

# To the People of the State of Idaho

## Do You Believe in a Free Press?

Because of the publication of Roosevelt's message to the people of Idaho during the last campaign, and because this paper saw fit to criticize a decision of the Supreme Court of this state, the manager and editor of this paper were each sentenced to pay a fine of five hundred dollars, and each to serve a sentence of ten days in the Ada County jail, by order of the Supreme Court.

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# THE EVENING CAPITAL NEWS

BOISE IDAHO

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### The Abuse of Judicial Power

BY A BOISE LAWYER

Looking at the action of the courts, in imprisoning and finding for constructive contempt of the court, from a legal standpoint, we have this remarkable situation:

In the first instance, the courts have followed precedents as laid down by other courts of like jurisdiction, in other words, all the law of constructive contempt has been court-made law, that is, the people, through their constitutional and legislative bodies, have had no voice in defining or regulating the courts in the matter of contempt. In these court-made laws the courts have almost universally held and declared, in no uncertain terms, that neither constitutional provisions nor legislative acts can control or abridge the power of the court to punish for contempt or the manner in which such proceedings shall be conducted, and that the right is inherent in an authority possessed without its being derived from another; a right, ability, or faculty of doing a thing, without receiving that right, ability or faculty from another. This definition does not even exclude the Almighty, so it can not be a divine right.

That any man, or body of men should have such a right, a phantom right, plucked from nowhere, under a Republican form of government, and that the people have no control over it and no power to abridge it, seems a startling statement, yet that it exists is an incontrovertible fact as those who have felt its weight can testify.

Let us see what the courts do when they punish for constructive contempt, taking the constitution and laws of Idaho as a basis together with the decision of the Idaho supreme court in the case of Sheridan, Broxon and Cruzon.

On Aug. 6, 1889, at Boise City, Idaho, a constitutional convention was held in which it was said: "We, the people of the state of Idaho, grateful to the Almighty God for our freedom, to secure its blessings and promote our common welfare, do establish this constitution."

Article 1. DECLARATION OF RIGHTS. Inalienable Rights of Man.—Sec. 1. "All men are by nature free and

Dr. C. D. Pons



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equal and have certain inalienable rights, among which are enjoying and defending life and liberty, acquiring, possessing and protecting property, pursuing happiness, and securing safety."

#### Political Power Inherent in the People.—Sec. 2.

"All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform or abolish the same whenever they may deem it necessary, and no special privileges or immunities shall ever be granted that may not be altered, revoked, or repealed by the legislature."

Yet the courts say, the people have no power to alter, reform or abolish the power the courts have exercised to punish for contempt, or the manner of conducting such proceedings. The courts are creatures of the constitution, yet the courts say that they are not controlled by its provisions. Their right is "inherent," they receive "that right, ability, or faculty, from"—No one. Witness:

Article 1, section 7, constitution of Idaho:

"The right of trial by jury shall remain inviolate \* \* \*"

Article 1, section 8, constitution of Idaho:

"No person shall be held to answer for any felony or criminal offense of any grade, unless on presentment or indictment of a grand jury or on information of the public prosecutor, after a commitment by a magistrate, except in cases of impeachment in cases cognizable by probate courts or by justices of the peace, and in cases arising in the militia when in actual service in time of war or public danger. \* \* \*"

The great weight of the authority of the court-made law, is to the effect that a prosecution for constructive contempt of the court is a criminal prosecution, the same authority holds that the court can not be restricted by legislative act as to the punishment it may impose, other than as restricted by the provisions contained in all state constitutions, that "excessive fines shall not be imposed nor cruel and unusual punishments inflicted." But, if the courts are not bound by the provisions of the constitution prohibiting a defendant to be held to answer a criminal offense of any grade, not within the exceptions, except after a commitment by a magistrate, if they are not bound by those provisions of the constitution "The right of trial by jury shall remain inviolate" and the guarantees in criminal actions of due process of law, why should these courts consider themselves restricted in any manner by that provision of the constitution which prohibits excessive fines nor cruel and unusual punishments? The position is highly inconsistent.

The legislature of the state of Idaho, when Idaho was a territory, passed the following law, and such law is still upon the statute books under the provision of section 2, article 21 of the constitution, as follows: "All laws now in force in the territory of Idaho which are not repugnant to this constitution shall remain in force until they expire by their own limitation or be altered or repealed by the legislature."

Criminal Contempts. "Sec. 6529. Every person guilty of any contempt of court, of either of the following kinds, is guilty of a misdemeanor: (1) Disorderly, contemptuous, or insolent behavior committed during the sitting of any court of justice, in immediate view and presence of the court, and directly tending to interrupt its proceedings or to impair the respect due to its authority; (2) Behavior of the like character committed in the presence of any referee, while actually engaged in any trial or hearing, pursuant to the order of any court, or in the presence of any jury, while actually sitting for the trial of a case, or upon any inquest or other proceeding authorized by law; (3) Any breach of the peace, noise, or other disturbance directly tending to interrupt the proceedings of any court; (4) Willful disobedience of any process or order lawfully issued by any court; (5) Resistance willfully offered by any person to the lawful order or process of any court; (6) The contumacious and unlawful refusal of any person to be sworn as a witness; or, when so sworn, the like refusal to answer any material question; (7) The publication of a false or grossly inaccurate report of the proceedings of any court."

