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THERAPION No. 3 [illegible]

THERAPION [illegible]

BURTON AT THE BAR

How Kansas Grafter Received His Sentence.

KANSAS CITY, Mo., April 6.—United States Senator Joseph R. Burton of Kansas, recently convicted of receiving fees illegally from the Rialto Grain and Securities Company, as their attorney, was today given a sentence of six months in jail and was fined $2500 by Judge Adams in the United States District Court here.

Judge Adams, summoning Senator Burton to stand up, spoke of the motions that had been filed for a new trial and for arrest of judgment. The court, after briefly reviewing the motions, overruled them both. The court then said to the defendant:

"Have you anything to say as to why sentence should not be passed upon you?"

Trembling and evidently suppressing his emotions with a strong effort, Senator Burton stood leaning with both hands on a chair back, as he said:

"Your Honor will please allow me to respectfully decline to say anything."

The courtroom was almost empty, with the exception of a few persons interested in the previous case, who had remained out of curiosity, and the silence was almost oppressive as Judge Adams, in low, modulated tones, began delivering the sentence. The court said:

"After a fair and impartial trial by a jury of exceptional intelligence you have been found guilty of the offenses charged in the indictment against you.

"A motion for a new trial in your behalf has afforded me an opportunity to carefully review and consider the evidence. As a result of this I am satisfied that the jury reached the just and true result. The evidence abundantly warranted their verdict, and I find no reason, either in the law governing the case or in the proceedings attending the trial, for disturbing it.

"Your conviction necessarily results in your punishment. Its importance, in my opinion, is not confined to its effect upon you.

"Your exalted station in life and the character of your offense give unusual significance to your conviction. It demonstrates that the law of the land is equal to any emergency, and that it can be administered regardless of the personality or station of the accused. It also demonstrates to all the people that public office cannot be prostituted to selferving purposes and that public office is not a sure or safe passport to private thrift.

"The humiliation attending your conviction and the statutory disqualifications resulting therefrom, which forever incapacitate you from holding any office of honor, trust or profit under the Government of the United States, are in themselves heavy punishment for your offenses, and leave but little in the way of severity which could be added.

"It is neither my pleasure nor purpose to impose any unnecessary punishment. I think the majesty of the law will be sufficiently vindicated and the public welfare sufficiently safeguarded by imposing a single sentence, warranted, as it is, on any one of the six counts of indictments on which you were convicted.

"This sentence will be that you be confined in the Iron County Jail for a period of six months, and that you pay a fine of two thousand, five hundred dollars."

At the conclusion of the sentence, Senator Burton, who had not taken his eyes from the court and who had scarcely moved as he supported himself by the chairback, turned and sat down, with his head bowed and his eyes on the floor.

Attorney Krum immediately filed a bill of exceptions in the case and offered a bond for $10,000, which was accepted. The case will now be appealed to the United States District Court of Appeals.

Senator Burton, who is senior Senator from Kansas, was convicted after an exhaustive trial, in which various letters from him to the Rialto Grain and Securities Company, the checks which he received in payment for his services in behalf of the concern before the Postoffice Department and the testimony of numerous agents of the Government were introduced. Senator Burton's defense was that he was acting merely in the capacity of an attorney and did not employ his Senatorial influence in the work.

WILL PAY OFF MANY WARRANTS

Treasurer Campbell is ready to pay registered warrants from [illegible] to [illegible] inclusive upon presentation. There is money enough now in the treasury to pay them all off dollar for dollar.

[illegible]

LEGISLATURE CLOSES ITS SPECIAL SESSION

(Continued from page 2.)

following measures:

Joint resolution No. 1, providing for the immediate carrying out of the changes and economies suggested in the appropriation bills.

Act 11, relating to payment of current accounts.

Act 12, providing for salaries and pay of employees of the Territory.

Act 13, making appropriations for the departmental use of the Territory.

Act 14, making appropriations for paying unpaid bills. In the latter as signed the Governor calls attention to an error in the footing of the total, being in excess $12.01.

Joint resolution No. 2, providing for a County Act Commission.

PARTING BOUQUETS.

Mr. Paris reported that the joint committee had seen the Governor, who stated that he had no further business for the consideration of the Legislature, and desired to convey to all the members of the Legislature his thanks for the diligence and effectiveness with which they had conducted the business of the special session to a satisfactory conclusion.

The report was received with applause.

Mr. Paris moved, seconded by Mr. Dickey, that the Senate adjourn sine die.

President Crabbe wished, before putting the motion, to thank the members of the Senate for their kindness extended to him. One and all he thanked them for the support they had given him.

