

STATE RESTS IN O'NEIL CASE AND RECESS IS TAKEN

Defense Given Until Monday in Which to Prepare for the Presentation of Its Evidence.

(Capital News Special Service) Cour d'Alene, Nov. 22.—The state rested at noon today in the case against "Barney" F. O'Neil, in which he is charged with making a false report of the State Bank of Commerce, of Wallace, and in order to give the defense an opportunity to marshal its testimony an adjournment was taken until Monday morning.

Judge L. J. M. Flynn announced that in order to please the defense in granting such a long continuance, night recessions would have to be held the coming week in order to hasten the trial.

The last bit of testimony offered today by the state was considered strong in connecting O'Neil's knowledge and intent in signing the report of May 9, 1909. In a letter of O'Neil to the Old National bank of Spokane he asked that they hold a note for \$62,000 as it "was too large for him to hold and pass inspection." He further said, "We are overburdened with that kind of paper and must cut out some of our bills receivable."

When Expert Accountant Donald Arthur was asked by the defense today if the Bank of Commerce lost any money through its dealings with the Idaho Northern Railway company, the witness replied that the bank had lost over \$5000, which was included in a rebate and interest.

est drug stores in the northwest. The store room now occupied by the company on Eighth street, is to be remodeled and will form a part of the Boise City National bank, which needs more room to handle its business.

Bad check artists are continuing their operations in Boise and are causing the police force considerable work, stated Chief of Police Reeves this afternoon, after being given several checks from different parties, all of which had been turned down as being worthless. Chief Reeves advises business houses to be extremely careful about cashing checks for strangers as bad check artists are operating quite extensively throughout the northwest.

REQUISITION OF MANSEL DENIED

Governor Hawley Explains Situation to Governor Hay in a Letter.

Idaho like Oregon refused to honor the requisition papers presented to Governor James H. Hawley by Governor Hay of Washington for the return of Bert Mansel to Kelso, Wash., to answer to the charge of adultery. In denying the request, Governor Hawley sets forth his reasons in a long letter today to Governor Hay in which he declares that in his opinion the youth wanted for so serious a charge has been more sinned against than he, himself, has sinned.

Through his attorney, R. B. Scatterday, of Caldwell, Mansel resisted requisition and made a hard and successful fight before Governor Hawley. The fact that the governor knew some of the circumstances in connection with the case and particularly with reference to Herbert Van Hausen, with whose wife young Mansel eloped, saved the defendant, who is as yet hardly of age, from facing trial in the state of Washington.

Van Hausen is a well known character in Caldwell, where he lives, and the governor was informed that he has had trouble before with his wife, Julia A. Van Hausen later living apart from her. Facts were presented to the governor to show that Mrs. Van Hausen had money in her own name and that it was not the woman in the case that prompted a desire to have her and the man with whom she eloped returned to Washington to stand trial, but rather to secure the money she is claimed to have in her possession and which is rightfully hers.

For these and other reasons that Governor Hawley set forth in his letter to Governor Hay, one of which refers to the character of the parties interested and their conduct during the trial of a case that originated in Caldwell, Governor Hawley denied the requisition papers.

Sheriff Thomas A. Corrine, of Cowlitz county, Washington, who was here armed with the request of Governor Hay for the release of Mansel by the Idaho to the Washington authorities, will have to return home without his prisoner. Mansel is the son of well-to-do ranchers living near Caldwell.

It was charged by eloped with Mrs. Van Hausen, going first to Eugene, Ore., and then to Kelso, Wash., and living with her.

GOVERNOR MAY BE SENT TO WASHINGTON

The state land board held a long session today discussing the advisability of sending Governor James H. Hawley and State Land Commissioner George W. Day to Washington to confer with the interior department on the policy to be followed with reference to western and Idaho lands in particular and to endeavor to so straighten out the land matters of this state that there will be no further trouble.

The governor has consented to be held in the east and will make the trip anyway. Owing to this fact the land board has seriously taken up the question of commissioning the chief executive to spend some of his time in Washington on the land matters and this course will probably be followed. If it is Commissioner Day will accompany the governor, due to the fact he thoroughly understands the land situation.

SHAKEUP LIKELY IN INDUSTRIAL SCHOOL

That there may be a shakeup regarding the St. Anthony school matter was a report strongly current today. The Capital News report that the resignation of George D. Hill, one of the board members, might be called for created not a little stir in official state circles yesterday. The fact that Mr. Hill stood with the governor and corroborating his views relative to the action that the chief executive believed should be taken as the result of the disclosures of the investigation, adds interest to the rumors.

