

BARRING ROADS

How Supreme Court Sustained Validity of Court. Part of Judges Held That Bill Had Enough Votes.

OTHERS THAT IT DIDN'T They Sustain Validity Because of Enrolled Bill Record.

Justice Mason's Theory of "A Two-thirds Majority."

A question of unusual interest and importance is raised in the opinion of the court sustaining the validity of the Thirty-eighth judicial district, created at the last session of the legislature.

Justices Mason and Porter sustain the law on the ground that the bill creating new judicial districts is a law.

Justice Mason writes the special opinion. He says in part:

"I am unable to discover any ambiguity or inconsistency in the entry made in the house of the bill had received a constitutional majority following the record of the roll call showing 83 affirmative votes can not be presumed as a declaration that more than 83 members had voted for it, but merely indicates that the house, rightly or wrongly, regarded the entry as making a constitutional majority."

The question is whether this provision means two-thirds of the members elected, or two-thirds of the members elected, or two-thirds of the members elected, or two-thirds of the members elected.

Five of the seven justices hold that it means two-thirds of the members elected, and as 83 is not two-thirds of 125, they reverted to the theory that the journal entries showing the 83 votes, followed by the statement that the bill received a constitutional majority, are conflicting, and that the law must be sustained on the presumption of validity which goes with an enrolled bill.

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It, and also failed to pay the taxes due on the mortgaged property in the years 1897 and 1898. They carelessly claimed that the note was barred by the statute of limitations. The plaintiff, however, claimed that since the debt had been renewed by a subsequent default, they waived their default, and the statute of limitations ceased to run. The lower court rendered judgment for the plaintiff for \$576, and both parties excepted and both asked for a reversal. The supreme court says:

The failure to pay the subsequent taxes when due and payable caused the whole debt to come due at once. More than five years elapsed afterwards before the plaintiff brought suit, and therefore the whole suit was barred by the statute of limitations. The redemption of the land after being sold for these taxes did not waive the default or affect the running of the statute. Judgment of the district court is reversed with directions to enter judgment for the defendants for costs and attorney's fees, and they may be required by the interests of the other parties."

Dyke Can Stay. The case of Walter Darlington vs. the board of county commissioners of Cloud county was argued, in which Judge Darlington asked for an injunction to prevent the county commissioners from building an embankment to keep surface water from flowing off from the Darlington farm. The embankment was constructed on a strip of land which the court held constituted a public road, and that the county was the right owner and improve that strip. The lower court denied the injunction asked for and the supreme court affirms the decision.

Get Rawlins County Land. Fred Robertson, an attorney, and W. J. Ratcliff, town Rawlins county judge, have been passing in an embankment which they have been trying to obtain in Rawlins county under the now famous Spencer-Smith case.

The questions involved would not be the same as those in the Spencer-Smith case. The Rawlins county treasurer of Rawlins county, to compel him to accept money for the redemption of certain lands, which Robertson and Ratcliff had purchased the original certificates. The court holds that under the decision in the Spencer-Smith case, which held that the questions involved would not be the same as those in the Spencer-Smith case, the original certificates, the county treasurer must receive the money. The court goes on to say in a per curiam opinion:

"The real party in interest opposed to the plaintiff in these actions is not here appearing, and any decision of the court in these actions would not be a final judgment. So far as the county treasurer is concerned, the questions have been decided in Spencer vs. Smith."

State Prison Pays. The report of the Penitentiary Board shows a safe margin.

Leavenworth, Kan., Jan. 7.—The fifteenth biennial report of the directors, warden and other officers of the Kansas state penitentiary has been issued. It shows that the Kansas penitentiary is more than self-sustaining. The earnings for the two years covered by the report were \$67,491.39 in excess of expenses.

The board of directors, Captain John Seaton, T. B. Baillinger and W. I. Biddle, tell in their report of new improvements in the penitentiary which will increase its value and will increase the output 20 per cent. The board recommends an increase of \$10 a month in the salary of the warden, and that the increase in the cost of living since the last report and the long hours and close confinement of the guards make it urgent that the warden, also, receive an increase in wages in his report.

The board highly commends the warden, and says:

"The board has devoted a great deal of time and attention to the paroling of prisoners under the parole law in order to determine its practical workings. We believe that prisoners discharged under parole are kept in restraint and discipline, and that the parole law is being commended its practical workings. We believe that prisoners discharged under parole are kept in restraint and discipline, and that the parole law is being commended its practical workings."

We find that very few violate their parole; also, that few prisoners released on parole are afterwards returned to the penitentiary for committing new crimes. While, on the other hand, second and third-term prisoners are generally those who have been discharged without parole. The report of the board generally shows that most paroled prisoners comply strictly with the conditions attending their release and give satisfaction to their employers.

