THE OMAHA DAILY BEE

VOL. XXXVI—NO. 157. OMAHA, TUESDAY MORNING, DECEMBER 18, 1906—TWELVE PAGES. SINGLE COPY THREE CENTS.

WALCOTT GETS OUT

One Land Man Whose Name is Stricken from the Indictment.

LONE WITNESS TESTIFIES AGAINST HIM

Motion to Release Other Defendants Overruled by Judge Munger.

GENERAL DEMURRER UNDER ADVISEMENT

Attorney for Defense Pronounces Prosecution Baseless, Legally and Morally.

GOVERNMENT RESTS CASE EARLY IN DAY

Court Overrules Motion of Defense to Compel Prosecution to Elect Which Count It Wants Prosecution on.

The government rested, the name of F. M. Walcott was stricken from the indictment, the court overruled a motion to compel the prosecution to elect which count it would demand conviction on, overruled a motion for the court to order a verdict of acquittal for each defendant, the court continued consideration of a general demurrer by the defense and Judge Crites of counsel for defense declared "the prosecution, no matter by whom instituted, is baseless under law and moral principle"—these were the vital developments and features in the big land trial before Judge Munger yesterday.

"The government rests."

Such was the announcement of Special United State District Attorney Rush at 11:57 a. m. Monday, being the twenty-fifth day of the big land trial in which these are the defendants: Bartlett Richards, president; Will G. Comstock, vice president; Charles C. Jameson, secretary and treasurer of the Nebraska Land and Feeding company; Thomas M. Huntington, president of the Maverick Loan and Trust company of Gordon; Aquilla Triplett, agent for Richards and Comstock, and F. M. Walcott, the alleged agent and attorney for the Nebraska Land and Feeding company at Valentine. They are charged in a 500-page indictment of conspiracy to defraud the government out of title to a large quantity of public lands by means of fraudulent filings and entries and for conspiracy to suborn perjury in these several matters.

Court Overrules Crites.

At the beginning of the afternoon session Judge Crites of counsel for the defense moved that the government be required to elect which of the counts it would demand conviction upon. Judge Munger overruled the motion.

Judge Crites then read a general demurrer to the indictment and asked that a verdict of acquittal be ordered for each of the defendants on the ground that each of the counts charges the same general conspiracy, "and that the government has not produced one particle of proof of conspiracy. In count 31 of the indictment the government has failed completely to establish proof of forgery in the matter of the declaratory statements and that the defendant, F. M. Walcott, has not been shown in any way to be connected with the alleged conspiracy or forgery; that counts 31 to 37 charge the subornation of perjury and that no proof has been produced to substantiate the allegation, and further, that the alleged act of conspiracy cannot be split up into several offenses as appears in the indictment, holding that this conspiracy was entered into on June 28, 1904."

Judge Crites cited several cases in support of his contention and notably one from Wisconsin where the same general features enter as in the case at bar and whereby a decision was rendered showing that an agreement to lease the land as part of the conditions for money advanced for the entry expense was not unlawful.

Overt Act Renewal of Plot.

The court held that the overt act was a renewal of the conspiracy and that it was true a man cannot be punished more than once for the same offense. The court said.

"The offense in the case at bar lies in the agreement prior to the accomplishment of the overt act. The motion is therefore overruled."

Mr. Brome of counsel for the defense moved that the jury be instructed to return a verdict of not guilty, from the fact that the evidence is not sufficient in law to warrant a conviction on any of the counts and that this action was made for and on behalf of each of the defendants. The court did not pass on this motion.

Judge Crites then renewed his motion that the name of F. M. Walcott be stricken from the indictment, as no evidence had been produced connecting him in any way with the conspiracy or alleged forgery.

Upon this motion Judge Munger said:

"There has been but one witness who has connected Mr. Walcott's name in this matter and I must, for the present, sustain the motion as to the defendant, Walcott."

Similar Motion for Others.

