

BECOMES VERY CAUSTIC WHEN ARGUING CASE

JUDGE MITCHELL SCORES OTTUMWANS AS ENACTING ROLE OF PRO BONO PUBLICO; TERMS CASE SIMILAR TO PIRACY.

"These men from the attorney general's office are lending aid as desperate a game as ever cut a throat or scuttled a ship, and I do not speak disparagingly of Messrs. Rankin, Darner, Sibrell and Peirce when I say that as the needle points true to the pole, so do they point to the pro bono publico."—Judge Mitchell in his opening argument this morning.

The beginning of the end in the Phillips ouster proceedings started this morning when the state's witness for rebuttal delayed the proceedings half an hour and then upon arrival was not used by the state. One witness, Chief of Police Gallagher, was called to the stand by the defense to testify to the time the saloons were closed by the revocation petition, December 22, 1908, and also told of his police service under Mayor Pickler, and of the convention when Phillips and Pickler each tried for and Phillips got the nomination for mayor. At the close of the testimony of Gallagher the defense rested and a delay of the proceedings was caused by the failure of the state to get O. L. Shadford to the court room for half an hour. Upon his arrival the state decided not to use him, and rested Mayor Phillips was not present, owing to being ill at his home after the strain of yesterday's effort on the stand, and an amendment to the answer was read by the reporter and filed as if verified in the presence of the mayor. The real ending of the case was started when Attorney John Fletcher of the attorney general's office made the opening argument for the state, saying that he and Senator Cosson came to Ottumwa to furnish evidence against Mayor T. J. Phillips, showing that he was unfit to act as mayor of Ottumwa, and that he was satisfied that they had accomplished their purpose. Judge Mitchell followed for the defense and went into the Cosson law, attacking it on the grounds that it makes prey of certain officers while others are left alone as to intoxication, and showed that where in chapter eight of the code the discrimination, as he classed it, was made plain.

Legal Questions in the Case. Chief Gallagher when placed on the stand, said that he and a majority of the police favored Phillips in the convention which was held at the Cosson law, and that thirty minutes after the convention nominated Phillips that he (Gallagher) with Desk Sergeant J. Grammer and Patrol Driver G. Ryttenberg, were discharged and that Joe Beeman and Billy Maloney resigned to avoid being fired. In his opening argument, Attorney John Fletcher for the state, outlined the course of argument he would pursue, stating that he would maintain the theory of the law and that Senator Cosson in the closing argument would take the application of the law. He said that they came here to furnish evidence that Phillips did not fulfill his duties as mayor and was sure that they had succeeded. He was asked by the court how the counsel for the state held the law as to a deposed mayor losing his vote and this opened up a discussion that led to the right of such a deposed person having the right of re-election. Judge Mitchell maintained such a one had the right thirty minutes afterwards, if the people elected him as their choice, but Attorney Fletcher cited the case of the "State vs. Rose," in which the mayor of Kansas City, Kas., was forbidden by the court to serve after re-election on the grounds that it was trifling with the court, and a lengthy discussion of the case followed.

Both Laws Apply. The matter of the prosecution of Mayor Phillips under the Cosson law, notwithstanding that it did not become effective until March 27, 1909, when the charges deal largely with a period prior to that time, was argued by Attorney Fletcher as proper. He said that several cases were passed on by the supreme and federal courts touching the repeal and enactment of laws wherein some sections are to be found identical in both, and the courts had borne out this contention. In this case, he said, the matter of misconduct or maladministration was considered as a crime by the law repealed, as well as by the Cosson law.

Saloon Men Chief. He stated that for sins of omission and commission during his incumbency of the office of mayor during 1907 to 1909 the case is applicable under the Cosson law, in that he did not close down on some of those abuses during that time or at least until 1909, and that such is the basis of the action taken. He said the testimony of several witnesses and that of the mayor himself went to show that he had been elected on an open town issue, and that after election he selected and appointed for his chief of police a man who had been engaged in the saloon business, a business which he classed as being of the liberal element of people and not the kind identified with the closed town issue. He said that there were eighteen bawdy houses that period, and that there was no record that license and protection was given under the administration preceding. He further stated that when Phillips became mayor the

houses of prostitution were opened and the madames paid \$25 while the girls paid a fine of \$5.

