

# District Court Opens Prison Gates for Schmitz and Ruef

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case the court of appeal takes up seven distinct phases of the case argued by attorneys during the appeal was pending.

The opinion consists of 32 typewritten pages, and yet the case to which it refers was never finally submitted for the decision of the court of appeal until Wednesday of last week. Less than 24 hours before the decision was handed down. Permission was given some time ago for the filing of briefs relating to various matters concerning the appeal and the last of the briefs prepared by the prosecution was only filed Wednesday.

Members of the prosecution and attorneys interested in the case called attention yesterday to the fact that it would have been a physical impossibility for the justices of the court to consider the appeal and prepare such a document as was handed down yesterday in the short time that elapsed after the case was actually submitted to the court. According to the assertions of attorneys thoroughly conversant with the law, it is the intention of the law that a court shall not anticipate a decision in a case until it is finally given into its hands any more than a jury shall anticipate a verdict until every bit of evidence and every word of argument has been presented.

Superior Judge Dunne, before whom the Schmitz case was tried and the conviction of the former mayor secured, referred pointedly to the premature action of the court in discussing the decision yesterday, and also declared that the relationship of the justices of the court of appeal to some of the persons most closely identified with the defense should have precluded the court from sitting in judgment on the appeal taken by Schmitz.

The relationships referred to by Judge Dunne were discussed also by many attorneys who expressed indignation at the fact that the justices of the appellate court should have considered themselves strong enough from bias to give a fair and impartial hearing to the case.

Justice Hall is a brother in law of Attorney A. A. Moore, leading counsel for T. J. Ford and Patrick Calhoun, the indicted officials of the United Railroads. Moore is the open and avowed enemy of the graft prosecution. Justice Cooper's wife is a sister of Mrs. W. I. Brobeck, whose husband is also under indictment for bribery. It is likewise a sister of Mrs. Gavin McNab. Justice Kerrigan's wife is a daughter of James McNab and a niece of Gavin McNab.

Speculation was rife everywhere yesterday as to the effect which the action of the court of appeal will have on the future of the graft prosecution in San Francisco. It was the subject of heated discussion on streetcars, in offices and in every center where people congregate.

## PROSECUTION TO PROCEED

District Attorney Langdon and his associates of the graft prosecution went into conference as soon as they received a copy of the reversal of Schmitz's conviction, and spent several hours in perfecting plans to proceed with the work that they have carried on in the face of the most discouraging obstacles. When that conference was ended the plan that had been adopted was not made public, but assurance was given that the prosecution will go on and that the fight to send the guilty hoodlums and racketeers to the penitentiary will be waged unflinchingly.

## BRINGS JOY TO GRAFTERS

It was only to the indicted grafters that the news of the reversal in the Schmitz case brought joy. Out at the county jail there was no mistaking the happiness that surged through several breasts. The news of the reversal and the fact that Louis Glass took on the attitude of conquerors.

## NEW ISSUE RAISED

Opponents Claim That Candidacy was Promoted in an Irregular Manner

ROME, Jan. 9.—Cardinal Martinielli, chamberlain of the sacred college, has been intrusted with the task of presenting before the congress of the Holy See the matter of the appointment of a coadjutor archbishop of San Francisco. Cardinal Martinielli declares that he is ready to support the nomination of Rev. Edward J. Hanna, A. C. Rochester, as he is convinced that the charges of modernism made against him have been exaggerated.

advantage of the one time boss and secure him absolute immunity from further prosecution. Rabbi Nieto and Rabbi Kagan, his two most influential supporters, called at the office of District Attorney Langdon and asked an audience. They were heard by Langdon and Assistant District Attorney Heney, but their proposals met with a cold response and they were given no inkling of the intentions of the prosecution in carrying out its future policy.

**DISCUSS ONE SIDE ONLY**  
The opinion handed down at noon yesterday is a document confined to a discussion of one side of the case. Its 32 typewritten pages containing not a single argument in support of the evidence against Schmitz or the contentions of the attorneys for the prosecution. It is based, as a whole, on the most meager technicalities, and half-breadth distinctions are drawn in certain parts which demand long study to comprehend. The opinion does not question whether Schmitz extorted money from the keepers of French restaurants in San Francisco—it only asks whether the technicalities attending the presentation of evidence and the preparation of the case against him were complied with in a manner that would preclude a reversal of the case under the construction placed on the statutes by the justices of the court.