Mr. Paris withdrew his motion to propose thanks to their president for the impartial way in which he had ruled and carried on the business of the session, and he thought they could well pass a vote of thanks to the president for the manner in which he had treated all parties—Democrat, Republican and Home Rule.

Applause carried both motions and the president's gavel fell at 11:35 o'clock.

THE HOUSE.

There was practically no business transacted in the House of Representatives yesterday which is not revealed in the report of the Senate proceedings. The same messages were received by both houses from the executive, while the exchanges of documents for final amendments and passage are told about in the Senate report.

One exception was the giving of fifteen days to the clerk in which to complete the Journal and have 100 copies of it printed. Another exception was the more demonstrative closing accessories as compared with the retiring conduct of the staid upper chamber.

Mr. Aylett led the Representatives in cheering for Governor Carter, Speaker Beckley, Secretary Atkinson, President Crabbe of the Senate (who was on hand to respond with a speech) and for the reporters of the newspapers.

An attempt, while the session was still on, to cheer for the band, when its appropriation was found intact from the hand of the Governor, was discouraged by the Speaker.

THE TREASURE OF THE INCAS.

Sixteen Millions in Gold Dug Up in South America.

The New York Tribune prints a report that, after a search extending through several centuries and entailing the expenditure of many thousands of dollars, the fabulous treasure buried in the time of the Incas, and valued at $16,000,000, has just been discovered by a group of British and American engineers, according to reports brought to New York by a South American official. Advices from Bolivia tell of great excitement among the natives, as there is, according to their belief, still buried gold valued at $30,000,000. The newspapers of Bolivia and Peru publish the news of the discovery under "scare" headlines unusual in those parts.

This rich treasure, consisting of the purest gold, was buried and found at Chayaltaya, in the interior of the republic. About 400 years ago, at the time of the assassination of Atahualpa, king of the Incas, the gold was buried by his followers. Since then innumerable exploring parties, native and foreign, have made fruitless searches for the gold. It was by mere accident that the lucky finders came upon the ancient treasure, which many had come to consider as a myth. They discovered it in making surveys and driving stakes for another enterprise, according to the reports.

A dispute has now arisen among the American and English engineers as to its division, in which the Bolivian government has interested itself. The government has taken charge of the find, announcing that, on account of the difference in the nationalities of the engineers, it will act as guardian and supervise the distribution.

WHOOPING COUGH.—This is a very dangerous disease unless properly treated. Statistics show that there are more deaths from it than from scarlet fever. All danger may be avoided, however, by giving Chamberlain's Cough Remedy. It liquifies the tough mucus, making it easier to expectorate, keeps the cough loose, and makes the paroxysms of coughing less frequent and less severe. It has been used in many epidemics of this disease with perfect success. For sale by All Dealers and Druggists. Benson, Smith & Co., Ltd., Agents for Hawaii.

District Judge Mahaulu

Judge Kalli, District Magistrate of Waialua, who was arrested on Monday, has sent in his resignation to Governor Carter. Abdon Mahaulu will probably be appointed in his stead. [illegible]

[illegible]

EXECUTION MUST ISSUE

Supreme Court Majority Commands Judge Dickey.

(From Thursday's Advertiser.)

Justice Perry is author of a majority decision of the Supreme Court, Chief Justice Frear signing it with him, in the mandamus suit of E. O. Hall & Son, Ltd., vs. Lyle A. Dickey. Plaintiff wanted the writ to compel the respondent, as District Magistrate of Honolulu, to issue execution, pending an appeal to the Circuit Court, in a cause wherein the respondent gave judgment for the plaintiff for $309.40. The magistrate found there was good cause for issuing the execution so far as the appeal was concerned, but denied it on the ground that the law of 1892 purporting to authorize such issuance was not applicable to district magistrates where the amount involved was over $300. In his answer the respondent set up the additional point that the judgment, being for an amount exceeding $300, was beyond his jurisdiction and therefore voidable.

It is decided by the court that the latter point was previously settled in the case of Lewers & Cooke vs. Redhouse, where it was said: "Attorney's commissions and costs allowed by statute should not, we presume, be included in determining the jurisdictional amount. They are not a part of the claim or of the amount sued for." In the case under consideration the judgment was for $275.91 damages, $15.26 interest, $14.78 attorney's commissions and $3.45 costs of court. Excluding commissions and costs, the amount of the judgment is decided as having been within the jurisdiction of the magistrate.

The court then takes up the law bearing on the issuing of executions by a district magistrate. It was made in 1892 and amended in 1903. This law has a proviso to the effect that the judge or magistrate may issue an execution upon good cause shown, notwithstanding an appeal, "unless the applicant" shall deposit a bond in not less than double the amount of the judgment, "conditioned for the prosecution of the appeal without delay" and for the payment or other performance of the judgment.