Judge Crites made a similar motion as to the defendant, Bartlett Richards, Will G. Comstock, Charles C. Jameson and Aquilla Triplett. He then entered into a prolonged argument, sustained by numerous authorities, bearing upon the various features of the case and the complicity of these defendants in the conspiracy, as alleged in the indictment. On the subject of the procurement of leases on the land from the entrymen, he said:

"The leases given do not operate as a vitiation of the entry. The parties entering the land supposed that they had a right to make the leases. It has been frequently shown that a mortgage given on a homestead prior to final proof was a lawful transaction and the mortgage in this instance was equivalent to a lease. These mortgages were given to enable the entrymen to make improvements. The Interior department has itself influenced the general opinion that grazing the land was equivalent to cultivation and this presumption has been let into the law by the department itself. A lease is not an alienation of the land, particularly where no agreement has been made to sell the land prior to entry. No law in the United States prohibits this practice, nor does it pronounce it a crime. Under these decisions these defendants are not guilty of any offense and this prosecution, no matter by whom instituted, is baseless under all law and moral principle."

Rush Against Motion.

Mr. Rush argued against the motion of Judge Crites and said:

"The allegation of the indictment relative to the conspiracy and in all its points and counts has been abundantly sustained by the proofs submitted. The time for acquiring the title to the land has not yet arrived. The conspiracy was to de-

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HAMBURG LINER AGROUND

Prinzessin Victoria Luise Strands Off Kingston, Jamaica, and Captain Kills Himself.

KINGSTON, Jamaica, Dec. 17.—The Hamburg-American line tourist steamer Prinzessin Victoria Luise, from New York December 12 for this port, went ashore last night off Port Royal, while on its way back to New York. The passengers were landed here safely, today.

Captain Bruinswig, who was in charge of the Victoria Luise when it struck, committed suicide by blowing out his brains.

The Victoria Luise is pounding heavily and the seas are breaking over it, but hopes are entertained that it will be saved. It is resting on a rocky ledge.

In accounting for the stranding of the steamer it is explained that it was without a pilot and the captain in charge had followed the wrong course and piled it up on the rocks just under the lighthouse. Two hours later the captain locked himself in his cabin and blew out his brains. The officers of the ship and the German consul here made ineffectual efforts to hush up the news of the tragedy. The local police are arranging to take charge of the body and perform an autopsy. The body probably will be sent to New York for burial.

When the Victoria Luise ran on the rocks the sea was calm, the present heavy weather coming up later. The passengers were panic stricken until it was learned that there was no immediate danger. The officers succeeded in restoring order and the transfer of the passengers to Kingston was effected without accident.

The Princessin VictoriaLuise was launched at Hamburg in 1900, and is 4,419 gross tons. It was designed and built as a cruising yacht. All of its appointments are after the most approved modern plans. It carried first-class passengers only and has been utilized in the excursion business exclusively.

EDUCATION BILL REVIVIFIED

Indications That British Lords and Commons Will Reach an Agreement.

LONDON, Dec. 17.—When the educational bill, amended by the House of Lords, sent back to the House of Commons and returned by that body to the upper branch, reached the lords today, the earl of Crewe, lord president of the council, announced that the government was not prepared to sacrifice the main principles of the bill, but that with certain modifications the most important points might be agreed upon in order to enable the bill to become a law. Lord Crewe added that concessions of a substantial character would be made. In view of this announcement the House of Lords consented to an adjournment of the debate in order to enable the leaders to reach an agreement.

The crisis arising from the educational bill has taken a new turn as a result of today's proceedings in the House of Lords and it is becoming clear that a historic conflict between the two houses is not likely to occur over the question of education. The fact is that both houses are equally desirous of avoiding a conflict and immediately after Lord Crewe's announcement it was foreseen in all probability the bill would be saved.

SUPERIORITY OF ASIATICS

Former Minister of Italian Treasury Tells of Their Toleration of Religions.