Judge Dunne, before whom Schmitz was tried, is held to be the author of the greater part of the responsibility for the reversal of the case. His rulings are taken almost as a whole and pronounced rank error. Six distinct subjects connected with the trial of the case are dwelt upon at great length, and in each instance Judge Dunne is credited with having exhibited wantonly ignorance of the law and unpardonable prejudice. The contention of the prosecution that the appeal was invalid because it was not filed until after notice had been served and because the appeal was taken before judgment was entered in the trial court, in direct violation of the statutes, is dismissed with the curt explanation that such objections are too highly technical and unreasonable to demand consideration.

**OMITS 'UNLAWFUL INJURY'**  
The most sweeping portion of the decision, however, in respect to its application to the graft cases, is that which holds that the indictments against Schmitz and Ruef with extortion do not allege or show a public offense. On this ground the demurrer of Schmitz to the indictment on which he was convicted is sustained. The extended explanation of this is that the indictment must allege "unlawful injury" to the person who was made the victim of the extortion, and that in the Schmitz case it was only the threat which was qualified in the indictment by the words "unlawful" and not the injury done. A great distinction is laboriously drawn to show that licenses for the sale of liquor are merely certifications of a right and not "property" which is subject to injury.

One paragraph from this argument is authentically explanatory of the court's reasoning and view of the matter, not from the standpoint of whether a wrong was done, but from the standpoint of whether that wrong was accomplished by means of a threat to perform an "unlawful" act. If the threat was not to perform an "unlawful" act, then, says the court, the wrong which was maliciously accomplished does not constitute a crime. The opinion reads:

"Unlawful means contrary to law. It is true that from a high standard of ethics it could not be claimed that one could extort money by a threat to do a lawful act, if the intent was to get every wrong done. A great distinction is laboriously drawn to show that licenses for the sale of liquor are merely certifications of a right and not 'property' which is subject to injury. One paragraph from this argument is authentically explanatory of the court's reasoning and view of the matter, not from the standpoint of whether a wrong was done, but from the standpoint of whether that wrong was accomplished by means of a threat to perform an 'unlawful' act. If the threat was not to perform an 'unlawful' act, then, says the court, the wrong which was maliciously accomplished does not constitute a crime. The opinion reads:

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## NO DEBARRING WHEN

Shooting the Rapids of the Colorado River in a Sixteen Foot Boat

**SPECIAL DISPATCH TO THE CALL**  
**BRIGHT ANGEL** Grand Canyon of the Colorado, Jan. 9.—Charles S. Russell, a mining man of New Mexico, Arizona, and Colorado, formerly employed in the Mohawk mine at Goldfield until September, left the foot of Bright Angel trail today in a 16 foot rowboat in an attempt to make the 322 mile trip to Needles, Cal. He reached there yesterday, fighting the rapids of the Green and Colorado rivers for 420 miles, from Green River, Utah, the starting point. Albert Loper, the organizer of the trip, smashed his boat in Cataract canyon after the first 150 miles. He remained behind at Hite, in southern Utah, to wait for a new camera shutter to replace one ruined by the water when his boat was lost.

Russell and Monnet kept on down through the 150 miles of Glen canyon and waited for 43 days for Loper at Lees Ferry, Ariz. They were forced to go on, as their provisions were getting low.

Against the protests of old settlers, who prophesy certain death for the daring adventurers, they left today to cover the remaining distance with the one boat and only six weeks' provisions, all they can carry. If they reach Needles they will have beaten the records of Major Powell, who came through in 48 days with 16 men and six boats, and R. E. Stanton, who with almost as large an outfit made the trip in '89. Both of these expeditions had larger and stronger boats and were able to make portages and

the statute to find whether or not an act is a public offense for which a prosecution will lie.

