

WANT MCCARTHY TO TELL WHAT THE LABEL WAS

Defendants in Criminal Action Seek for Definite Information From Labor Leader

Anxious to Know if It Is Disreputable to Confer With Jere Burke

After listening to argument on the demurrer to the complaint of P. H. McCarthy against Charles W. Hornick and Ernest S. Simpson, general manager and managing editor of The Call, for criminal libel, Police Judge Edward P. Shortall yesterday first sustained and then overruled the demurrer and set the case for Tuesday, May 25, at 2 o'clock.

Judge Shortall announced, when argument had been finished, that he could not, in justice to himself, decide the matter offhand and told the interested parties that he would have to have some time to consider the legal points advanced by both sides.

Within a few minutes, however, he decided that the demurrer should be sustained on the showing made by Attorney Walter Bacon, of the many defects in the complaint. A little later Judge Shortall decided that the demurrer should be overruled and this ruling stood.

Prior to this final determination of what proved a vexatious question for the committing magistrate to decide, Attorney Walter Bacon had shown that the complaint was lacking in certain essential allegations, and although Judge Shortall hesitated to rule offhand that the complaint was fatally defective, Attorney Cleveland L. Dam had expressed his willingness to file an amended complaint. On the theory, possibly, that a third attempt (there have been two complaints drawn so far) would enable McCarthy and his lawyers to submit a paper on which issue could properly be joined, the defendants offered no objection. But Judge Shortall's sudden change of mind and his decision that the demurrer should be overruled obviated the necessity for this step.

DEFENDANTS WANT SPEEDY TRIAL On leaving the courtroom Mr. Hornick and Mr. Simpson expressed satisfaction with the judge's final ruling, declaring that nothing suited them better than a speedy hearing of the case on its merits.

Attorney Bacon, for the defendants, tried his best to have the case heard without delay, but it was found that next Tuesday is the judge's final ruling day which would be convenient for all parties concerned. On that afternoon, unless the complainant interposes another delay, the case will be proceeded with and P. H. McCarthy will have the opportunity to prove that he was libeled by the publication of the news of the conference with Jere Burke which he attended.

When the case was called yesterday morning Attorney E. Schwab appeared for John D. Spracks, who had left town after being admitted to bail. There was some discussion as to the necessity of the defendants being in court in a case of indictable misdemeanor, the judge finally instructing the attorneys to proceed despite the absence of one of the defendants.

In filing his demurrer to the complaint Attorney Bacon stated that it was both general and particular, the general demurrer being to the effect that the complaint did not state facts sufficient to constitute a public offense. He explained that the article giving the news of the conference with Burke at which McCarthy was present did not charge McCarthy with the commission of a crime or with anything that would tend to bring him into disgrace or disrepute with his neighbors.

NOTHING TO SHOW STING Bacon further explained that as the article was not libelous in its facts, it would be necessary, in order to make a statement of an indictable offense, to plead the peculiar state of facts to which the article referred and the conclusions to be drawn from these facts. Attorney Bacon argued, the McCarthy complaint did not do this, there was nothing to show the sting of the article or to indicate that it was published willfully and maliciously.

"I submit," said Bacon, "that we are not only libeled by the fact that we went up to see Jere Burke, if Jere Burke is so notoriously bad and it has come to such a pass that the court can take judicial notice of the fact that going to see Jere Burke would bring a man into disrepute in this community we would acknowledge that it is an offense; but the supreme court of this state has never adjudicated as a fact that it is disreputable to be seen in Jere Burke's office."

Bacon, in pointing out technical flaws, showed that the complaint did not allege that there existed a union labor party or that McCarthy belonged to it. He called attention to the use of the term "republican machine," asking in what way the court was to know whether it meant an ambulance or an automobile or a pink tea society.

"The complaining witness in this case," Bacon declared, "could not prove that he was a union labor party because he does not allege it. He could not prove that there was an organization within the republican party, because he does not allege it."

"We submit," said Bacon in conclusion, "that the complaint is bad on the general demurrer, and it is also bad in each of the particulars that we have mentioned and described with respect to indefiniteness and uncertainty."

WHAT IS REPUBLICAN MACHINE? In rebuttal Attorney Dam declared that the complaint had stated indirectly that McCarthy did not attend the conference in question, and that the libel consisted in the statement that McCarthy had gone to the meeting to sell out the union labor party. He insisted that the term "republican machine" was sufficiently well known.

"Is it a matter of which the court can take judicial cognizance?" demanded the judge.

"The court can take judicial notice of what is called 'the sack' in politics," returned Dam. "There is a decision to that effect."