ROME, Dec. 17.—Signor Luzzati, ex-minister of the treasury, delivered a lecture at the university here today on the "Superiority of Ancient and Modern Asiatic Races Over the White Races in the Matter of Religious Toleration and Liberty of Conscience."

During the course of his remarks he referred to Japan as the country where those principles of toleration had reached the highest standard. Those present, who included many students and local notabilities, including the Japanese minister and the Marquis Viscount Costa, ex-minister of foreign affairs, applauded the speaker enthusiastically. The students immediately decided to act, contrary to the principles set forth by Signor Luzzati, by organization demonstrations against the Vatican and in sympathy with the action of the French government.

RAISOULI LAYS DOWN LAW

Warships Must Leave Tangier in Five Days or Trouble Will Follow.

PARIS, Dec. 17.—Raisouli, the bandit chief who has terrorized the people residing in the vicinity of Tangier, Morocco, has, according to an interview published here today, indulged in open threats against the French and Spanish residents.

He is quoted as having declared that he will not tolerate the presence of foreign warships at Tangier, adding: "I have written to the authorities at Fez and will write to the legations, notifying them that before the expiration of five days the warships must depart."

KING OSCAR IS IMPROVING

Recovery is Expected to Be Slow, but He Passes Quiet Night.

STOCKHOLM, Sweden, Dec. 17.—King Oscar continues to improve. His general condition this morning is noticeably better. His recovery, however, is expected to be slow.

The following bulletin was issued today by his majesty's attending physicians:

The king passed a good quiet night. His temperature is 99.1, the action of the heart is stronger and the mucus in the trachea has not increased.

New Bishop Recommended.

ROME, Dec. 17.—At a meeting of the congregation of the propaganda held today Rev. A. Guertin, rector of St. Anthony's church, Manchester, N. H., was recommended to the pope for appointment as bishop of Manchester diocese.

Revolutionists Arrested.

MOSCOW, Dec. 17.—Thirty members of the revolutionary fighting organization were arrested today in the Bismanoff quarter of this city. Large stocks of arms, ammunition, dynamite and bombs were seized.

British Sailors Drown.

PORTSMOUTH, England, Dec. 17.—Nine sailors belonging to the crew of the battleship Hindustan were drowned today owing to the upsetting of a cutter in which they were returning to the warship.

Alleged Forger Taken.

LOS ANGELES, Cal., Dec. 17.—Charles F. Kaiser, wanted in Columbus, O., on the charge of issuing a forged note for $800, was arrested last night and will be held until the arrival of an officer from Columbus.

RAILROADS WILL MOVE COAL

Fuel Famine in the Northwest to Be Broken Within Twenty-four Hours.

INTERSTATE COMMERCE COMMISSION ACTS

Officials of Northern Pacific and Great Northern Promise Immediate Relief—Replies from Other Railroad Presidents.

ST. PAUL-MINNEAPOLIS, Dec. 17.—The fuel famine of the northwest will be broken within twenty-four hours as a result of the Interstate Commerce commission's inquiry in this city today. The commission was represented by James S. Harlan of Chicago and Franklin K. Lane of San Francisco.

Mr. Lane is taking personal charge of the fuel famine inquiry, while Mr. Harlan is engaged in the car shortage inquiry. It was decided that since the fuel famine was the most important, there being already many reports at hand of suffering from the cold in North Dakota, it should be the first to be handled and settled. Mr. Lane questioned E. C. Blanchard, division superintendent of the Northern Pacific at Duluth, and D. M. Philbin, assistant general agent of the Great Northern at Duluth, today. Before Mr. Lane had finished his examination of the witnesses both had promised that relief would be forthcoming within the next twenty-four hours and orders have been given to rush coal to the suffering towns, all other traffic being made secondary until supplies shall have been furnished.

It puzzled the attorneys and judges of the commission in the afternoon session why it was that it took a freight car on the average about thirteen days to make a trip that could be made at a ten-mile rate in twenty-five hours.