Harbored Criminals. Speaking of the time of the Rosen murder he said that until then the city had harbored criminals and gamblers and granted license to crime, that gamblers were not the people that build cities, schools, colleges and homes. Summing up he stated that if these things went on and the mayor did not know of them, he was unfit to be mayor.

Taking up the Smoky Row matter the attorney stated that the disposition of the criminals from that region was not by way of the penitentiary but through the hills and bottoms of Ottumwa. The same as to the saloon men on "bottle row," whom he said ply the same business in other parts of the city. The boys in pool halls was also treated and the mayor censured with his police for not arresting the proprietors under the minor clause.

Scores Phillips. Alluding to the Ren Lane matter he stated that the mayor himself testified to having had two or three talks with Lane and that these were enough to put him on his guard, but that he did nothing. He stated that the mayor a minute after he took the oath of office, became a partner with these law breakers.

He alluded to the street flushing saying: "I don't care what else this testimony furnished, but one thing that was proven even by the defendant's own words on the stand, was that he used vulgar, profane and indecent language on the public streets and was, thus not a good example to the young people, and that it violated a city ordinance as well. And further it is not strange that in all of the testimony against him in which drinking is charged, he admits taking a drink."

Said Took Six Drinks. In the treatment of the saloon trouble April 30, he said that Gray proved himself a better man, for he had tried to calm the mayor when he was striving to fight and there is no doubt but what the liquor was then having its effect on the mayor. Recounting the drinks the mayor is alleged to have taken according to the different witnesses, he stated that no less than six drinks were taken by the mayor. He then related the names of the witnesses and that much of their testimony as to the trip home with Sheriff Jackson, saying in conclusion that no matter what else he was guilty of, he was intoxicated.

The court then asked if one intoxicated was sufficient, or if it was necessary that habitual drunkenness be proven.

Once Enough. To which he was answered that one intoxication was sufficient as in habitual drunkenness it would be necessary to determine how often a man must get drunk to attain the appellation of habitual drunkard. He further stated that the testimony of the business men who never frequent the saloons and testified that they never saw the mayor taking a drink, was negative evidence of value, but that the state's evidence was positive and of weight. Numerous authorities were cited in the argument for the guidance of the court among them one in which the repeal and enactment is treated in the federal code, and another in the Northern Railway heard under the Elkins law, wherein the railroad was charged with taking rebates, and his after the Hepburn law became effective.

Scores Ottumwans. Judge Mitchell began his argument by going into a description of the Cosson law and making some comparisons between it and the code. He told of cases tried under it and questioned the wisdom of the act in that it permitted the ousting of an officer, sheriff, county attorney, mayor and police because of intoxication while the offices of county clerk, auditor, recorder, etc., were not thus treated. He said that the code provided the latter officers with a jury trial and the complainant had to give a bond for the costs in bringing such a case to court. He said that if removed from office, he mandated as a permissible term and not mandatory.

"The effect of the act," said he, "leaves open for political malignity and spite work those holding the prescribed offices above. They are a prey to unscrupulous and unscrupulous who take on the air of 'better than thou' milk and water reformers." Without anything personal to the gentlemen from the attorney general's office, these men are lending their aid to a desperate case as ever cut a throat or scuttled a ship. I do not speak disparagingly of Messrs. Rankin, Darner, Sibrell and Peirce when I say that as the needle points true to the pole, so do they point pro bono publico."

Tells of Duties. He then went into the official duties of the mayor at great length and told of the duties of a chief executive, naming the governor and comparing the duties of the two. The mayor's duty as to criminal laws was explained by Judge Mitchell who said that the mayor can act only upon information furnished and that he is to be held responsible for the powers of filing such information to themselves, presuming it their duty to keep the city free from all evils as they see it. He said the right to arrest or call upon anyone whether officer or citizen to make the arrest, said the attorney, "and a justice of the peace or any judge or magistrate has the same power. Also the government of the city." And continued Judge Mitchell, "the mayor has powers of a magistrate, to enforce the city ordinances, etc., as chief executive."

