

"GOVERNMENT BY INJUNCTION" HAS COME WHEN COURT DENIES CITIZEN DUE JUDICIAL PROCESS—BIRDZELL

Nonpartisan Member of Supreme Bench Declares No Trial Was Given Defendants in Scandinavian-American Bank Matter—Asserts Judgment Should Be Held Void and Case Reheard or Remanded to District Court for Adjudication on Its Merits

That the case of the state ex rel O. E. Lofthus, the Scandinavian-American bank and its president and cashier and directors versus the state banking board was not tried before the supreme court of North Dakota on its merits, is the contention of Justice Luther E. Birdzell, in a strong dissenting opinion which was filed today.

"I dissent," says Justice Birdzell, the only Nonpartisan member of the court not to agree with the majority opinion signed by Justices Bronson, Grace and Robinson and written by the first named of the trio. "At the time the original application in this matter was presented to the court, I was of the opinion that the court did not possess, under the constitution, the requisite original jurisdiction to deal adequately with the matters presented in the complaint. The matter of jurisdiction required decision then if the court was to issue the order prayed for, for the plaintiff requested that a restraining order issue at once, which would have the effect of removing Haldorson, the receiver appointed by the banking board, and of placing the bank in the control of the public examiner. It was also asked that the banking board be immediately restrained from invalidating post-dated checks as collateral security. The restraining order was asked for without notice and upon an ex parte application. It appeared clear to me that it should not issue unless this court was possessed of the requisite jurisdiction, not only to disturb the existing status to the extent requested, but to determine fully the merits of the controversy foreshadowed by the complaint.

NO ORIGINAL JURISDICTION

"I was of the opinion that this court did not possess under the constitution the requisite original jurisdiction, and further reflection confirmed that opinion. The majority of the court, however, assumed jurisdiction and issued the order. That action brought the matter here for future proceedings as might be deemed appropriate. It was a justifiable assumption at the time that upon the return of the order to show cause, the temporary order would be dissolved, if sufficient showing were made by the respondents to justify their continuing the course they were pursuing; or, if not, that it would be continued pending a trial of the issues on the merits. But so far as the assumption related to a trial on the merits, it proved to be altogether too liberal, as it will appear presently.

"Prior to the return day, the attorney general had asked for an interpretation of the injunctive order with reference to its effect upon certain proceedings which had been begun by him under section 7900 of 8004, C. L. 1913, in the district court of Cass county.

"These proceedings were predicated partly upon the alleged insolvency of the Scandinavian-American bank, and were brought for the purpose of having a judicial determination of that fact and for the further purpose of having its affairs administered in accordance with the statutory law especially made applicable to the situation. In the application it was stated that the district judge before whom the case was pending had construed the order previously issued by this court as preventing further proceedings in that action; and the majority of this court, which is the same majority that has joined in the principal opinion herein, declined to place an interpretation upon its previous order that would permit the attorney general to exercise his statutory authority to prosecute the action referred to in district court.

"Later another application was made by the attorney general for modification of the order that would permit him to retain certain documents which he represented to be material as evidence in criminal proceedings against officers of the bank. This request was also denied by the majority, the minority considering that reasonable provision should be made to secure for the state the benefits, if any, of such original evidence. On the return day the defendants requested an opportunity to examine witnesses in case court should be desirous of passing upon the solvency or insolvency of the bank and the merits of the controversy. The case already stood at issue both upon a motion to quash for lack of jurisdiction and upon an answer putting in issue all the principal facts alleged in the complaint. But at the close of the argument, instead of granting this request, the court entered an order permitting the respondent to file affidavits upon any matters concerning which they desired to submit proof up until October 23.

PETITION IGNORED

"It was understood by the court that this order should not be construed as either a denial or a granting of the request of the respondents made at the time of argument; but that such request should be dealt with in the future in the light of such facts as might be developed by the affidavits filed, and as the need for further proof might appear to the court. As is stated by the majority, no additional affidavits were filed by the respondents. But on October 21 the attorney general petitioned for modification of the order entered on the day of argument which would permit him to examine witnesses that he might subpoena to appear before a district court. The petition practically amounted to a renewal of the request made upon argument, and it was based upon the representation that there were some five or six persons whose testimony under oath was material and who had refused to give affidavits.