There are five indictments against Ruef and Schmitz, charging them with the crime of extortion, and all the indictments are drawn in identical language, with the exception of names and dates. It was on one of these indictments that Schmitz was found guilty and on one of them that Ruef entered his plea of guilty. The portion of the court's decision affecting the validity of the indictment before rendered each of these indictments void. Ruef's plea no longer can stand against him on the court records, and only a few technical steps will have to be taken to have it wiped out.

**SIXTY DAYS' DELAY**  
In spite of the overwhelming nature of the decision and the direction for an order directed to Schmitz in custody, no change can come in the position of either Ruef or Schmitz for 60 days. The law requires that the remittitur can not be handed down until 60 days after the decision is filed. The prosecution is allowed 20 days in which to apply to the court of appeal for a rehearing of the case and the court is given 10 days in which to grant or deny the application. A similar length of time is allowed for application to and action by the supreme court. Should the application be filed and the final decision given in less than 60 days, that time must still elapse before the remittitur can be filed.

Undoubtedly the prosecution will take the case to the supreme court, though no one connected with the prosecution would give any hint yesterday as to the plan of procedure. In the face of the unreserved nature of the decision given yesterday there would be no use in taking the case again before the court of appeal, and application will be made direct to the supreme court. In case the latter court should grant the application for a rehearing the matter would come up before it on briefs and oral argument. In the face of the unreserved nature of the decision given yesterday there would be no use in taking the case again before the court of appeal, and application will be made direct to the supreme court. In case the latter court should grant the application for a rehearing the matter would come up before it on briefs and oral argument.

**OTHER INDICTMENTS REMAIN**  
Ruef's chance of freedom, even with all five extortion indictments against him wiped out, would still be so slender as to preclude the least possibility that he would be able to leave his cell in the county jail. With these five indictments against him still pending against the ex-boss 117 true bills, on which the aggregate bond is \$1,120,000. To secure his liberty Ruef would have to furnish bonds in this amount or \$550,000 in cash. With the five extortion indictments against Schmitz removed, there remain 40 other indictments, the total bond being \$400,000.

**RUEF HEARS OF DECISION**  
In Judge Dunne's court yesterday morning an hour or more before the decision of the court of appeal was handed down an incident occurred which led to the charge being made yesterday afternoon that Ruef had received direct information from the court as to the nature of the coming decision before it was given to the public. Ruef was up for sentence on the case in which he pleaded guilty two months ago, and while the customary motion for a two weeks' continuance was being made his attorney, Richard O'Connor, stepped into the hallway and some one referred to Ruef's incarceration in the county jail.

"He's getting along pretty comfortably," responded O'Connor, and then he added, significantly, "but he may not be there long. If the appellate court reverses the decision in the Schmitz case it also declares Ruef a free man, you know."

## DREW SAYS SCHMITZ WILL SOON LEAVE JAIL

Confident That His Client Will Have No Difficulty in Obtaining Bail

Attorney Frank H. Drew of the firm of Campbell, Metson & Drew, who, with J. J. Barrett and Charles H. Fairall of Stockton represented Schmitz in the extortion case before Judge Dunne, said yesterday that he was inclined to let the decision speak for itself.

"I can not speak on what will be done with the other cases until they are reached," he said. "Schmitz will soon be taken to bail. There are no other indictments pending against him, and as he once had bail on about 35 indictments he will have no difficulty in securing bonds now. Naturally we are pleased with the decision and are not surprised."

Charles H. Fairall said: "We are not saying anything harsh about any one. We were confident all the time that the decision would be what it was. What will be done with the other cases remains for the other side to say."

## RABBIS TAKE UP CAUSE OF RUEF

Nieto and Kaplan Visit District Attorney in Behalf of the Prisoner

Express Opinion That He Has Earned Immunity by Aiding the Prosecution

Considerable interest was aroused yesterday when it became known that Rabbis J. Nieto and Bernard Kaplan were interesting themselves in Ruef's behalf and had taken up his case with the attorneys for the prosecution.