Quelled Riot Alone. In referring to the riotous crowd collected on the Sunday of the supposed rape during the murder excitement, he lauded Mayor Phillips as a born leader of men saying that he had stemmed the tide of the crowd that had collected in the streets and without using his right to summon and in suppressing disorder, he calmed the crowd himself. "He is not like one of these little name-by-name fellows that

go around like a cur barking at one's heels and stirring up trouble."

Duty of Police Officer. Judge Mitchell said that a recent statute passed by the last general assembly made it the duty of the police officers to file the information against gambling houses and houses of ill fame and other offenses and that it doesn't say that it is the mayor's duty to file the information. He further declared that the statute did not require the mayor to file information any more than the governor. The mayor can appoint his chief of police, and can remove him and that chief of police appoint his officers who have passed civil service examinations and are recommended by the board of police and fire commissioners. The mayor cannot suspend a policeman as this must be done by the board of police commissioners. The mayor can recommend the dismissal of an officer but any citizen has the right, said Attorney Mitchell. The chief of police cannot remove an officer but can suspend him awaiting an investigation by the police board and only in this indirect way, he pointed out, has the mayor anything to do with the police.

Judge Mitchell declared that the chief of police was directly answerable to the law and not to the council Bluffs case. "Instead of 'umping onto the old mayor out there," declared Judge Mitchell, "they jumped on the chief of police and removed him from office. He could not suspend him had no more power to bring on criminal prosecutions than any ordinary citizen. In regard to the gambling and houses of ill fame he cited two cases, City of Chariton vs. City of Ottumwa, and Mt. Pleasant vs. Brazene which showed that the city had no power to punish a person for gambling as it was in conflict in the state law which made it a felony. Judge Mitchell said this point said it was a serious proposition and he had in mind whether or not the law was retroactive.

Scores Attorney General. By the recent statute, meaning the Cosson law, Judge Mitchell stated that the attorney general was the grand mogul and had ninety-nine assistants, one in every county in the state. "I will boldly say," Judge Mitchell declared, "that since January 1, 1909, no city in the state of Iowa has had a more efficient government than the city of Ottumwa." He stated that previous to that date many Iowa cities, naming Des Moines, Davenport, Dubuque, Fort Madison and a number of others, conducted the city government the same as in Ottumwa.

Mayor and Cosson Congenial. One of the features of the hearing of T. J. Phillips on the charges preferred by the attorney general, was the heart to heart manner of cross examination yesterday afternoon between the defendant and Senator George Cosson, author of the law under which the case is being tried, who is in charge of the prosecution of the case. "Let me call you George and you call me Tom, and I can answer you better," said Mayor Phillips and thus the well known senator from Audubon came to know one of the characteristics of the mayor. Practically the entire afternoon was given to the conclusion of the direct testimony and the cross examination of the defendant by Senator Cosson and at its close, both were tired. Capt. W. H. C. Jagues and Elmer Miller, the latter scavenger for the city, were the only other witnesses heard in the session. So long and tedious was the examination of the witnesses, that by 4:30 it was not through and the court served notice on the attorneys that he would give them until Tuesday night to finish their testimony and their arguments. Judge Willcockson announced that he was going home, having concluded that the case had taken long enough to be finished by this time as one week and a day had already been consumed. Adjournment was then ordered until 8 o'clock this morning. All of the witnesses told of the saloon episode and the testimony of the mayor went further into the case, reviewing the evidence of many of the defense's witnesses heard early in the trial.

Jaques and Miller. Captain Jaques reviewed the saloon trouble, telling what took place after he arrived there. He proved a difficult witness on cross examination when he was asked to define drunkenness and give an account of the mayor's condition while he was present in the saloon. Elmer Miller told of seeing the mayor in the saloon April 30 and of talking Mayor Phillips and T. H. Pickler to have a drink with what the mayor drank and was not sure he drank at all, but thought he had. He also said he heard John Gray remark "I am going to get the old fellow." He told Mr. King in the blacksmith shop the story of the incident and supposed that the defense heard of it there, as he did not talk of the matter to the mayor or the attorney until the day he testified. On cross examination the witness said he did not know what the mayor drank but said later that it might have been whisky. He took whisky and supposed that Mr. Pickler took the same, but that Mr. Pickler swore as to what the mayor took. He knew that Phillips was not drunk and did not think him under the influence of liquor and said that he himself was not drunk, but had taken perhaps two or three drinks that day. He said he thought the symptoms of drunkenness were staggering about and loud talking.