It was contended by the respondent that the foregoing proviso did not apply to cases tried by district magistrates in which the amount involved exceeded $20—in other words, if it did so apply, it would be unconstitutional as unduly obstructing the right to trial by jury.

The court has no hesitation in holding that the word "applicant" quoted above should be read as though it were written "appellant," no matter whether the word was purposely used to denote the party appealing or was a mistake of the copyist. It is admitted further on that if the word was used to identify the appealing party it is "an unusual term of description."

As to the other point, the court holds that the provision in question does not constitute a denial of the right to a trial by jury and does not unduly obstruct it.

Another objection to the statute presented by the respondent was that the condition named, that of a bond in double the judgment, is not imposed upon all applicants alike but only upon some at the mere will of the magistrate. This objection the court says would apply equally to appeals from circuit judges, and has no relation to any possible contravention of the Seventh Amendment to the Constitution, providing the right to trial by jury, but must be based and stand, if at all, upon the provision of the Fourteenth Amendment, prescribing that "no State shall deny to any person within its jurisdiction the equal protection of the laws."

Upon this the court holds that the statute only gives the magistrate "a judicial discretion" to decide in what cases the bond shall be required, and goes further by providing "that the bond shall be required only in those cases in which good cause is shown for the immediate issuance of execution. If this discretion is abused, there is a remedy by appeal. There is no inequality in the provision. All are treated alike who are situated in like circumstances." Other conditions of appeal are quoted which are equally objectionable to this one if the objection to it were sustained.

Another point raised was that this proceeding was brought against "Lyle A. Dickey," without his official title of "District Magistrate." This is held to have been waived by the respondent in answering to the merits and in proceeding to a hearing without raising the point. "In any event," the majority says, "the petition is capable of amendment in this respect." The opinion concludes thus:

"Upon an amendment as to the name of the respondent being asked for and made, a peremptory writ should issue directing the respondent to issue execution at once unless the judgment debtor and appellant in the original action shall deposit the bond required by law."

J. A. Matthewman appeared for the petitioner, W. [illegible] against whom the [illegible]

THE DISSENTING OPINION.

Justice Galbraith begins his dissent [illegible]

no power to control his conduct by this extraordinary writ. This proposition is elementary."

As to the law he says the meaning of the statute is not clear. The plaintiff assumes that notwithstanding an appeal duly taken and perfected the district magistrate may order execution for the enforcement of the judgment unless the defendant shall file a bond, etc., but, Justice Galbraith says, the statute does not read that way. He discusses the wording of the statute thus:

"It reads 'unless the applicant shall deposit a bond.' The 'applicant' for what? The execution? No. It could not mean that the plaintiff should file a bond to prosecute the appeal. That would be absurd. He has no control over the appeal and the judgment is payable to him and not by him. Nor can the word 'applicant' in this connection by any fair or reasonable interpretation refer to the judgment defendant. He has perfected his appeal and transferred the case to the Circuit Court, where he is entitled to a trial de novo and a jury trial if he desires it. He is not an applicant for anything further from the district magistrate or his court."

As to the use of the word "applicant" itself, Justice Galbraith says that when the "intent of the legislature" is spoken of he understands that reference is to the meaning of the words used in the statute. To substitute another word for "applicant" he holds "is coming very near an act of legislation." He had no means of knowing that some members of the legislature did not know that and for the reason that the word "applicant" was used and might not have favored it if the word "appellant" had been substituted for it.

[illegible]

to issue execution, Justice Galbraith goes on to argue that if they assumed for the purposes of the case, which they had no right to assume, that, if the lawmakers meant "appellant" where they said or were made to say "applicant," it meant that the district magistrate was given the power, in his discretion, to deny a litigant the right to a jury trial in a case involving twenty dollars or more unless he should execute a bond as the law directed. He argues out that the law is not equal to all people. No "applicant" or "appellant" can know whether or not his appeal is conditioned on the bond in question "until the inner thought of the district magistrate has been revealed."

Justice Galbraith contends that the decision of the Supreme Court before the law was amended is equally pertinent to this case, where it said:

"There is strong ground for the contention that the issuance of execution on the judgment of the District Court, where a jury trial is impossible, pending an appeal to the Circuit Court, where such a trial is available, is practically a denial of the right to a jury trial. * * * To be entirely effective this right should be available before the defendant's property is seized and sold under execution. To seize and sell his property and then permit him to have a jury trial to determine whether or not it should have been seized and sold, is, to put it mildly, placing restrictions about this constitutional guarantee that ought not to be upheld."

Prefacing his conclusion that the peremptory writ should be denied and the proceedings dismissed, the dissenting Justice says:

"The statute is wrong in theory. It gives an obvious advantage to the [illegible]

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