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FLAW IN PAPERS TO FREE TEN MEN.

Coeur d'Alene Rioters Regain Their Liberty. ARE NOW IN SAN QUENTIN. United States Court of Appeals Orders Their Release.

Were Convicted of Conspiracy to Obstruct United States Mails, but Indictments Failed to Specify That They Were Aware the Train Interfered With Carried the Mails—This, the Judges Held, Was an Essential Ingredient, Hence Prisoners Must Be Released—One of the Men a Spokane College Graduate—Text of the Ruling.

SAN FRANCISCO, Oct. 1.—Through a decision rendered today by the United States circuit court of appeals the ten Idaho strikers who were convicted of a conspiracy to obstruct a train carrying the mails will secure their release from San Quentin.

The case is one growing out of the big strike in Idaho in 1899 and the destruction of the mill of the Bunker Hill and Sullivan Mining Company. In their decision Judges Gilbert, Ross and Morrow call attention to the fact that the indictment does not charge that the conspiracy had for its purpose to knowingly obstruct the mails. Continuing the judges say:

"It is alleged that they willfully and knowingly delayed and obstructed the movement of the train. While it is true that the laws make the railways of the United States postal roads for carrying the mail and a large number of passenger trains are engaged in carrying the mail, it is nevertheless true that many passenger trains do not carry the mail. The defendants in this case are not charged with the overt act of obstructing the passage of the mails, but with a conspiracy. It is the confederation and conspiracy to commit an offense against the United States that they are called upon to answer. As charged in the indictment, the conspiracy is declared to have for its purpose to knowingly hinder and obstruct the movement and passage of a certain railroad car and train, which car it is subsequently alleged carried the mails of the United States. It is no offense against the United States to hinder and delay the passage of a railway car and, consequently, it is no offense to conspire or confederate for that purpose. Such an offense must be dealt with under the laws of the state.

Lacks Essential Ingredient. "The conspiracy as charged in the indictment lacks an essential ingredient to an offense against the United States, to wit: That the defendants knew that the mails of the United States were carried upon the train, which they conspired to obstruct. It may be that they all had such knowledge, or that the facts and circumstances shown in the evidence were sufficient to charge them with such knowledge, but that does not dispense with the necessity of setting forth in the indictment all the elements of the wrongful act which they conspired to commit."

The decision quotes from Hawkins as follows: "In an indictment nothing material shall be taken by intendment or implication. Continuing the court says: "The above authority sustains the proposition that an indictment for a conspiracy to commit an offense against the United States must charge every element of the offense as fully as if the indictment were for its perpetration."

WHO THE PRISONERS ARE. One Spokane Man Among the Number, a Graduate of Gonzaga College, of That City.

Special Dispatch to the Post-Intelligencer. SPOKANE, Oct. 1.—The ten Coeur d'Alene rioters who are now imprisoned at San Quentin, as a result of the former trial, and who will be released in accordance with the decision of the court of appeals, are Francis Butler, Mike Mather, P. F. O'Donnell, Arthur Wallace, John Lucinette, Henry Maroni, Louis Salla, Edward Albino, C. R. Burris, Dennis O'Rourke.

All, with the exception of Dennis O'Rourke, were sentenced to twenty-two months' imprisonment, and to pay a fine of \$1,000. O'Rourke, on account of his age, was given a sentence of twenty months. The men were released in accordance with the decision of the court of appeals, and were taken to the United States penitentiary at San Quentin, where they will be held until the expiration of their terms.

All during the time the men had been in the penitentiary their attorneys have been working incessantly for the victory which they have at last secured. Francis Butler, the one Spokane man in

RECEIVER OF NOME MINES IS ORDERED ARRESTED.

Pronounced in Contempt of Court for Failing to Turn Over Mines to Original Owners.

Judge Arthur H. Noyes, of the United States Court for the District of Alaska, Is Also Charged With Disobedience of the Court's Orders—United States Officers to Leave Seattle for Nome to Make Arrests and Enforce Orders.

Special Dispatch to the Post-Intelligencer. SAN FRANCISCO, Oct. 1.—Deputy United States Marshal Shelley, Monckton and George H. Burnham left this city tonight for Seattle. They are to sail from that point on Tuesday, charged with an important mission at Cape Nome. An order made in this city today by the circuit court of appeals directs the marshals to arrest Alexander McKenzie, the receiver in a number of Nome mining cases. They are also to enforce an order of court which has been disobeyed by McKenzie, and also by Arthur H. Noyes, the United States judge for the district of Alaska.