Warden Haskell urges the establishment of a night school for prisoners and asks for an appropriation of \$2,000 for books to maintain it. He also recommends the establishment of a tuberculosis hospital and says that the brick and labor to erect it can be furnished in the prison. In this connection, the report of the physician, Dr. C. E. Grigsby, tells that eight of the twenty-three deaths in the two years were from consumption. Three deaths were from accidents, one suicide, one killed by a fellow prisoner, and the others from various diseases.

The report shows that Wyandotte county furnished the greatest number of prisoners, seventy-six; Shawnee second with fifty-three, and Leavenworth third with fifty-one. One hundred and thirty-nine prisoners are native Kansans, 157 are from Missouri and seventy-one are Texans. Of the prisoners of foreign birth, eighteen are from Germany, eight from Ireland, one from Jamaica and two from elsewhere. There are sixty-four imprisoned for life, one for sixty years, one for fifty years and two for forty years.

A Burlington Newspaper Deal. Burlington, Jan. 7.—F. C. Flory, editor of the Elk County Citizen of Howard, has bought the Burlington Independent from Ray P. Spensard, who is now in Chicago. Flory is an old newspaper man and is prominent in state politics as well as editorial circles, being a member of the Democratic state central committee. Mr. Flory expects to run a Democratic newspaper and considers the field here a good one. Mr. Spensard, a native of Iowa, is engaged in newspaper work elsewhere and as soon as he finds a place to suit him he expects to purchase.

Chicago Produce Market. Chicago, Jan. 7.—CHEESE—Firm; dairies: Swiss, 15¢; Young Americans, 14¢. BUTTER—Steady. Creamery, 11¢; market, 10¢. EGGS—Steady, at mark, cases included, 20¢.

Two Boy Friends Think Weapons Are Not Loaded. Chanute, Kan., Jan. 7.—Orlin Bingley, a 14-year-old Chanute boy, was here Saturday evening while fighting a duel in play with Edward Reed, a chum of his, about the same age. The two boys were great friends. Bingley had an old rifle and a pistol, both of which he had no hammer. Reed had a 38-caliber revolver. The latter snatched the revolver a number of times to make sure it was loaded and had and the boys squared off for their duel.

The revolver went off, hitting young Bingley just below the heart. He died shortly afterwards, and his father, who forgave his comrade and said that he was not to blame. Young Reed is prostrated over the accident.

KILLED IN A DUEL. Burlington, Jan. 7.—F. C. Flory, editor of the Elk County Citizen of Howard, has bought the Burlington Independent from Ray P. Spensard, who is now in Chicago. Flory is an old newspaper man and is prominent in state politics as well as editorial circles, being a member of the Democratic state central committee. Mr. Flory expects to run a Democratic newspaper and considers the field here a good one. Mr. Spensard, a native of Iowa, is engaged in newspaper work elsewhere and as soon as he finds a place to suit him he expects to purchase.

Bursting Water Main Does Damage in Leavenworth. Leavenworth, Kan., Jan. 7.—The bursting of a huge water main caused water to accumulate under great pressure beneath some of the paved streets of Leavenworth and the brick pavement was thrown up for an entire block in one big mass while a torrent of water turned the streets into mirages.

The sewers could not accommodate the immense flow and several cellars were flooded. The pumps were stopped at the central station for the time until a force of men could close the necessary valves. Every precaution was taken at the federal prison and in the city to guard against fire, and the water was off for several hours. The loss will amount to several thousand dollars.

FORCED UP THE PAVEMENTS. Burlington, Jan. 7.—F. C. Flory, editor of the Elk County Citizen of Howard, has bought the Burlington Independent from Ray P. Spensard, who is now in Chicago. Flory is an old newspaper man and is prominent in state politics as well as editorial circles, being a member of the Democratic state central committee. Mr. Flory expects to run a Democratic newspaper and considers the field here a good one. Mr. Spensard, a native of Iowa, is engaged in newspaper work elsewhere and as soon as he finds a place to suit him he expects to purchase.

Novelist James B. Connolly, who has joined the navy. James B. Connolly, who recently entered the United States navy as yeoman on the battleship Alabama, has won fame as the author of "Out of Gloucester," "The Seiners" and "The Deep Sea Toll," powerful stories of the Gloucester fishermen. The president is said to have urged Mr. Connolly to take this step in order that literature might be enriched by stirring tales of life on a modern American man-of-war. Mr. Connolly is also noted as an amateur athlete.

AT THE CAPITAL.