It will thus be seen that the legislature has clearly defined contempt to be a crime, has defined what shall constitute contempt, and provided for its punishment. The court has specifically held that it is not governed by this statute and that in effect it is null and void and of no effect, regardless of the fact that the constitution adopted this as a law of the state when Idaho passed from a territorial government to that of a state. The law has not been repealed and has not been declared to be repugnant to any provisions of the state constitution.

It is worthy of note that the only provision for constructive contempt, that is contempt not committed in the immediate view and presence of the court and which tends to obstruct its proceedings, is the publication of a false or grossly inaccurate report of the proceedings of any court.

The legislature has provided that the contempt shall be punished as a misdemeanor. Section 6512 of the revised codes of Idaho provides: "Except in cases where a different punishment is prescribed by this code, every offense declared to be a misdemeanor, is punishable \* \* \* by a fine not exceeding three hundred dollars. \* \* \*"

This law is also an inheritance from the territorial laws, and has not been repealed or declared repugnant to the state constitution.

Article 1, section 18, of the constitution of Idaho provides: "Courts of justice shall be open to every person, and a speedy remedy

afforded for every injury of person, property or character, and right and justice shall be administered without sale, denial, delay or prejudice."

Article 1, section 9, of the Idaho constitution provides: "Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that liberty."

It is quite evident that the framers of this provision of the constitution intended to leave to the legislature the power to regulate and punish, and that it could be lawfully left to no other power, and especially not to that power which is derived from no one and from no where, (See definition of inherent power) the abuse of that liberty. And the legislature has so provided for the abuse of that liberty both in civil action for libel and slander and for both civil and criminal contempts of the courts of justice.

There has been a hue and cry for recall of judges, recall of decisions, etc., but if the courts are not bound by state constitutions or legislative acts, why this chasing of the rainbow?

### TOKEN OF ESTEEM IS SENT THE PRISONERS FROM "MEN BEHIND"

Accompanying a box of flowers sent the contempt prisoners in the county jail by the employees of the composing room of the Capital News, was the following note:

"To R. S. Sheridan and C. O. Broxon: The employees of the Capital News composing room beg you accept this token of regard and esteem from the 'men behind'."

"Some of us have been on the job during the entire life of the paper—have witnessed, and, in a measure, shared all its ups and downs. Most of us have been in close daily association with each of you since our connection with the paper. Therefore, it is with a sense of personal injury that we contemplate your present difficulty."

### GOLDEN RULE EMPLOYEES JOIN THE PENNY BRIGADE

The undersigned employees of the Golden Rule store each contribute a penny towards paying the fine of Messrs. Sheridan and Broxon:

L. R. Walter, H. H. Mathews, Melford, Ed. Konrad, P. N. Quast, Robert Heinrich, Ethel Hale, Lillian Kendall, J. C. Nordby, Ella Flynn, Pet C. Lillard, Nell Taylor, Carrie Owens, J. E. Fisher, Marion Ketchen, Marie Ricker, Edith Carr, Frank Miodok, Lillian Baugh, W. E. Graham, O. H. Graham, Henry Nelson, J. C. Wengert, Mable O'Connor, W. Kerbach, John Anacabe, John Ketchen, E. O. Sorben, Viola Denton, Alice Fleming, Elizabeth Ferguson, Gertrude Rhodenbaugh, Guy Douglas, Louis Walker, George Hesser, Mary Hatfield, Pauline Taylor, J. H. Wallace, Ida Wade, Stanley Briggs, S. A. Lilley, Emma Dixon, William M. Morris, William Hart, Helen Mathews, May Mathews, Kathleen Lundy, J. O. Ball, Pearl McFarland, Walter Cox, William Filter, Scott Doig, Anna Steinhausen.

### NEW COMPANY TAKES OVER CREAMERY PLANT

The Purity creamery on Bannock street has passed into the hands of the Boise Valley Co-operative Creamery company, composed of nearly 100 farmers, and on Monday the business will be turned over to the new management, with J. S. Doome in charge. H. A. Schellenger, of Buhl, who was formerly butter inspector in the Michigan state pure food department, has been engaged as buttermaker, and will also be here the first of the week to begin operations.

The creamery taken over by the Co-operative company is modern in every respect, but will be somewhat remodeled, and some additional machinery will be added.

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### NEW PARDON BOARD HOLDS FIRST MEETING

The first meeting of any of the state boards under the new administration to be presided over by Governor Haines was held in the state capitol this afternoon when the state board of pardons, consisting of Governor Haines, Secretary of State Gifford and Attorney General Peterson convened to consider the application for a pardon of Lee Garrett, a convict at the state penitentiary.

Garrett was a barber at Coeur d'Alene. On Nov. 29, 1906, he killed M. Combs, following a discussion in a saloon. Garrett claimed that the killing was done in self-defense but he was committed to the state prison to serve

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A 30-year sentence. He asks for an absolute pardon by the board or whatever relief is possible. Recommendations for a pardon in Garrett's case from prominent citizens in Coeur d'Alene accompany the request for freedom.  
The Garrett matter was to have been heard this morning, but the session was necessarily postponed until this afternoon at 2 o'clock.  
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