"My only motive in discussing the matter with the prosecution," said Rabbi Nieto, "was to learn the real status of affairs. I have interested myself in Ruef as I would in any other man who needed my help, and on leading today that the decision of the appellate court might mean his liberation I went to the offices of the prosecution, knowing the attorneys personally, to find out just how the case stood. My interest was purely that of rabbi toward a member of their faith who needed help."

"We visited the prosecuting attorneys to find out the meaning of the decision in which I have been cleared, and as to what policy they intended to pursue in regard to him."

"We, however, learned very little. District Attorney Langdon informed us that the prosecution had not come to any definite decision and we were no wiser than hundreds of others who asked the same questions."

"Is any effort being made to start a movement to have Ruef released?" he was asked.

"Not that I am aware of," said Rabbi Nieto. "There seems to be a change of sentiment in regard to him and there are many who hold individual opinions to the effect that inasmuch as he voluntarily confessed and by his testimony considerably helped the prosecution he ought to be shown leniency, but I know of no definite movement to petition or plead for his release."

Rabbi Kaplan made similar statements.

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Continued From Page 1, Column 3

him and shortly before supper last evening Ruef was served with a copy of the court's opinion.

"It does not come as a surprise to me," Ruef said as he read the manuscript aside. "We made our former fight in the supreme court on the same grounds. For a long time I have expected just such a decision would be reached by the appellate court, and therefore the news does not stir me like the majority of the people evidently believes it does."

"I pleaded guilty to the charge of extortion for a personal reason, as I stated in Judge Dunne's court on that evening, I made the plea because it was a hard thing to do—a terrible strain on me. I contended all the time that I was innocent, and I still contend that way. My reasons for making the plea, I made, will be explained to the court later on. I also made this statement when I entered the plea. The public, I am led to believe, did not take it in good faith, but it will all be explained later on when I appear before the court and make good my promise."

**FALLEN BOSS CONFIDENT**  
"Regarding my release on bail, I am not at liberty to speak for the present. No, I do not expect to be out tomorrow, or the next day. I will say, however, that I believe that the law will afford me, as well as any other citizen, its protection in this instance. When I have thoroughly discussed my future plans with my attorneys we will get to the ball matter and I think that it will be readily and agreeably settled very shortly, although when I am not prepared to state."

**RECONCILED WITH ACH**  
Ruef had a long talk last night with his attorneys, Henry Ach, George Keene and Richard O'Connor. The breach that has existed between Ruef and Ach since the former's confession in the present case has been healed, and it is likely that Ach will again take an active part in the fighting of the fallen boss' legal battles. Ruef only smiled when questioned regarding his love feast with Ach, but from the manner in which he has been handled it is evident that their friendly relations have been re-established.

O'Connor has stuck by Ruef through thick and thin. While the latter was in the custody of the elisor the faithful young lawyer was ever present to lend him any aid possible. He was one of the last to take leave of his client when the stern law decreed that he must take up his residence in the county jail.

Schmitz had absolutely nothing to say regarding the decision of the court. He would not even comment upon one way or another. His attorneys were equally reticent. Schmitz held long conversations yesterday afternoon and last evening with several of his friends, but the nature of them he deems it wise to withhold from the public.

**Californians in New York**  
NEW YORK, Jan. 9.—The following Californians registered at New York hotels today:

San Francisco—W. G. Hartreef, Park Avenue; W. G. McCarthy, York; W. M. Newhall, Mrs. W. D. K. Gibson, Miss G. Gibson, J. J. Barrett, Manhattan; N. Abrams, Astor; Miss G. Cohen, Marie Antoinette; M. J. Schmidt, L. J. Clayburgh, Woodstock; J. C. Currier, Prince George.

Pomona—Miss R. A. Gallagher, Continental.  
Los Angeles—W. F. Botsford, St. Denis; J. N. Fernberg, Sinclair.

**ENORMOUS NUMBER OF CARS NOW IDLE**  
Leading Financial Journal of Boston Estimates that Total at 119,000

**SPECIAL DISPATCH TO THE CALL**  
BOSTON, Jan. 9.—According to figures compiled by the Boston news bureau, the leading financial authority of the east, upwards of 119,000 motor cars are idle throughout the United States. This compares with 40,448 on November 27 and 20,000 to 30,000 under normal conditions.