Freight Moves One Mile an Hour.

E. C. Blanchard, division superintendent of the Northern Pacific at Duluth, by whose testimony this situation was brought out, explained it by stating that hot boxes frequently delayed the progress of a car and that various other causes contributed to the delay of the car in transit. According to the testimony of the Northern Pacific official, it would not be uncommon for a freight car to move from point to point at the rate of a little less than a mile an hour.

He stated that there was an increase in shipments in every commodity—grain, lumber from the coast, merchandise, coke, coal and wood products.

Judge Lane asked the witness for how long a period of the year it took such a very long time as from ten to thirteen days to move a freight car 250 miles, and he was told that the conditions were most unfavorable to speed during September, October and November.

"And you know about this every year, don't you?" asked Judge Lane.

"Yes, we expect it," was the reply.

"You have nine months to prepare for it," stated the court.

"Yes, we try to do our best," was the answer of Superintendent Blanchard.

Telegrams From Railroad Presidents.

WASHINGTON, Dec. 17.—Three more responses have come to the Interstate Commerce commission from Northwestern railroads in response to Chairman Knapp's telegram of last week, calling attention to the reported shortage in cars and the complaints of a lack of transportation for the necessities of life and of fuel. From the information conveyed by the railroad companies today the commissioners express the opinion that one cause for the shortage in fuel is that the dealers have not stored up in advance sufficient quantities for the winter's supply, but have ordered only sufficient supply to last from day to day. Replies were made public today from President Hill of the Great Northern, President A. J. Earling of the Chicago, Milwaukee & St. Paul and President Howard Elliott of the Northern Pacific company.

Hill Blames Shippers.

Following is the message from Mr. Hill:

Replying to your message repeated from St. Paul to New York: Am on my way to St. Paul to meet commissioners now. Coal scarcity is not due to want of cars. Thousands of empty cars have been moving from the head of Lake Superior to the grain fields all fall, and the coal ordered by local dealers has been only sufficient to supply from day to day. During the last two weeks there have been very heavy snowstorms, with the thermometer below zero. Snowdrifts around stations from six to fifteen feet deep have temporarily blocked railroads. Special trains of coal having right of way over all other traffic are being sent and road is being opened as fast as conditions will allow. The fuel difficulty is temporary and is being rapidly remedied. The general condition applying to all traffic is due to the rapid increase in tonnage to be moved. Owing to difficulties in disposing of freight at terminals the average car movement varies from fifteen to thirty miles a day. Our increase in locomotives and cars since last spring is from 15 to 17 per cent in number and more than that in capacity, which, with reasonable opportunity to move, would amply take care of the traffic. Inability to secure labor at any price has badly delayed the completion of additional main tracks and terminals. We have orders for new locomotives to be delivered between now and June 1 for 25 per cent increase in capacity and 5,000 freight cars to be delivered between January and September. Capacity of the latter is 250,000 tons. However, relief can only come through increase in double track and terminal facilities. We are arranging for $50,000,000 covering next two years to provide additional tracks, terminals, equipment and new lines when traffic is heaviest.

(Signed) JAMES J. HILL.

Following is President Earling's message:

There has been no deficiency in car supplies on the lines of the Chicago, Milwaukee & St. Paul railroad greater than usually occurs in the fall movement of crops eastward and merchandise and fuel westbound. The motive power of the company has been sufficient to move all its traffic promptly. There has been no failure or unusual delay in transporting fuel or other necessities of life. Movement of fuel has had preference over other western traffic for the past forty days and will be continued as long as necessity may exist.

(Signed) A. J. EARLING.

Dealers Advise to Buy Early.