"While this petition was pending, it, the court, acting by the majority members, considered the proofs closed and proceeded to determine the merits of controversy in the manner indicated in the majority opinion. These facts are not stated in the majority opinion and I state them as preliminary to (Continued on Page Five)

BAD WEATHER IS NO HANDICAP IN ROLL CALL DRIVE

Red Cross Reports "Not a Single Refusal" in Campaign For Members

TEAM MEMBERS NAMED

Not a single refusal. That is the outstanding feature of the Red Cross membership campaign which officially opened yesterday and the booths in the local hotels, teams covering the city and the chairman of the districts in the county all report, "Not a single refusal."

Every person in the city and county who was approached gladly contributed his or her \$1 for the annual dues and Raymond Bergeson, director of the campaign, said this morning it is only a question of seeing the people in order to get the members.

"The weather may be very disagreeable, but that is not going to stop us from exceeding our quota of 5,000 for the county," said Mr. Bergeson today. "The members of the American Legion have taken hold of their work in the city in fine style and with Bismarck mapped out into districts and each district covered intensively by the former service men, there can only be one result; oversubscribed."

The various teams in the county, some of which started their activities last week, report considerable interest in the drive in the county and that there has been no difficulty in securing members. The county's quota is set at 2,000 members and the various district chairmen are confident that this amount will be exceeded.

BOOTHS SUCCESSFUL

The drive in the city started Saturday with booths in the various hotels and these booths will be kept open all week. Those in charge report that the response in the hotels for members is very gratifying.

Mr. Bergeson said this morning that it had been impossible to tabulate the results of the drive so far as many team captains and district chairmen found it impossible to send in detailed reports because of the weather. However, he expects to be able to announce in definite figures just how the drive is going in the city and county by the middle of the week.

In this drive, the officers of the Burlington county chapter of the Red Cross wish to impress upon every person in the county that if they are not visited by some worker for their membership that they should apply at the booths of the various hotels, or Mrs. T. H. Poole, secretary of the chapter, in the Federal building.

"The members of the American Legion are glad to help the Red Cross for that organization helped the former service men in many ways," said Capt. A. A. Jones, commander of the Bismarck post of the legion. "We know what the Red Cross has done for the soldiers at home and overseas and we know that it has a big task before it in this country and in our own county. That is why we are glad to do our share in making this drive a success."

GREEN RIVER ON RAMPAGE; DAMAGE EXCEEDS MILLION

Greenburg, Ky., Nov. 3.—Green river swollen to flood stage by heavy rains came to a stand today after inundating a large area and driving scores of families from low lying sections to higher ground. Damage has been confined to the bottom lands and the loss in crops is estimated at more than \$1,000,000.

HALL DECLARES RECALL ACT IS BADLY JOKERED

Law as It is to Be Submitted to People for Approval is Farce, He Says

TO GIVE VOTER CHANCE

Believes Electors Should Have Privilege of Dismissing Public Servants

"Some of my Nonpartisan friends have been lamenting over the fact that at the present time the people of this state do not have the right to recall their public servants," remarked Secretary of State Hall today. "The league organs have been proclaiming that when the constitutional amendment proposed by the last legislature assembly (Senate Bill No. 168, Chapter 93, Session Laws of 1919), has been approved by the people, this will be remedied. On this I wish to take issue.

"The proposed amendment provided for the recall of any elective official, by petition signed by 30 percent of the qualified electors who voted for governor at the preceding election, and the holding of a special election not less than forty or more than forty-five days from the filing of the petition.

"The officer against whom such petition has been filed shall continue to perform the duties of his office until the result of such special election shall have been officially declared. Other candidates for such office may be nominated in the manner as is provided by law in primary elections. The candidates who shall receive the highest number of votes shall be deemed elected for the remainder of the term. The name of the candidate against whom the recall petition is filed shall go on the ticket unless he resigns within ten days after the filing of the petition."

"Now in the first place the primary election law does not apply to special elections. (Section 852, Compiled Laws 1913, State ex rel Burtness v. Hall, volume 37, North Dakota reports, page 259), and secondly, it would of course, be impossible to call and hold both a primary election and the special election within the period limited, forty-five days.