Shook Hands With Gray. Captain Jaques said that he with his son Jo was passing the Exchange saloon and stopped in and upon entering he saw the mayor and John Gray in a dispute and heard hot words. He heard what he thought was liar and damned liar and remonstrated with the mayor for the matter taking place in there. He told much the same story of the trouble as to the fight as did the other witnesses for the defense, saying at the conclusion of the description that the mayor and John Gray shook hands and that Tom Pickler then threw a dollar on the counter and all drank but the mayor. He said the mayor was not intoxicated and that he never saw Phillips intoxicated.

Depends on Man. When asked about the mayor being quick tempered, the witness said he was, and might fight if he had cause. Upon cross examination he was asked to describe the effects of intoxication. He said it depended on the man; that some got a thick tongue, others staggered and that it was not easy to de-

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The sale will positively end—Plenty of good things left.

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Miss if you stay away from this sale

Table with columns: Boys' 2-Piece Suits, Men's Suits, Men's Odd Pants. Lists various suit and pant items with prices, such as \$10.50 AND \$10.00 TWO PIECE SUITS NOW 7.00, \$30.00 AND \$27.50 SUITS NOW 20.00, etc.

Reductions on Soft and Stiff Hats. Straw Hats at Half Price. One-Third Off on Boys Knickerbocker Pants. One-third Off on all Boy's Wash Suits. Reduced Prices on All Men's and Women's Oxfords. Iowa Clothing and Shoe Company, House of Quality.

scribe intoxication as in describing the differences in persons faces. He further stated that some became red in the face from too much liquor and others white; and again others became quarrelsome, wanting to fight, while some became good natured. He said the defendant was mad, very angry and to some extent lost control of his temper, but did not lose control of himself, "as was evidenced," said he, "in the mayor's calming down after the matter." He said the mayor did not complain to him of being sick and did not give the matter of his being sick any thought although he knew the mayor had been sick at times and even that he had been confined to his home from that cause. He also stated that Gray seemed to be in a conciliatory manner toward Phillips during the trouble and calm. He said it would depend on the man as to whether a little liquor would make him angry, and that the mayor was subject to anger on slight provocation, but was of a forgiving nature.

Tells of Taking Brandy. The incident related by Witness Keefe a few days ago was told in almost similar detail by Mayor Phillips. He stated that he had been informed during the last of February by Superintendent J. A. Macdonald of the Milwaukee about a catch bas. being in order near the passenger station at the foot of Jefferson street. It was while investigating the matter that he met Keefe. He stated that he felt sick as he has been troubled when he reached the Ballingall hotel he felt sick as he had been troubled with stomach illness for a year before. "I stood against a post that holds the porch in front of the hotel" said he, "and a cloud seemed to pass over me and I felt dizzy. Keefe came up to me and asked if I was sick, saying I looked pale." The witness then recounted the story of taking the brandy and of getting weak and staggering in front of the Wapeio restaurant and of seeing taking him as far as Third street, when he said that he could go home from there himself. He said he had no other drink that day previous to that time. He was again questioned about the saloon trouble with Gray and said he was nervous and very angry but was not intoxicated.

John Had Stomach Ache. "Were you in the Kaiser place when Kaiser said he had the stomach ache and left you playing at the pool table while he went to the rear of the hall, and said by a witness that he went to the rear entrance of the gambling rooms up stairs?"

"I remember his complaining of the stomach ache when playing a game of pool with him but did not suspect him and after he was gone a long time I made a remark about where he had gone, but then he came back apparently feeling better removing all signs of distress. I will have to admit that he had the bulge on me that time and I don't think he told me the truth."