President Howard Elliott of the Northern Pacific Railway company telegraphs the commission from St. Louis as follows:

There is a scarcity of fuel in some parts of the country served by our line, but we do not know of any shortage of other necessaries of life. Our company has done and will continue to do all that it can to prevent suffering. The company realized in June and July last that the fuel supply was likely to be insufficient and that the general increase in business would produce a congestion in the autumn. We, therefore, urged all dealers at that time to look ahead and provide a stock of coal early and to try to find new sources of supply. I think the reason given in your message, namely, extraordinary delays in moving, is incorrect so far as this company is concerned. The difficulty in Montana, Idaho and Washington is that not enough coal is being produced to supply promptly the increased domestic trade and at the same time furnish the railroad with fuel for the operation of its trains. Then, in November, unprecedented floods in and about the Cascade mountains damaged our tracks so that trains could not move over important parts of the road for more than a week and a number of important coal mines could not be reached. This flood damage complicated the situation.

Increased Use of Fuel.

In North Dakota and Minnesota the difficulty in part is due to trying to move

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INSURANCE ELECTIONS TODAY

Policy Holders of Big Companies Will Ballot for New Board of Trustees.

NEW YORK, Dec. 17.—The election of trustees for the New York Life, the Mutual Life, the Mutual Reserve Life Insurance companies and the Equitable Life Assurance society will take place tomorrow at the home offices of the companies in this city. The polls will be open from 10 a. m. to 4 p. m., and immediately after the polls are closed the task of counting the ballots and proxies will begin.

There has been no contest in the Equitable and Mutual Reserve and the election of their administration tickets is a certainty, but a remarkable campaign has been waged among the policyholders of the New York Life and the Mutual Life for control of the affairs of those two companies.

It is estimated that more than 400,000 votes will be cast in the New York Life election and about 350,000 in the Mutual Life. It is expected that it will require several weeks to count the ballots and that the courts will be resorted to on many occasions to settle the validity of votes and proxies. Otto Kelsey, superintendent of insurance, today appointed these inspectors, who will supervise the counting of the ballots in the two contests:

For the Mutual—Alexander Rice McKim, architect; J. Bayard Packus, lawyer; Joseph A. Arnold, George S. Ludlow, lawyer; Melvin H. Dahlberg, lawyer, all of this city.

For the New York Life—J. Earle Lawshe, lawyer; Alphonse G. Koelble, Frederick W. Marks, merchant; Robert Seldon Huse, lawyer, of this city, and Ellis Guy Kinkead, lawyer, of Cincinnati.

It was announced tonight by the international policyholders' committee that its general counsel, Samuel Untermyer, would serve as a watcher tomorrow at the New York Life polls and that Louis Marshall would act in a similar capacity at the Mutual polls. It was stated also that Mr. Untermyer would make a protest at the opening of the polls of the New York Life against the receiving of certain proxies by agents of that company.

KIMMELL OUT OF ASYLUM

Former Bank Cashier Declared Sane by a Jury in New York.

NEW YORK, Dec. 17.—George J. Kimmell, former cashier of the Farmers' bank of Arkansas City, Kan., who has been an inmate of the insane asylum at Mattewan, today was declared by a jury in the supreme court at White Plains to be of sound mind.

Kimmell was sent to the insane asylum under the name of Andrew White. He had been convicted of larceny and was committed to the asylum as demented. Kimmell disappeared while cashier of the Arkansas bank of Arkansas City, after which he was alleged to have defaulted. At that time he had three policies in the New York Life company for $25,000. Miss Edna K. Donslett, a sister of Kimmell, was named as beneficiary in the policies and after her brother had been missing for seven years she made a claim to the money, declaring that he was legally dead, but the insurance company had detectives searching for him, with the result that he was finally located in the lunatic asylum.

ST. LOUIS, Dec. 17.—After a trial lasting for almost a week a jury in the United States circuit court here rendered a verdict on October 5 last in favor of George C. Rankin, plaintiff, in his suit against the New York Life Insurance company to recover $7,736 insurance on the life of George A. Kimmel. Kimmel was the former president and cashier of the Farmers' State bank of Arkansas City, Kan., and disappeared on July 31, 1898. In contesting the suit the insurance company set up the claim that Kimmel was not dead, but was inmate in the Mattewan Asylum for the Criminal Insane in New York under the name of Andrew J. White.