They represent the United States courts and all the power of government will be used to make the court's decrees respected. In the court of appeals this morning direct charge was made that Judge Noyes and McKenzie were principals in a criminal conspiracy through which citizens have been deprived of mining properties valued at many thousands of dollars. The charge came from attorneys representing the Wild Goose Mining and Trading Company, Charles D. Lane and other parties to litigation said to involve practically every mining claim of large value in the Nome country.

Charges Against Judge Noyes. The charges against Judge Noyes were first made of record in the circuit court of appeals some weeks ago. It was then shown that McKenzie, through the kindness of Judge Noyes, had been placed in possession of many thousands of dollars of property upon the mere filing of a bond for \$5,000. The right of Judge Noyes to appoint McKenzie was challenged. Upon the filing of proper bonds Judge Morrow granted a writ of superseas, which annulled the appointment of the receiver and directed both Judge Noyes and McKenzie immediately to restore the property in dispute to the owners who had been in possession at the time litigation commenced.

The session of court of appeals was attended by Judges Gilbert, Ross and Morrow. They learned with amazement that Judge Morrow's writ of superseas and its accompanying order had been contemptuously ignored. Judge Noyes, when served with the writ at Nome, declared it to have been made without authority. He refused to assist in enforcing the order. McKenzie was equally firm in refusing to relinquish control of the property.

At the time service was made of the order McKenzie had under his control gold dust valued at many thousands of dollars, which had been taken under the direction from the mining claims in dispute. This dust he had on deposit in the vaults of the Alaska Banking and Deposit Company, where it still remains under the guard of armed men. It was urged upon the court that im-

mediate steps should be taken to enforce Judge Morrow's order. Attention was called to the fact that the last steamer of the year for Nome was to leave Seattle Thursday. In order to catch this steamer it would be necessary for an officer of the court to start for Seattle at once. In the event of delay it would be impossible for an officer to reach Nome before next spring, by which time, counsel argued, the purpose of the alleged Noyes-McKenzie conspiracy would have been so far accomplished as to work irreparable damage to the real owners of property.

Upon this showing of facts the court was prompt to act. The deputies were sent by Marshal Shiner to see the order of Judge Morrow enforced, even should it be necessary to call upon the military authorities of Alaska for assistance.

McKenzie is to be brought here as a prisoner, and demand will be made by counsel that he be adjudged guilty of contempt and severely punished.

Trouble for Judge Noyes. Judge Noyes may expect more serious trouble from writs of certiorari which were issued today. The writs called for a complete record of proceedings in Alaska. This record is expected to show that McKenzie was appointed receiver within twenty-four hours after Judge Noyes reached Nome, before a court room had been secured, or any papers filed to authorize the judge's action.

ORDER FOR ARREST SECURED FROM SEATTLE. Mr. N. P. R. Hatch Sent Telegraphic Synopsis of Affidavits to San Francisco.

N. P. R. Hatch, of this city, a member of the firm of Jackson & Hatch, arrived here from Nome yesterday at noon on the steamship Senator. Immediately upon his arrival Mr. Hatch sent a telegraphic synopsis of a number of affidavits to his associate counsel at San Francisco. That gentleman presented the message to the circuit court of appeals, now in session here, and the order for arrest was issued immediately. Only a general statement has reached this city. Mr. Hatch being in receipt of a telegram which states that Receiver McKenzie is to be arrested and that the marshal who goes up to make the arrest will take with him a number of writs directing that various claims be restored to their owners and other property held by the receiver also returned. It will be remembered that July 23 an order of the appellate court at San Fran-

isco was secured removing the receiver and directing that he return property held by him. This order was transmitted to the United States marshal at Nome, and by him served on Receiver McKenzie, Judge Noyes and persons whose interests were involved. The receiver and the court at Nome, it is said, professed to believe that the order from San Francisco should be construed to mean only that all work should stop. Accordingly they suspended operations on all property under their control, but refused to return the property to the owners. Affidavits to this effect were prepared and brought down by Mr. Hatch, and it was on this showing that the order of arrest was made.

Mr. Hatch was the original attorney for the plaintiffs who took the matter of the receivership to the circuit court. His firm has since become associated with a number of others which represent persons whose claims are tied up, and he believes that the order made last July, and which will now be enforced as was originally intended, will put nearly all of the property in controversy once more in the hands of the original owners and allow the resumption of development work on most of the claims about Nome.