"My objection is," explained Bacon, "that you don't say that there is such a thing as the republican machine, and you must allege it and then prove it."

Dam took issue and insisted that the main point was for The Call to prove the truth of the news it had published.

Bacon pointed out that nowhere in the complaint was there a denial of the truth of the article, but Dam insisted that the complaint of libel consisted in this.

"We do not want to have it insinuated,"

Hetch Hetchy Grant Upheld by Present Secretary of Interior

Secretary Richard A. Ballinger, who has confirmed Hetch Hetchy to San Francisco, and scenes in the now famous valley from which the metropolis will some day draw its water supply.



LOOKING UP HETCH-HETCHY VALLEY

ated," declared Bacon, "that because we have filed a demurrer we are attempting to evade anything. Nobody wants to go to trial on a complaint that does not state a cause of action."

"If Mr. Dam will amend his complaint and be in here at 2 o'clock we will go ahead with the trial."

THE COURT IN DOUBT "I really think," declared the court, "that this complaint should set forth these specific facts with more particularity."

"If your honor will rule on it we will do it," declared Dam. "I am not prepared to say it is fatally defective, but I prefer to consider it," declared Judge Shortall. "It seems to me that there is a great deal in Mr. Bacon's argument."

"I can prepare an amendment in line with the argument of counsel and then your honor can decide this demurrer," offered Dam.

"Then I will say that the demurrer is sustained at this time," ruled the court.

It was decided, for the convenience of Attorney Dam, that the case should be continued next Tuesday.

"Of course there may be another demurrer at that time," said Dam. "I won't say that we won't file a demurrer to the amended complaint," answered Bacon, "but we won't demur to it if we find in the complaint what Mr. McCarthy is really complaining of."

"If that is all you want, I think this complaint will indicate that to you," suggested the court. "You see the difficulty you are putting me in. I don't want to pass on this matter hastily. There are a number of points here. I prefer to consider the matter calmly."

"If your honor will sustain the demurrer," suggested Assistant District Attorney Duke, "and there is a new complaint to be filed, you can clear away the preliminaries and be ready to proceed Tuesday."

"Mr. Bacon says that all we think to know is what Mr. McCarthy complains of," said Shortall. "I think there is no difficulty in understanding it from the complaint which is now before the court."

"I want it understood that we are to come here Tuesday and try this case," declared Bacon, decisively.

"Let the demurrer be overruled and an exception noted," ruled Judge Shortall. Both sides were satisfied, so there was no further argument.

CLAIMS TO HAVE BEEN ROBBED OF HIS MONEY Captain of Schooner Says He Was Relieved of Cash

Reinhart Peterson, captain of a schooner, living at 354 Clipper street, obtained a warrant from Police Judge Shortall yesterday for the arrest of C. A. Kirkpatrick, real estate agent, on a charge of grand larceny. The amount alleged in the complaint is \$450.

Peterson said he was drinking with several men in a saloon at Ocean View Sunday night and imbibed too much liquor. He alleges that Kirkpatrick, who was one of the crowd, went through his pockets taking \$800 and his watch and chain.

Peterson had sense enough to demand and return of his property, when, he says, Kirkpatrick returned his watch and chain and \$250, but kept the other \$550. Detectives Taylor and Macphree were detailed on the case.

CHANGE IN DATE OF THE RYLAND DEBATE Santa Clara College Faculty Names the Judges

[Special Dispatch to The Call] SANTA CLARA, May 19.—The annual Ryland debate at Santa Clara college, which was announced through the press to take place Saturday evening, will occur Friday evening, May 21, instead. The faculty of the Jesuit college has announced the judges for the contest. They are: Joseph R. Ryland, Michael E. Griffith, Peter J. Dunne and James P. Sex. William P. Dunne will act as chairman.

Foreign Navies at Portola Festival Warships From Great Powers to Be Present at Big October Celebration

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CITY IS ASSURED OF WATER RIGHTS

Secret Assault on Hetch Hetchy Grant Made by Spring Valley and Gas Company

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committee on public lands a measure to that end was favorably reported, and that bills are now pending looking to the same end. Consequently, the honorable secretary of the interior sees no reason for disturbing the decision of his predecessor.

VIGILANCE STILL NEEDED These secret and persistent efforts make it manifest that the utmost integrity and effort must be brought to bear by every present and future official and department of this city's government to preserve and develop these inestimable rights; also that authority and means must at all times be available for immediate use without the delays incident to ordinary city procedure. The response of the voters of this city on November 12, 1908, upon their first opportunity to express an opinion upon the ownership of their water supply was too significant to admit of any delay or the jeopardizing of a single element of interest in the preservation of these rights.