TWO GIRLS DIE OF POISON

Chicago Coroner Examines Bodies of Members of Vzral Family Who Die Suddenly.

CHICAGO, Dec. 17.—Poison was responsible for the death of at least two of the Vzral family in this city, six of whom died within a few months of each other in the year. Herman Billik, a fortune teller, is now in jail on a charge of having administered poison to the family so the mother of the dead could collect the insurance money. Mrs. Vzral was found dead in her home two weeks ago, a few hours after an investigation into the cause of the death of the other members of the family was begun. At first it was believed she committed suicide, but the police are of the opinion that the same agency that caused the death of the children caused her death.

Positive evidence of the presence of poison in the internal organs of Ella and Mary, two of the daughters of Mrs. Vzral, whose bodies were exhumed last week, was discovered today by Prof. Walter M. Haines of the Rush Medical college and Dr. Lewke of the coroner's staff. Arsenic was found in the liver and stomach of both victims in sufficient quantities to cause death.

After hearing from the physicians tonight Coroner Hoffman said the bodies of the other members of the family would be exhumed and an examination made for traces of poison.

QUARANTINE ORDER INVALID

Supreme Court Declares Wilson's Rule Unconstitutional, as it Affects State Commerce.

WASHINGTON, Dec. 17.—In deciding the cases of the Illinois Central Railroad company against T. G. Edwards and J. U. McKendree of Kentucky, the supreme court of the United States held to be unconstitutional the Agriculture department's quarantine order because the line fixed by it was made applicable to the state as well as to the interstate movement of cattle. The court's opinion, announced by Justice Day, reversed the finding of the circuit court of Carlisle county, Kentucky.

The case grew out of a claim for damages made by Edwards & McKendree against the railroad company on account of the contraction of Texas fever by cattle owned by them through contact with cattle brought into Carlisle county by the railroad. The suit was instituted under the act of congress in 1903, authorizing a national quarantine to prevent the spread of infectious diseases among live stock. The Carlisle county court awarded damages and the railroad company appealed the case, claiming the law to be unconstitutional in that it delegated too much power to the secretary of agriculture in allowing him to fix lines. The decision distinctly holds the act of the secretary invalid because of its interference with interstate commerce.

HOWE'S TITLE NOW CLEAR

Senate Confirms His Nomination, Also That of B. H. Barrows.

OMAHA INDIAN DEPOT PROVIDED FOR

Congressman Cushman in All Probability Cannot Accept Invitation to Speak in Omaha on Washington's Birthday.

(From a Staff Correspondent.)

WASHINGTON, Dec. 17.—(Special Telegram.)—Having anticipated the name of E. L. Howe being sent to the senate today, Congressman Kennedy not only asked the assistance of the Nebraska senators, but saw Senator Penrose, chairman of the postoffice committee of the senate, with a view of bringing about the earliest confirmation possible. Usually nominations for postmasterships of a presidential class go over for at least one day, but in this case, where one name was sent in for the South Omaha postmastership and withdrawn for that of another, the senate committee on postoffice saw no reason to debate the question in committee, and when the name appeared confirmation followed. While somewhat of an unusual proceeding, everybody in the senate seemed to think that the proper way to settle matters was to confirm Mr. Howe's appointment at once without reference to the committee, and this was accordingly done.

Mr. Kennedy was congratulated by his many friends in congress in having his nominee selected after another nomination had been sent in.

Mr. B. H. Barrows, at the same time, was confirmed as surveyor of customs of the port of Omaha.

Cash for Omaha Indian Depot.