It is claimed that receivers have been appointed even in cases where the contesting parties did not desire such action. One instance of a claim on Daniels creeks is cited where it is said the owner applied for a temporary injunction to prevent another party from working the claim. This injunction was denied and the owner was told that his only remedy lay in the appointment of a receiver. To protect his own interests the owner consented to such appointment, and then the very thing that he had endeavored to avoid followed. The receiver proceeded at once to open and work the claim.

In other instances it is alleged that persons having capital and every facility for developing their properties have allowed them to lie idle, knowing that if development progressed sufficiently to show the property to be of value any person so inclined could dispute the title and in all probability secure the appointment of a receiver.

The enforcement of the decision will, it is said, not only be a benefit to Nome and the adjacent country, but will greatly stimulate Seattle's trade with that section. Heretofore persons owning property have been unable to take out any considerable amounts, but this order, it is thought, will enable work to proceed and it is expected that the shipments of gold to the Seattle assay office will increase materially during the next season. This increase means a growth in the volume of business transacted between the miners and the local merchants, so that Seattle as well as Nome is interested in the issue of this order.

MINERS TO DECLINE INCREASE OFFERED.

Operators Meet and Make Definite Concessions. TEN PER CENT. ADVANCE.

Reduction in Price of Powder Is Also Agreed Upon.

Stipulated, However, That the Latter Must Be Computed in Figuring the 10 Per Cent. Advance in Wages—Striking Miners Fail to Appear for Work, Despite the Concession, and President Mitchell Says They Are Not Satisfied With the Terms Offered—Demonstration Planned by Strikers.

WILKESBARRE, Pa., Oct. 1.—The operators of the Lehigh and Lackawanna regions held an important meeting in this city this afternoon and decided to offer the miners an increase of 10 per cent. in wages and also to reduce the cost of powder to the miners from \$2.75 to \$1.50 per keg.

W. A. Lathrop, general superintendent of the Lehigh Valley Coal Company, president, and all of the railroad and individual companies were represented. The whole situation was thoroughly discussed, nearly all those present taking part therein. The powder question was the chief subject of debate, and next came the recognition of the union. So far as can be learned none of the operators were in favor of recognizing the union in any way.

The meeting lasted from 2 p. m. until 6 o'clock. This evening W. A. Lathrop, chairman of the meeting gave out the following:

Offer of Operators. "Lehigh Valley Coal Company, "Wilkesbarre, Oct. 1. "NOTICE.

"This company makes the following announcement to its mine employees: It will adjust its rate of wages so as to pay to its mine employees, on and after October 1, a net increase of 10 per cent. on the wages heretofore received; and will take up with its mine employees any grievance which they may have.

"W. A. LATHROP, "General Superintendent. "It is understood in the foregoing that powder will be sold to miners for \$1.50 per keg, and that the difference between this rate and the old rate of \$2.75 shall be taken into account in figuring the net advance of 10 per cent. noted above, for this class of labor."

Similar notices to the above will be posted by all the other companies represented at the meeting.

Strikers Will Not Accept. The strikers say that under no circumstances will they accept the offer. They claim that it is not as good as an offer as the Lehigh company made to its men, as the union is ignored, and the net increase must come out of the price of powder.

E. L. Palmer, chairman of the press committee, at United Mine Workers' headquarters, said: "The men will not return to work under such conditions. It is not a fair offer."

The operators will make no further move until they hear from the men.

Big Demonstration Booked. Preparations are about completed for the big demonstration to be held in this city tomorrow.

President Mitchell makes the following statement to the miners of the Wyoming valley: "To the Miners of Wilkesbarre and vicinity: "I look forward with pleasure to the great demonstration which will be given under the auspices of the mine workers of the Wyoming valley on Tuesday, October 2. The mine workers of the anthracite region have by their law-abiding conduct won the respect and admiration of all justice-loving citizens of the United States. I feel assured that organized labor has won a great victory and that in the future there will be in the homes and families of mine workers a little more happiness and sunshine instead of the gloom and sadness too often finding a dwelling place there. (Signed) "JOHN MITCHELL, "President."

MINE WORKERS PLEASED. Ignoring of the Proffered 10 Per Cent. Increase in Wages the Cause.