The above report is made in order that you, the other officers of this city, and the public, may in part, at least, realize the efforts that are made to thwart the great interests of this municipality, and the vigilance and efforts which now and at all times in the future must be put forth to guard and protect these valuable properties and rights.

Respectfully submitted, MARDEN MANSON, City Engineer.

PACIFIC MAIL COMPANY MUST PAY FINE OF \$250

Hospital Space for Female Steerage Passengers Lacking For not providing hospital space for female steerage passengers on the steamer San Juan the Pacific Mail steamship company must pay a fine of \$250. The fine has been imposed by Secretary of Commerce and Labor Nagel, the notification being received from Washington, D. C., yesterday by Collector of the Port Fred Stratton.

The discovery was made by Surveyor of the Port Edward F. Woodward when the San Juan arrived here last March. In accordance with the passenger act of 1882 the surveyor reported the matter to the collector.

The steamship company made its report and applied for relief, but the department at Washington declined to dismiss the matter without a fine.

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FOREIGN NAVIES AT PORTOLA FESTIVAL

Warships From Great Powers to Be Present at Big October Celebration

Continued from Page 1

in Washington seems to regard our celebration as a national jubilee. Every man I have met today has been a Californian in spirit, whether he hails from Connecticut or Texas. They are all proud of San Francisco. They are pleased with the idea of welcoming outside nations to the Golden Gate and they urge me by all means to go abroad and spread the story of a brand new city erected from the ground up almost in a night. They say it is an American triumph, and not merely a San Francisco triumph.

Foreign Visitors Expected "I am under great obligations to Senators Perkins and Flint for what they have done. They certainly have helped me wonderfully here. Tomorrow I shall see the members of the house who have already been busy in this matter. Since coming here the scope of my effort has been immensely broadened and while I do not care to discuss the details now, I wish you would throw out a hint to the boys back at San Francisco that they had better get busy and prepare for foreign visitors. They are not going to jolly up all alone."

AUTOISTS PLEAD NOT GUILTY OF SCORCHING C. H. Truman Threatens Vengeance on Marin Officers

SAN RAFAEL, May 19.—Five of the 18 autoists arrested for breaking the speed laws last week appeared in the justice court today and entered pleas of not guilty. Those who pleaded were: F. Nelson of 684 Second avenue, San Francisco; G. Vranzian, a commission merchant of San Francisco; Natalia R. Gambet; C. H. Truman, a real estate man of San Francisco, and A. W. Pollard of the Pollard steamship company, who lives at Ross.

All took their arrest philosophically, with the exception of Truman, who delivered himself in an extended and forcible speech, the substance of which was that he would make Marin county a horrible example of automobilistic wrath and that vengeance would fall on the necks of Marin county officials with a rapidity second only to the speed of his machine when George Ortmann "clocked" them. Those who heard Truman voice his ideas on the right of the man with the machine say that the speech was a gem. No impression was made on Justice Magee, however, who set the case for trial along with the others, Tuesday, June 8.

Attorney Henry Owens appeared for two of the defendants and announced that he probably would represent the others, and that he had an intention of testing the law under which the alleged scorchers were arrested. Because of Owens' declaration Justice Magee will set all the cases for trial June 8.

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ACTION AGAINST "FRATS" DELAYED

Education Board Takes No Steps Toward Barring Societies From High Schools

Resolutions in Honor of Newton J. Tharp Passed at Regular Weekly Meeting

No resolution banishing the fraternities and sororities from the high schools was passed by the board of education at its weekly meeting yesterday. Members of the board declare that the matter has never been discussed in conference or at any meeting of the board. The directors, however, are of the opinion that action will not be long deferred. The board of education, they say, has no option in putting the law into practice.

Directors Oliver and Hayden said yesterday that the board would enforce the law. It is very likely that a resolution will be framed at one of the early meetings of the board calling the attention of the principals of the schools where fraternities or sororities exist to the recent enactment of the legislature. Further action, more drastic, will be taken in case the students refuse to obey the law.

Warren Manley, secretary of the interfraternity council, called on the board of education yesterday for a hearing. An hour was set Monday for his plea for the fraternities.

Leaves of absence were granted to Mrs. Kate Grant, Miss Nell O'Hara, Louise R. Hatch and Rose B. Stolz. The name of the Commercial high school was changed to that of the Commercial school, the same change being made in the Commercial evening high school, it being the opinion of the board that high school branches were not being taught at the school.

Mrs. Margaret Mahoney was transferred from the Lincoln evening school to the Washington evening school to take charge of a class formerly taught by Miss Abbie McLaughlin.