"The primary election law relates only to party nominations. Section 851, declares, 'It is the intention of this article to reform the methods by which political parties shall make nominations.'"

"It is the intention of the proposed amendment to have party nominations. If so, is the recalled official denied the privilege of having his name appear in his party column, if not is his party denied the right of selecting some other candidate?"

"As the recalled official automatically goes on the ballot, and no workable method by which another candidate can have his name placed thereon, this law is merely a farce and is being used to fool a certain class of people with. The men who drew the bill know that it cannot operate."

"The legislative having been called to meet in special session, I therefore suggest, that it strike out this joker, and propose a workable law, so that the people may actually have the power to dismiss objectionable judges and officers from public service."

HALOWE'EN PRANK MAY CAUSE DEATH OF WINONA BOYS

One Young Man in Very Serious Condition From Gun-shot Wounds

Winona, Minn., Nov. 3.—Fred Moore is in a serious condition and William Pease, Walter Blodgin and Debs Lake, all Chatfield high school boys, are suffering from gun-shot wounds received at the hands of Charles Cotton, 75-years-old Civil war veteran, on last Friday night, according to word received here today.

It is said that Cotton anticipated the boys were going to tip over one of the out-buildings as a Halloween prank and that he had been waiting for them. When the boys approached, Cotton's property he opened fire on them with a shot-gun it is said. Feeling in Chatfield is said to be running high as a result of the shooting.

BOLSHEVIKI GUNS SAID TO BE STILL

Reports Tell of Silencing of Batteries By Bombardment

Copenhagen, Nov. 3.—Reports that the Bolshevik batteries in and around Kronstadt and Krasna Gorka on the Gulf of Finland have been silenced by a bombardment by allied warships lasting several days are contained in dispatches to the National Tidende from Revel. Heavy explosions are said to have occurred in both places named presumably being due to ammunition dumps blowing up.

BLIZZARD CONDITIONS AT HEAD OF THE LAKES

Duluth, Minn., Nov. 3.—Blizzard conditions excepting the cold are ruling over the head of the lakes and from ranges today. A cold wave is headed for the district and temperature is expected to drop to about ten degrees above zero by tomorrow morning. Heavy snow and winds will accompany the drop in temperature according to the local weather office.

"OUT"



LEAVING THE MINE WITH SHOVEL AND PICK, WHICH WILL BE USED DURING THE STRIKE.

BRYAN BECOMES C. M. & ST. P. R. R. PRESIDENT TODAY

Chicago, Nov. 3.—The election of H. L. Bryan, federal manager of the Chicago, Milwaukee and St. Paul railroad, to the presidency of the road was announced today. He will be succeeded by B. B. Geer, assistant to Hale Holden, director of the central western region of the federal railroad administration.

WORKER BUREAU FAILS IN EFFORT TO BLOCK QUIZ

Supreme Court Holds That Calling in of Judge Hanley Was Regular

The calling in of Judge J. M. Hanley of the sixth judicial district to hear State Auditor Kositzky's petition for an order giving him entry to the books of the workmen's compensation bureau in the absence of Judge Nussle, who is regularly presiding jurist in this half of the fourth district, was upheld by the supreme court today, when it declined to issue a writ of prohibition against the hearing of Kositzky's plea against the hearing of Judge Hanley, prayed for by S. S. McDonald of the workmen's compensation bureau.

The opinion of the court, written by Chief Justice A. M. Christianson, holds that a writ of prohibition will be granted to arrest the proceedings of a tribunal, corporation or board only when such proceedings are without an in excess of the jurisdiction of such tribunal, etc. In this case it was held that Judge Hanley, in common with other district judges, possessed jurisdiction in another district; that he was a judge of the sixth judicial district called in to act as judge in the fourth judicial district upon and pursuant to the written request of one of the judges of said fourth judicial district, and that there is nothing in the law which in any manner prohibits judges from acting in a different district from that in which they are chosen. On the contrary, rules the supreme court, the act expressly recognizes the right of the supreme court to call in a judge from another district.