It was learned today that Governor Hawley commissioned Mr. Hill to act as the referee in the investigation when it was in progress, as Chairman Haga was not in the state and other members of the board could not attend immediately. Mr. Hill was a member of the board and was therefore in a position to act as referee in chancery.

The members of the board of control with the exception of Mrs. Pugmire were appointed by Governor Hawley, it is said, for a term of three years. The law provides that the members of the board shall be divided equally as to their respective political faiths, each one being a member of the prominent political parties in the state. O. O. Haga, Mrs. Worthman are Republicans, Mrs. Pugmire and Mr. Hill are Democrats. The governor is an ex officio member of the board, as is also Miss Grace Shepherd, superintendent of public instruction.

The new Industrial Banner, printed in the interest of workers, has made its appearance in Toronto, Ont.

M'GRAN APPEALS CHECK CASE TO SUPREME COURT

Man Who Gave Mrs. Coe \$3000 Check When He Thought He Was Dying Still Fights Payment.

Setting up the defense that Mrs. Ross E. Coe, whose Christian name is Nellie W. Coe, "did, in some fraudulent, scheming, covering and designing manner, secure from him his signature" to a \$3000 check while he was in a semi-conscious condition and supposed by Mrs. Coe and his friends to be dying, Phil McGran, a well known resident of Boise, today filed an appeal in the supreme court from the judgment entered in the district court for Ada county, giving Mrs. Coe damages to the amount of \$3000 with interest at 7 per cent, amounting to \$3216.

Payment Refused on Check. The case is one that attracted unusual attention during trial in the district court. Mrs. Coe had been taking care of Phil McGran, who had been in poor health during December of 1911. She declared that McGran had often declared that he wished in some manner to repay her for this kindness and that on Dec. 29, 1911, when he was seriously ill and believed that death would overtake him, he called her to his bedside and wrote out the \$3000 check, presenting it to her. The next day, however, according to the testimony in the transcript, Mr. McGran was still alive and greatly improved in health. When the check was presented to the Boise City National bank of Boise for payment on December 30, at 11 o'clock a. m., payment on it was refused. It was several times later presented for payment at the same bank and payment each time refused.

Fraud Charge Made. McGran sets forth in his answer to the complaint that there was not only fraudulent scheming and coercion surrounding the check, but he declares that he has no knowledge of ever signing one or making it out to Mrs. Coe for any such amount. He admits that he was very ill during the date named and that friends thought that he was going to die and his answer to the allegation that he did sign a check for \$3000, payable to Mrs. Coe, is that if his signature was secured to a check for any such amount, it was certainly done in some fraudulent, scheming and designing manner.

Had but Small Deposit. It is further set up by McGran that on the date the alleged check was issued, he had but 400 on deposit in the bank and therefore a check for such an amount, of course, could not be paid. This figure is named in defense of McGran's claim that he never gave a check of this kind while in a normal condition.

The brief is one of the largest that has been filed in the supreme court for some time. It contains 223 pages and sets forth that trial was given in the district court and Mrs. Coe had a verdict for the amount of the check and interest.

ILLINOIS PROFESSOR IS INDICTED FOR PERJURY

Champaign, Ill., Nov. 22.—Professor Charles L. Hall, of the faculty of the University of Illinois, was arrested here today on indictments charging perjury in connection with an inquiry into voting by the students at the last election.

Run Down by Bloodhounds. Charlestown, W. Va., Nov. 22.—Samuel Russell, alleged leader of a band of coal strike sympathizers who shot up the town of High Coal yesterday, was run down in the mountains by blood hounds and mine guards and taken to military headquarters at Paint Creek Junction today. The strike zone was quiet today.

RESIGNATION OF BAUTZ ASKED FOR

Washington, Nov. 22.—Secretary McVaugh today asked for the resignation of Gleason C. Bantz, assistant treasurer of the United States, because he was not in sympathy with the secretary's policy.

VAUDEVILLE STAR IN MUSICAL COMEDY

Elizabeth Eric, the popular vaudeville star, will be in musical comedy this season. She is an important member of A. H. Woods' "Tasteful Tommy."



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DECISION IN NORTH IDAHO CASE GIVEN

Supreme Court Sustains Judge Steels in Case From Latah County.

The supreme court handed down an interesting decision this morning written by Justice James F. Allright in the case of Charles A. Brown versus E. W. Scheurman et al. appealed from judgment rendered in the second judicial district for Latah county, involving the brick used in the construction of the new federal building there. The supreme court cannot judge Edgar C. Steels and the judgment given for Brown. Chief Justice Stewart and Justice Sullivan concur.