The witness told of seeing Judd in the Kaiser place several times, but never having seen him shake dice for cigars while there. He then referred to the Elmer Miller treat in the Exchange saloon and the drink taken at the Beauty saloon when flushing the streets after the work was done one day. He said he did not drink whisky with C. C. Wertz and that he never heard John Gray make a remark about getting him. The Bee Hive hotel matter was slightly touched by the cross examination. He said the trouble with Gray began when "Gray, Pickler, Arrison and a few others bolted the party because he beat Pickler when the latter wanted a third treat."

The story of doping was alluded to and also a story given the Register and Leader at Des Moines as to his being doped, but the witness said he talked to no one about it when in Des Moines and that J. W. Lewis and C. M. ... years talked to the press. He said that his wife told him the evening of April 30 that she knew those men would get him in trouble.

visit with Mr. and Mrs. Carmi McKinley. Mrs. E. G. Wetzel and little daughter of St. Paul, returned home Saturday after a visit of a week with her mother, Mrs. E. L. Hickman, and other relatives and old friends.

Mr. and Mrs. C. F. Chase visited over Sunday near Russell at the home of her brother, Foster Palmer.

Dean Bown, son of Dr. and Mrs. T. A. Bown was kicked in the stomach by a horse Saturday and was seriously injured.

Miss Mary Wright of Kansas City returned home Saturday after a month's visit with her cousin, Mrs. J. A. Brown and other relatives.

Mr. and Mrs. James Robbins visited in Leon Saturday with Mr. and Mrs. James McEndree, formerly of this place.

Mr. and Mrs. E. A. Eppler left Saturday for a visit with relatives in King City, Mo.

Mr. and Mrs. Fred Butcher are the proud parents of a fine baby who arrived at their home recently.

H. B. Stewart and family have returned from Chicago, where they had been sojourning for several months. They made the trip home in their automobile.

Miss Gladys Price of Indianola, came Saturday for a visit with the Misses Martha Becker and Phurno Young.

A GOOD YEAR FOR THE BANKS

STATE AUDITOR REPORTS ON CONDITION AT CLOSE OF BUSINESS JUNE 30.

Des Moines, July 25.—Bank deposits in 663 savings banks, 272 banks and 16 trust companies in Iowa increased \$21,768,039.68 from May 18, 1909, to the close of business June 30, 1910, according to the reports of all banks made to State Auditor Bleakly at the close of business June 30. The reports were compiled under the direction of C. B. Ellis, chief clerk of the state bank department, and Bank Commissioner Roberts. Both feel highly elated at the showing made.

There has been a decrease in the amount due depositors, since the report of February 16, amounting to \$8,727,126.63. A striking feature of the report and one highly pleasing to the bank officials is the decrease in the overdrafts, which, since the last report, amount to \$674,839.90. During the time from May 18, 1909, to June 30, 1910, there was an increase of 53 banks, while from February 16, 1910, to June 30 there was an increase of 19 banks.

One of the unusual features of the report is the strong increase in the credits subject to sight draft, which decreased \$7,461,307.60. The condition on June 30 compared with February 16, is as follows:

Table with columns: Assets, Liabilities. Lists financial figures such as Bills receivable, increase \$ 6,461,297.08, Gold coin, increase 53,296.22, Silver coin, increase 30,714.90, etc.

Next Governor of Texas. Dallas, Texas, July 25.—Oscar B. Coulter, anti-prohibitionist and anti-submissionist, will be the next governor of Texas if belated returns from the democratic primary do not favor another of the four contestants for the gubernatorial nomination, overwhelmingly. At the same time a proposition to submit to popular vote a constitutional amendment looking to prohibition has carried.

CHARITON. Mrs. Chas. White left last evening for a visit in Des Moines with her daughter, Sarah, who is attending the summer school at Drake university.

Miss Mabel Dorn of Des Moines is visiting in this city a guest at the home of her brother, A. E. Dorn.

Mr. and Mrs. P. R. Meyer, of Peoria, Ill., have returned home after a week's



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Instead of carrying all the patterns of one make, we discriminate and select only the very best designs of several makers.

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J. W. Neasham Manufacturing Jeweler Ottumwa, Iowa