It is contended by officers of the workmen's compensation bureau that their defeat in supreme court in this instance means nothing, inasmuch as the supreme court in a separate action a few days ago held the workmen's compensation fund a special fund, and no part of the public moneys of North Dakota. This decision, it is held, will prevent State Auditor Kositzky from examining the books of the bureau under the statute which makes it his duty to examine and audit the accounts of all state officials, boards and commissions which have to do with the collection or disbursement of public funds.

AGGIES TRIM "U" IN STIFF FIGHT FOR STATE BELT

North Dakota Classic Ends in 7 to 6 Victory For the Farmer Eleven

FARGO BESTS JAMESTOWN

Grand Forks, Nov. 3.—The Agricultural college defeated the University of North Dakota football team 7 to 6 in the hardest fought struggle since the game of 1914 when the Aggies won by the same score as today's game.

The A. C. touchdown was made in the first quarter by Duerner from a forward pass by Movold. Duerner ran forty yards for the down. Van Eise kicked the goal from the 15-yard line.

The touchdown for the university was made in fourth quarter by an end run of thirty yards by Kelly. The ball was punted out from the side line and was caught on the 25-yard line. Richards failed to kick the goal, making the score 7 to 6 in favor of the Aggies.

The stellar work for the Aggies was done by Duerner, Movold and Van Eise on offensive and Hayes and Rosati on defense.

FARGO BEST JAMESTOWN

Fargo, N. D., Nov. 3.—Playing in a field of mud and water Fargo College defeated Jamestown college by the score of 19 to 0. Not at any time was there any real danger to the Fargo team and after the first quarter was over it was quite evident which was the better team. Within two minutes after the first scrimmage every player on both teams was covered with mud. Substitutes coming into the game with clean suits were used as towels by their teammates.

GOPHERS UPSET DOPE

Madison, Wis., Nov. 3.—Minnesota upset the dope completely here and landed Wisconsin its first defeat of the year, 19 to 7, in a game featured by the terrific line-plunging of the Gopher backs who tore great holes in the Wisconsin line and romped around the enemy's tatted ends, Meiers and Weston, for big gains.

SNOW AT GRAND FORKS

Grand Forks, N. D., Nov. 3.—A heavy snow has been falling over the northern half of North Dakota since Sunday morning.

DEVELOPMENTS LOOKED FOR TODAY WHICH WILL CLARIFY SITUATION IN THE CENTRAL BITUMINOUS FIELDS

Operators Announce That Strikebreakers Will Not Be Employed and That No Discrimination Will Be Practiced at Expense of Men Who Have Gone Out—150,000 Non-Union Miners Remain On Job in Pennsylvania and West Virginia

Chicago, Nov. 3.—Developments today in the strike of more than 425,000 soft coal miners throughout the country were expected to clarify the situation to the extent of determining whether production was to be stopped indefinitely in a large part of the bituminous zone, or whether any considerable number of workers were willing to return to work.

No plan has been made for opening any of the mines with imported labor, and old men who return to work are to be treated as though they never had laid down their tools, according to Thomas T. Brewster, chairman of the coal operators' scale committee. No miner will be discriminated against, he said.

Reports from most of the large mining centers indicated that while a large number of mines were to be in shape for the miners to resume work, the operators did not expect many union men to re-enter the mines today.

GOMPERS SAID TO HAVE WAY TO END BIG COAL STRIKE

Labor Officials Decline to Discuss Rumors Regarding President's Plan

WILSON OFFER YET OPEN

Chief Executive Still Hopes for Arbitration—Rail Service Is Curtailed

Washington, D. C., Nov. 3.—Labor officials declined today to discuss reports that Samuel Gompers, president of the American Federation of Labor had suggested a way of settling the coal strike.

Mr. Gompers is in New York and in his absence officers of the federation said there was no one here to speak for him.

Reports were awaited by the government from its agents in the coal fields who have been directed to telegraph immediately all facts bearing on the attitude of the striking miners and especially whether they showed a disposition to return to work.

At the White House today it was said that President Wilson's offer for arbitration was still open. Meantime preparations for the setting up of a commission on industrial unrest as recommended by the public group in the industrial conference are being forwarded and the selection of the personnel is expected to be completed by the cabinet tomorrow.