Washington Laughs at New Vernon Story. Brilliant Negro Official Not After Scott's Place. IS SATISFIED NOW. Appreciates Hard Fight Made for Him. Present Position Offers Him Splendid Opportunities.

Washington, Jan. 7.—The story that Dr. William T. Vernon of Quindaro, Kansas, the noted negro orator, who is now register of the treasury, is contemplating a congressional career, and would like to succeed Charles F. Scott in the house of representatives, is so silly as to deserve attention. Yet, because of its publication here, and by a Topeka morning newspaper, a serious Washington dispute has been considered attention given the story.

Dr. Vernon is not in the city at present. He is in Kentucky, making some addresses. He left here a week ago. The story originally was printed in a morning Washington newspaper, a new paper, which is making strenuous efforts to rival the well-established Washington Post. After being discussed here day after day, more or less seriously, the Washington correspondent of a Topeka morning newspaper wrote an elaborate piece about Vernon's prospective candidacy, treating it in a serious vein, and sent it to his paper.

Vernon is content with his present job. He likes it. He appreciates the desperate fight that was made by Senator Long and the Kansas delegation to land him. He knows it will give him an excellent opportunity for the next four years. It places him nearly at the head of noted negroes of the country, with the possible exception of Booker T. Washington. It is a distinct recognition of the advancement of the negro. Dr. Vernon has often expressed himself as desiring to be a senator.

Dr. Vernon has been very modest and unassuming since his preference for the senate has been announced. He has said that his desire is to hold this office for a period of four years, at least; make a good official; understand the duties of his office; keep in touch with the administration and the officials of the government; save as much of his liberal salary as possible; go about the country as occasion may require; and, if possible, make speeches to his people; keep closely associated with his old school at Quindaro and with the state of Kansas; and then go back to work for his people and the building of his institution. Dr. Vernon was telling a Kansas just the other day what his ambition was, and he mentioned these duties. Now he is a senatorial candidate, and he is a senatorial candidate, and he is a senatorial candidate.

George E. Tucker, one of the men mentioned by the State Journal a few days ago as a possible chairman for the senate committee on railroads, was appointed Saturday evening by Lieutenant Governor-elect W. J. Fitzgerald. Senator Tucker is from Eureka, Greenwood county, and is the owner and publisher of the Eureka Herald.

Senator Tucker attended college at Washburn, and while in school here was a debating team with W. L. Cunningham, who is now the representative from Cowley county.

Although a supporter of Curtis, it is a touch with the administration and the officials of the government; save as much of his liberal salary as possible; go about the country as occasion may require; and, if possible, make speeches to his people; keep closely associated with his old school at Quindaro and with the state of Kansas; and then go back to work for his people and the building of his institution. Dr. Vernon was telling a Kansas just the other day what his ambition was, and he mentioned these duties. Now he is a senatorial candidate, and he is a senatorial candidate, and he is a senatorial candidate.

C. E. Denton, the new secretary of state, has announced the appointments of his assistants and clerks when he goes into office January 14. J. T. Botkin of Geary will be assistant secretary of state; H. E. Morrison will be chief clerk and P. W. Denton, charter clerk of the senate, will be in charge of the compilation of the session laws of 1907, with L. B. Beardley as proof-reader. There will be on change in the personnel of the prison forces in this rush times incident upon a session of the legislature, and there will be a considerable number of temporary appointments to assist the regular force until after the legislature has adjourned.

Representative C. L. Davidson of Sedgewick county, who went home Saturday, was interviewed in the Wichita Beacon as follows:

"Everything indicates that the railroads have their hand on the lever again this year, at least in senatorial matters," said Davidson. "Calderhead has been brought into the race plainly to injure Bristow, and it is known that Calderhead is a railroad and corporation man. The last time I saw

its merits for a moment. Curtis is backing Guilbert, and that's all there is to it. One of the grounds for the contest is that the judges in one precinct entered the voting booth across the room to a place where the light was better."

Alva Swope, the new representative from Jewell county, who beat R. H. McBride in the election, arrived in Topeka today. Mr. Swope is a Democrat, and he thinks that the Republicans ought to let the Democrats have a voice in the election of United States senator. Mr. Swope was elected by Republican votes. In speaking of the senatorial situation, Mr. Swope said:

"I have not said definitely who I will support for United States senator, but it won't be Curtis. It is my idea that if the candidates for United States senator go into a caucus they will be making a great mistake. The people of Kansas favor the primary election law, and they want all the candidates for United States senator to have expressed themselves as favoring such a law. The Republicans, of course, have a majority in the house, and can name the senator, but I believe that the Democrats, being in the minority, have a constitutional right to help elect a Republican senator. I am in favor of electing the very best man for that office that can be found. I believe the candidates for United States senator should be named by the people in the open, without resorting to a caucus."