It is held by the supreme court that where a contractor, as Scheurman, purchases brick by sample and receives shipments from time to time and accepts the same and uses them in the construction of the building for which they were purchased and makes no complaint of the kind or quality of the brick furnished, and consents to order more, he cannot upon action to recover the purchase price, successfully maintain the defense that under section 3325, revised codes of Idaho, the vendor having sold by sample warranted the bulk to be equal to the sample.

The opinion of Justice Allright is as follows: "This action was instituted to recover a balance due for the purchase price of 107,000 brick sold by the plaintiff to the defendant at the agreed price of \$11.35 per thousand. These brick were contracted for and used in the construction of a federal building in the city of Moscow. The appellants herein were the contractors in the erection and construction of the building and their contract with the respondent was in advance of the commencement of work on their contract. The controversy here arises chiefly out of the action of the government authorities in refusing to allow the contractor to use a lot of the brick because they were 'off color' or not the proper color as agreed upon in the contract between the contractor and the government. Sample bricks were furnished by the respondent in the first place, and subsequently some change was made by the appellants. It seems from the evidence that the respondent was not apprised of this change and did not agree to it; at best there is a conflict of evidence on this point. It is admitted that no objection was made to the brick during the time they were being furnished and that they were received and accepted and used by the appellants.

While the contractors were obliged to use a large percentage of them in inside work at places where cheaper brick could have been used because they were not fit to use on the outside, still they did not apprise the respondent of this fact and did not object to receiving the brick. On the contrary, they were all the time urging the respondent to ship more brick. The superintendent or agent who represented appellants testified that he did not notify the respondent that the brick were not fit for his use and that he did not object to them, and he explains his failure to make objections or protest, on the ground that had he done so they feared they would not receive any more brick at all and that their contract would have been tied up indefinitely and it would have caused them great damage. This fact alone, in our judgment, is sufficient to authorize and require an affirmation of the judgment in favor of the respondent.

Must Be Fair and Open.

"It is too fundamental to require discussion here that a purchaser of personal property who receives and accepts the property, knowing at the time its condition and fitness or unfitness for the purpose for which he is purchasing, cannot accept the same and appropriate it to his use and continue to demand, receive and accept more and more goods of the same character and quality, and then after he has used it raise objection for the first time that it was not up to the standard or like the samples of the goods he contracted for in the first instance. He must be fair and open about his dealing. If the goods furnished are not up to the standard or the sample, he must use reasonable diligence in appraising the vendor and make his objection and refuse to accept further goods of the kind.

"It is true that the statute (Sec. 3325) provides that, 'One who sells or agrees to sell goods by sample thereby warrants the bulk to be equal to the sample,' and this principle would be true independent of statute (35 Cys. 233), but the evidence here tends strongly to prove that the brick were furnished in accordance with the samples which respondent had given in the first place and supposed the appellants were expecting followed.

Judgment Should be Affirmed.

"It appears that when the contract was first made by the appellants and respondent that respondent furnished samples which the superintendent or agent for appellants caused to be sent to the department at Washington, and thereafter some change or substitution was made in the samples. To this, however, respondent claims to have never consented and that he had no knowledge thereof.

"Where some contention has been made that the respondent had waived his right to rely on the original contract of \$11.35 per thousand and that he could only recover on a quantum meruit, there is no evidence in the record that would justify or support that contention.

"We find no error in the rulings of the court in the admission or rejection of evidence which affects any substantial right of the appellants or would call for a new trial in this case. Upon the whole record, we feel that substantial justice has been done and that the judgment should be affirmed, and it is so ordered. Costs awarded in favor of respondent."

BOND ISSUE WILL BE SUBMITTED TO VOTERS OF CITY

Propositions Will Include Storm Sewer, Fluming of Sand Creek and Large Amount of Paving.

At a short session this afternoon the city council decided to submit a bond issue to the public for a storm sewer system, a paving district and the fluming of Sand creek, the total amount of which is estimated at \$145,000. The various improvements will be voted upon separately and will likely be submitted to the public some time in January. There is also a probability that the Cottonwood dam and Hull's gulch dam and tunnel may be added to the issue, bringing it up to \$165,500, the latter two improvements being fostered by Councilman Eichelberger, who was out of town today and could not attend the session.

The city attorney was ordered to draw up an ordinance covering the improvements to be submitted in the bond issue and have the same ready for the next regular session.