### KASKEL & KASKEL

SHURTMAKERS and MEN'S FURNISHERS  
Of Fifth Avenue, NEW YORK  
are now showing their styles for 1908 in SHIRTINGS AND NECKWEAR  
At the HOTEL ST. FRANCIS  
Mr. CHARLES ULYATT, their representative, will be at the hotel from 1 to 6 P. M. or by special appointment.

### BARGAIN

Forced Sale of Corner Lot, 78x200, with Colonial House on Santa Clara street (main thoroughfare), San Jose. This property can be made to yield an income, besides being used as a residence.  
Address Box 2254, care The Call, San Francisco.

### ARE RESOLVED TO PUNISH SCHMITZ

Continued From Page 1, Column 2  
Attorneys John O'Gara and William Hoff Cook were present during part of the conference. All the fighting men of the graft prosecution, with the exception of Hiram W. Johnson, who was associated with Heney in the Schmitz trial, were at the meeting, which lasted four hours.

### COFFEE

It is as easy to have good coffee as poor.  
Your grocer returns your money if you don't like Scullin's Best; we pay him.

### Wedding Rings

Our Specialty  
Large assortment; all styles; all sizes; 14, 18, 22 karat; sold by weight.  
T. LUNDY  
JEWELER  
744 Market at Grant Av.  
MAIL ORDERS SOLICITED

### Fredericks' January Inventory SALE

Remember Every Article Of FURNITURE IS CUT IN PRICE FROM 10 TO 50 PER CENT DRAPERY IS CUT A STRAIGHT 20 PER CENT CARPETS YOU NEVER LOOKED AT BETTER ORIENTAL RUGS AT ONE THIRD OFF REGULAR PRICE WALL PAPER 20 PER CENT DISCOUNT  
Call Today with your ads for Sunday's Call.  
Danger in a Cold  
Because you have contracted ordinary colds and recovered from them without treatment of any kind, do not for a moment imagine that colds are not dangerous. Not only pneumonia, but also the infectious diseases such as diphtheria and scarlet fever start with a cold. The cold prepares the system for the reception and development of the germs of these diseases. Take our advice—cure your cold while you can.  
Chamberlain's Cough Remedy  
by its remarkable cures of colds has become a staple article of trade and commerce. It is prompt; it is effective; it is reliable. Try it.

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### EVERY RAIN IN OIL PLANT BURNS MAN

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Continued From Page 1, Column 3

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Continued From Page 1, Column 2

### Death Claims Mine Owner

LOS ANGELES, Jan. 9.—Death claimed E. W. Sisson, a wealthy mine owner of Flagstaff, Ariz., three days after his arrival in Los Angeles. He was ill only three hours and succumbed to an attack of brain hemorrhage on Tuesday morning. Though he had been in poor health for several years, Sisson seemed in no immediate danger of death. He came here from Oakland with Mrs. Sisson and the two were the guests of Dr. L. G. Visscher of 908 West Eighteenth street when his death occurred. Sisson was vice president of the Yellow Jacket gold mine and was interested in other mining properties. The body was shipped to Flagstaff today.

### Tracy Declines Place

WASHINGTON, Jan. 9.—Secretary Taft announced today that Judge Tracy of the supreme bench of the Philippine islands to whom had been offered the position of the Philippine commission, had declined the offer, preferring to remain on the bench. No one else has been selected for the vacancy.

### Taft Going to Gotham

WASHINGTON, Jan. 9.—Secretary Taft will leave here at 11 o'clock tomorrow morning for New York, where he will deliver an address on the general subject of the Philippines. Cooper Union tomorrow night. Yesterday and today he remained at his home, engaged in the preparation of a special report on the Philippines for submission to the president. He is in the preparation of his New York address.

### ONLY ONE 'BROMO QUININE'

That is Laxative Bromo Quinine. Look for the signature of E. W. Grove. Use the world over to Cure a Cold in One Day. 25c.

### CASTORA

For Infants and Children.  
The Kind You Have Always Bought  
Bears the Signature of *Dr. J. C. Watson*

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