The board was at work most of the day on the salary schedule for next year. The charter provides that the schedule be filed with the supervisors on or before May 21.

The regular weekly meeting was adjourned out of respect of Newton J. Tharp, the late city architect. The following resolutions were passed: Whereas, Newton J. Tharp, as city architect of San Francisco, has done for the benefit of this city the best thought and work of a life devoted to high achievement, work so commendable and so thoroughly done as to insure to our city the best examples of school buildings in America; and

Whereas, his devotion to the great work, his untiring zeal, his great ability as an architect, his high character as a man, marked him among his fellows and won him the love and respect of his associates in life; Resolved, That in his sudden death the board of education recognizes the great loss to this department and to the city, and that this board in sorrow, and as a mark of its profound respect, adjourn until Friday, at 9 o'clock a. m.

SAYS LAWYER'S "COPY" WAS HARD TO DECIPHER Bloom's Manuscript Was Bad

The \$100,000 damage suit by Solomon Bloom, a lawyer, against the Bender-Moss company, for alleged breach of a contract to publish a book on mechanics' liens and building contracts, was advanced a further stage in Judge Seawell's court yesterday. Two witnesses, F. B. Moss, a member of the defendant firm, and Mrs. Emogene Moore, stenographer, who was an assistant to James Kerr, editor-in-chief of the Bender-Moss publications, were examined.

Moss stated that at the time Bloom demanded the return of his manuscript and tendered the \$900 that had been advanced him bills had been paid out for 35 patients. Chairman Payot and the committee took the matter under advisement yesterday.

The establishment of a safety station at the junction of Haight, Market and Gough streets, and also in Third street near Market, and the appropriation of sufficient money for the same were recommended by the board of works to the board of supervisors yesterday.

The launching of the first completed fireboat, the David Seannell, was fixed for next Saturday afternoon at 4 o'clock from the Risdon iron works.

The board adjourned out of respect to the memory of the late city architect, Newton J. Tharp.

COL. VON SCHRADER ARRIVES TONIGHT

Will Relieve Colonel Bellinger as Transport Quartermaster of This Department

Both Nines in Great Trim for Deciding Baseball Game of \$500 Series

Colonel Frederick von Schrader, the new transport quartermaster of this department, will arrive tonight and will assume his duties tomorrow. He comes to relieve Colonel J. B. Bellinger, who has been in charge of this department of the service for the last three years.

Mrs. von Schrader will arrive with her husband, but her daughter, who is a favorite in the social circles of St. Louis, will not come to to coast until July.

Colonel Bellinger will remain at Fort Mason for several weeks to assist Colonel von Schrader.

The Third Infantry regiment will sail August 5 from Seattle on the transport Buford for the Philippines. This regiment is at present stationed in Washington. The headquarters and second battalion are at Fort Lawton, and the first and third battalions are at Fort George Wright.

A change in orders will make the One Hundred and Fifth company and the One Hundred and Fifty-ninth company, coast artillery, continue at their respective posts at Fort Ward, Wash., and the Presidio until September 5. These troops were originally intended to sail July 5, but there was no available room on the transport sailing on that date.

The final game of the \$500 baseball contest between the nine of the Sixtieth company, coast artillery, and the "all players" of the post will be played Friday at 2 o'clock p. m. on the grounds in front of the general hospital.

This game decides the series, as each team has won one game. Both teams are in great trim for the contest and will fight hard.

Bids for improvements at Fort Barry, which will consist of a gymnasium and bowling alley, will be opened at the quartermaster's department at Fort Mason June 5.

Bids for the improvement of the quarters at Fort Winfield Scott will be opened June 7.

Bids for the construction of the 12 new buildings for the use of the infantry, which are to be located on the hill back of the athletic grounds at the post, will be opened June 9.

MAY BUILD TUBERCULAR WARD TO NEW HOSPITAL

Supervisors Consider Requests From Charity Workers

The supervisors' hospital committee are considering the building during the ensuing fiscal year of the tubercular ward of the new San Francisco hospital. The construction of this ward had not been included for this year in the late city architect's schedule, but was made a supplementary matter. The associated charities, represented by Miss Betty Ash of the Telegraph Hill settlement association and Miss Griffiths, petitioned the committee for favorable action. Health Officer Broderick reported that the equipment of the ward would take \$2,000 and its monthly maintenance, \$1,100. It would add accommodations for 35 patients. Chairman Payot and the committee took the matter under advisement yesterday.

NEW FIREBOAT TO BE LAUNCHED SATURDAY Arrangements Made to Have Craft Take Maiden Plunge

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