PASSENGER SERVICE SUFFERS One of the first effects of the coal strike has been the curtailment of passenger trains on some roads. Director General Hines has given regional directors wide discretion in this matter as they are in a position to survey the coal needs of their respective districts.

Freight service will not be disturbed unless the coal shortage becomes serious. Officials believe that with the stock of coal in transit together with thousands of tons stored at terminals it would not be necessary to curtail this service for several weeks.

PALMER REPLIES TO MINERS Attorney General Palmer today informed coal miners who protested against the strike injunction that the government stood ready to do everything in its power to facilitate an inquiry into the merits of the controversy but in the meantime the law must be enforced and combinations to stop production can not be tolerated.

Mr. Palmer's statement made in reply to a telegram from the local union at Glencoe, O., to President Wilson was taken to indicate that no attempt would be made by the government to settle the wage controversy until the strike was called off.

FINAL VOTE ON RATIFICATION IS DUE THIS WEEK

Senate Hopes to Finally Dispose of Issue in One Way or Another

Washington, D. C., Nov. 3.—A final vote this week on ratification of the peace treaty is proposed in an unanimous consent agreement drawn up for presentation to the senate today by the administration leaders.

JUMP OF MORE THAN SIX CENTS IN CORN TODAY

Chicago, Nov. 3.—Jumps of more than six cents a bushel in the value of corn took place today and purchasing took on big proportions. Breaking up of the longshoremen's strike at New York together with increasing anxiety as to whether supplies at terminal markets would be of sufficient volume to fill contracts for December delivery were the chief reasons for the steep advance.

NO BACK TO MINES RUSH

Chicago, Ill., Nov. 3.—No movement of men back to the mines developed in the early Monday report from the country's bituminous mine fields. A small number of lignite miners in the Burlington, N. D., area returned to work after being on strike one day. This was the only place where reports were received of men reporting for work Monday.

No attempt by operators to work the coal mines in the unionized territory were reported. It was said the operators would make no effort to operate until the miners show a disposition to return to work.

There were no reports of lawlessness from any of the mining fields and the first arrest reported in connection with the strike came from Walsenburg, Colo., where a United States immigration inspector took into custody M. C. Rouse, a Bulgarian miner, charged with having threatened to burn several mines in the district if the miners went to work.

150,000 YET AT WORK

While operators admitted that the figures given out by union leaders as to the total number of men on strike were approximately correct, they pointed out that close to 150,000 non-union miners were at work in the Pennsylvania and West Virginia fields and that nearly 20,000 union miners were working under contract in Kentucky, signed recently.

Federal troops today were in the mining region of West Virginia, Tennessee, Wyoming and New Mexico under orders to preserve the peace in case disorders arise in connection with the strike. One company of the 32nd infantry also was on its way from San Diego, Calif., to Utah for duty in the coal fields of that state.

The national guard of Colorado and Oklahoma have already been sent to the coal districts of those states and several companies of state troops have been mobilized at Birmingham, Ala., in case their services are needed.

Federal troops have been ordered to be held in readiness in every department of the army for service whenever state authorities ask for assistance in keeping down disorders.

IOWA IN THE DARK

Des Moines, Nov. 3.—Business in some of the smaller Iowa cities were feeling the effects of the coal strike today according to reports received here. Newton was in darkness last night and Indianola has curtailed rigidly business and amusements to save fuel.

Reports early today indicated Indianola was suffering more than most of the communities, schools, theaters and lodges there being closed. Business houses except drug stores and bakeries are open from eight in the morning until five in the afternoon only.

Electric power is turned on only from 5:30 in the evening until 10:30 at night. Electric current was turned off at Newton last night to save coal for the use of the city waterworks.

SATURDAY'S CONFERENCE

After hearing the miners' side of the present strike situation in this state, Saturday afternoon Governor Lynn J. Frazier issued a call to all operators of lignite mines in North Dakota to attend a conference at the capitol Tuesday morning.

The purpose of this proposed meeting is not to discuss the taking over of all mines by the state but to determine if possible a common ground where the operators and miners can meet in settlement of their difficulties and thus alleviate the possibility of closing the lignite mines in North Dakota.

Henry Drennan, president of the twenty-seventh district of the United Mine Workers of America which in (Continued on Page Eight)