HAZLETON, Pa., Oct. 1.—Although the labor leaders positively said they did not want a break in the ranks of the anthracite coal strikers, they were, nevertheless, pleased to learn that the 10 per cent. advance granted by the Philadelphia and Reading Coal and Iron Company, in the Schuylkill valley, was totally ignored by the striking mine workers today. It was predicted that many of the strikers would return to work under the belief that the 10 per cent. increase would be the limit of the operators' concessions, and the unanimity of the men in declining to stand out for a further advance caused many remarks of surprise.

It was expected in some quarters that today would bring a turning point in the strike, but nothing came to the surface that would lead to any intimation of the strike nearing an end. There is still a lack of anything tangible on which to base the report of an immediate settlement. President Mitchell continues to deny that he knows anything about it. The strike situation in the Lehigh val-

BRITISH ELECTIONS SHOW FEW CHANGES.

LIBERALS HAVE LITTLE TO HOPE FOR FROM METROPOLIS.

Densely Populated Working Class Districts of London Fail to Make Favorable Showing—Tories Gain Two Seats to Liberals' One.

LONDON, Oct. 1.—Sixteen English and Irish boroughs, electing twenty members to the house of commons, are polling today. Another long list of unopposed returns brings the total number of those already elected up to 230 p. m. today to 119, as follows: Conservatives, 75; Unionists, 15; Liberals, 5; Nationalists, 6.

Among the candidates returned today unopposed were: Ministerialist—Lord George Hamilton, secretary of state for India; Michael Hicks-Beach, chancellor of the exchequer; Nationalist—John E. Redmond, chairman of the United Irish parliamentary party. In the following boroughs polled today all the sitting members were re-elected: Devonport, Durham, Exeter, Kings Lynn, Peterborough, Preston, Reading, Rochdale, Wigan and the North and South divisions of Westham.

In Durham the Unionists secured a majority of 761, as against one of 45 at the last election. The results in the other boroughs show little change, with the exception of a very significant increase in the Unionists' majorities in Westham, where in the North division the Unionists secured a lead of 2,560, against 784 at the last election, and in the South division a lead of 1,196, against 736 in the last election. Westham is a densely

FIRST DAY IN NEBRASKA CROWNED WITH SUCCESS.

GOV. ROOSEVELT VISITS HOME STATE OF MR. BRYAN.

Thirteen Speeches Were Made and Between Thirty and Forty Thousand People Addressed—Eleven Speeches Are Booked for Today.

M'COOK, Neb., Oct. 1.—Gov. Roosevelt's first day in Nebraska was regarded as successful, though the morning started out wet and chilly and the audiences were small. Thirteen speeches were made during the day.

As the day advanced the sky cleared and the meetings at the different places along the way showed a great deal of interest. Besides the inhabitants of villages and cities a large number of people mounted and in carriages, evidently from the country, were noticed on the streets and around the stands. Probably thirty or forty thousand people were addressed during the day. Gov. Roosevelt's special train remained at McCook until late in the night, when it pulled out for North Platte and tomorrow's journey will cover a distance of 60 miles, and within that distance he will make eleven speeches.

Tomorrow night a journey will be made to Broken Bow, at which the train will arrive at 8 o'clock in the morning. National Democratic Clubs. INDIANAPOLIS, Ind., Oct. 1.—Arrangements for the convention of the National Association of Democratic Clubs here Wednesday have been completed. The officers of the association are predicting

DEGRADING OF TUAN OFFICIALLY ANNOUNCED.

MINISTER WU, AT WASHINGTON, HAS BEEN DULY NOTIFIED.

Information Agrees With That Contained in a Dispatch Received by the State Department From Consul McWade at Canton.

WASHINGTON, Oct. 1.—Mr. Wu, the Chinese minister, has received official confirmation of the issuance of an Imperial decree degrading Prince Tuan, Kang Yi and other officials for their course in regard to the recent troubles in China.

This information agrees with that contained in a dispatch received by the state department from Consul McWade, at Canton. The minister has heard nothing of the designation of officials announced by Minister Conger to act in concert in peace negotiations, but he has no doubt it is correct.

IMPORTANT DISPATCHES IN FROM PEKING. They Tend to Confirm the Events Recorded Saturday, Including Degradation of Tuan. WASHINGTON, Oct. 1.—Several important dispatches were received today from China. Generally they tend to confirm the events recorded Saturday. From Canton, Consul McWade reports the issue of the decree punishing Tuan and his colleagues, so that there is no longer doubt as to the accuracy of Sheng's statement on that point. Mr. Conger also has received notification of the Chinese

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