can be carried out. The aggregate of the investments represented in the projects is \$4,500,000.

One structure is to be seventeen stories in height, with the basement. The building will cost \$900,000 and will be erected on a \$1,100,000 site at the northwest corner of Wabash avenue and Madison street. The other, which is to be the new home of one of Chicago's financial institutions, will be twenty-one stories in height, besides the basement and sub-basement.

The latter structure will cost \$1,500,000, and will be erected on a site for which \$1,000,000 cash was paid today. It is to be a combined bank and office building and will occupy the ground under the old Taylor building, at 140 and 146 Monroe street, the wrecking of which will be commenced at once.

Jacob L. Kesner is the projector of the building at Wabash avenue and Madison street. The Harris Trust and Savings Bank has undertaken the other enterprise.

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