Representative Swope was elected to the legislature on this platform: "Resolved—That we hereby declare our opposition to all combinations of capital organized in trusts to control arbitrarily the conditions of trade among our people and we hereby pledge the nominee of this convention for the legislature to support for United States senator, regardless of party, any honest and courageous citizen among our people who we believe worthy of that exalted office, who favors a revision of the tariff and who will work in the United States senate to place upon the free list, building material, lumber, wood pulp, steel and iron."

Some surprise will be caused by the announcement that the Cherokee county delegation, consisting of Senator C. S. Huffman and Representative S. C. Westcott and Hal C. Cowan, will be for Benson for senator as second choice, in case the Campbell strength breaks. The Curtis people have been counting on gobbling up all the Third district votes on a Campbell break.

Paul Rich, representative from Hamilton county, is in Topeka. Mr. Rich has made a partial canvass of the choice for senator in his county of his constituents, taking their names, and the candidate they prefer, with the following result:

For Charles Curtis, 68 per cent; for Benson, 12 per cent; for Campbell, 10 per cent; for Stubbs, 4 per cent; with no preference, 12 per cent.

Mr. Rich states his interviews were with leading and representative Republicans, whose opinion he did not know in advance.

J. M. Davis, the Democrat elected from Bourbon county over E. F. Pawling, the old member, is a fighter, and he is mixing with the Republicans at the Copeland, and talking his best against the proposed increase of the salaries of members of the supreme court, as has been proposed.

"The justices of the supreme court," says Mr. Davis, "were willing to take their positions at the \$3,000 salary at the time of the convention when they were after the nomination. They ought to stand by the terms on which they were nominated. I am not saying that I oppose any increase in the pay for the justices but surely I shall fight the increase to take effect during the terms of the present members of the court."

Mr. Davis was a member of the legislature at the 1901 session and was then defeated for re-election by the Republicans.

Senator Baile Waggoner is one of the most successful farmers in the legislature. Part of his product this last year is three hundred tons of alfalfa raised on sixty acres. This is at the rate of five tons per acre. He has refused fifteen dollars and a half a ton for it. It is baled and housed. "I would like to see my neighbor, Cy Leland, speaker," said Mr. Waggoner. "He has had wide experience in legislative affairs. I never knew Mr. Leland to break or forget a promise. He may be slow sometimes in taking a stand, but when he takes it he sticks to it. He has earned the speakership from his party—but then of course I am not concerning myself about his party."

Chicago Live Stock Market. Chicago, Jan. 7.—CATTLE—Receipts, 20,000 head. Market steady. HOGS—Receipts today, 12,000 head. Market 7 1/2 to 10 c lower. Bulk of sales, \$2.30 to \$2.40. SHEEP—Receipts today, 8,000 head. Market 30 c lower.

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TONIGHT DECIDES.

(Continued from Page One.)

Wheat Opens Rather Firm on Good Demand. Corn Is Quiet—Local Receipts Under Estimates. LIVE STOCK TRADE. Cattle Quoted at About Ten Cents Per Hundred. Hogs Are Off Ten Cents Per Hundred.

Chicago, Jan. 7.—WHEAT—The market today opened firm and active on a good demand from commission houses and shorts. Local receipts were somewhat light. The high price for May was 76. The close was firm, with May 74 3/4 c higher.

WHEAT—Cash: No. 2 red, 74 1/4 c; No. 3 red, 73 1/4 c; No. 1 northern, 74 1/4 c; No. 2 northern, 73 1/4 c; No. 3 spring, 74 1/4 c.

CORN—The market opened quiet and firm. Local receipts were somewhat light. The high price for May was 43 1/2 c. The close was firm, with May 43 1/2 c higher, and sold at 43 1/2 c.

CORN—Unchanged to 1/4 c higher. Dec., 33 1/2 c; May, 34 1/2 c; July, 34 1/2 c; No. 2 mixed, 33 1/2 c; No. 3 mixed, 33 1/2 c; No. 2 white, 34 1/2 c.

Trading was light in the corn pit all day. The market was firm. The close was firm, with May 43 1/2 c higher, at 43 1/2 c.

OATS—The market was quiet and firm, partly in sympathy with corn and partly in sympathy with wheat. The high price for May was 23 1/2 c. The close was firm, with May 23 1/2 c higher, at 23 1/2 c.

PACKERS—The market opened with a shade lower, at 35 1/2 c.

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