The route of the storm sewer is from Sixteenth and River streets, up Sixteenth to Grove street, up Grove to Fourteenth, up Fourteenth to Idaho, up Idaho to Eighth street. This, the city engineer states, will drain all territory north of Idaho street and west of Eighth street that is troubled by water during freshets or heavy rains.

The paving district thus far mapped out embraces the following territory, the bond issue being to pave the intersections of the streets, which under the Black law, cannot be taxed against the abutting property:

State street from Eighth west to the county road, Eighth street north to Union, Sixteenth street north to Harrison boulevard, Harrison boulevard north to Heron, and possibly Thirteenth street from Main north to Brumback, and Idaho from Sixth east to Warm Springs avenue.

On Harrison boulevard the council plans to pave the street with a parking 14 feet wide in the center. The Harrison Boulevard Improvement association will probably be asked to pay for the upkeep of the parking, and it will probably be made one of the show streets of the city.

The estimates of the cost of the improvement are: Sand creek flume, \$42,000; storm sewers, \$48,000; paving, \$55,000.

Jewelry Store Robbed. Chicago, Nov. 22.—Burglars hurried a horse shoe, wrapped in newspapers, through the window of Berg & Co., Jew-

Mr. Rent Payer

There's No Excuse for You! When you see our houses and learn our terms you'll quit that foolish habit of accumulating rent receipts. Good, new, modern houses in the most desirable residence district of the city at from \$2850 to \$5500 each. Full sized lots with walks, curbs and trees. YOU FIX THE TERMS.

Idaho Title and Trust Co.

826 MAIN STREET.
M. A. CAMP, Mgr. Real Estate Dept.

- FOR SALE—Good gentle horse, saddle and driver, 3rd and Fort Sts. Phone 2247-J. N-25
- FOR RENT—6-room modern apartment with heat furnished, 513 Warm Springs Ave. H. D. Pope, 217 Overland Bldg. S W F N-26
- FOR RENT—Large, sunny, well furnished front room, with alcove closet, bath and phone; price \$10. Phone 1963-J. N-24
- COCKERELS—White Leghorns worth \$3.00, now \$1.50; \$5.00 birds at \$3.00, Buff Orpingtons worth \$4.00, now \$2.00; \$5.00 birds at \$3.00. Grebe Poultry Co., Lemp Gulch. Phone, 2407-J. N-25c
- LOST—32nd degree Masonic charm, I. N. R. I. enameled in black on one side, double eagle on reverse side. Finder please leave same with J. T. Laughlin 892 Main St., and receive reward. N-25c
- FOR RENT—Five acres, all set in orchard and all kinds of berries. Good 4-room house, good barn and chicken house; near Colliester. Inquire of C. L. Rand. 1806 Ridenbaugh St., Boise. D-50
- WANTED—A nice, large light unfurnished room. Phone 1491. N-24
- WANTED—A woman for general housework; Phone 1102-W. N-23
- NICELY furnished rooms, also light housekeeping rooms. 612 Bannock. N-23
- DRESSED TURKEYS delivered for Thanksgiving by the raiser. Phone 1668-W. N-25c
- FOUND—Horse near Baxter's Foundry. Owner may get same from A. Droese, beke, sexton Catholic cemetery. N-25c
- MILLINERY—Ostrich Plumes ready to wear for sale cheap. White City Park Ostrich Farm. Phone 279. N-28
- WANTED—Two bright boys for ushers at the Empress theater. Apply stage entrance, between 12 and 23 p. m. N-23

You would gladly mortgage your business to pay for a policy of "Profit Insurance"—wouldn't you?

If you could take out a policy of insurance which guaranteed you certain dividends from your store, or business enterprise, securing against losses, you would be glad to lose a little sleep in securing such a form of insurance—wouldn't you?

And yet, in any business under the sun, what amounts to such a policy of insurance is embraced in an intelligent advertising campaign.

No advertising campaign that was well devised and carried out with unflinching persistence ever failed to furnish actual "Profit Insurance" for a business.

The cost of this sort of insurance for a store or other enterprise is not "beyond your means,"—unless you are one of the folks who ought not to be in business at all, WHICH YOU ARE NOT! This cost is partially payable in cash, of course, but only partially. A large part of it is payable in INTELLIGENCE, in the capacity of profit by experience, in what is generally known as "grey matter." This does not mean that you must "worry." It means that you must THINK—that you must plan and execute.

You can make your advertising campaign your "Policy of Profit Insurance"