While the house was considering the Indian appropriation bill today, the item appropriating money for Indian supply depots throughout the country was reached, the bill this year carrying a lump sum for several Indian depots. Mr. Kennedy asked the question whether the Omaha Indian supply depot was to be maintained with the same liberality during the next fiscal year. He called attention to the fact that he had to fight last year, not only with the committee, but later in the house to get an appropriation of $10,000 to carry on the work there. This year the Indian affairs committee had decided to give the commissioner of Indian affairs a lump sum to carry on the work of several depots—New York, Chicago, St. Louis, Omaha and San Francisco—and he wanted to know whether Omaha was to have the same treatment as accorded it last year. Mr. Sherman, chairman of the Indian affairs committee, stated, in reply to Mr. Kennedy's question, that a lump sum given to all Indian supply depots included Omaha on a basis as liberal as last year, or even more so, if the business warranted. Mr. Sherman further said that, should the business increase in Omaha, as he believed it would, a larger sum of money would be available at that point, calling the attention of the house to the fact that the Omaha depot had greatly increased its business during the past fiscal year and that it was the intention of the Indian bureau to still further use Omaha as a medium of supplies.

Cushman May Not Come.

Representative Francis Cushman of Washington has been invited to address the Omaha club on Washington's birthday. Today Representative Kennedy saw Mr. Cushman in order to clinch the invitation, but the congressman fought shy of making a definite promise. Much as he would like to go to Omaha, he having started in his legal career in Holt county, Nebraska, Mr. Cushman said today to Mr. Kennedy that he was afraid he could not see his way clear to accept, Washington's birthday coming so near to the end of the session. He asked, however, that the date be held open until after the holidays. In the meantime he thought the club should not lose an opportunity to secure some other speaker for the night in question.

Chapman Appeal Dismissed.

The supreme court today dismissed, for want of jurisdiction, the case of Hiram T. Chapman, plaintiff in error, against Florence Elliott Chapman, on appeal from the supreme court of Nebraska. This suit originated in Cedar county, Nebraska, wherein Mrs. Chapman sued her husband for maintenance and support. The judgment of the trial court was in favor of the plaintiff, and she was awarded $10,000 for maintenance. On a writ of error to the supreme court that court reversed the judgment of the court below for the reason that the trial court had erred in awarding a lump sum of $10,000 for maintenance instead of awarding amounts to be paid periodically, and sent the case back to the district court for instructions "to receive such additional evidence pertinent to the subject of alimony as may be offered by either party and to award to plaintiff such sum, to be paid to her periodically by defendant, as shall appear to be within his ability to pay and to be adequate for suitable maintenance."

Conductors File Protest.

Representative Kennedy today presented resolutions adopted by the North Platte division of the railway conductors protesting against the passage of the LaFollette bill limiting the hours of labor for railway employes.

Congressman Kinkaid today recommended for postmaster at Mitchell, Scott's Bluff county, C. H. Blackburn, vice L. S. Russell, resigned.

Pollard Profits by Experience.

Congressman Pollard introduced a bill today amending section 51, revised statutes, relating to the pay of members of congress to fill vacancies as follows: Whenever a vacancy occurs in either house of congress, by death or otherwise, of any member or delegate elected or appointed thereto the person elected or appointed to fill such vacancy shall be compensated and paid from and including the date of his election or appointment.

Millard Starts for Home.

Senator Millard left Washington this afternoon for Omaha and will not return to the capital until about January 7.

Burkett to Talk in Pittsburg.

Senator Burkett leaves tomorrow night for Pittsburg, where he is to address the International Reform bureau on the theme, "The Measure of Man."

Omaha Women at Capital.

Senator Millard and Representative Kennedy entertained Mrs. John Patrick and Miss Eugenia Brown of Omaha at luncheon today. These women, who have been visiting in Washington several days, were shown through the capitol building by Senator Millard and Representative Kennedy and this evening left for Omaha.

South Dakota Appropriations.

Senator Kittredge today introduced the following bills: Providing an appropriation of $150,000 for the erection of an addition or extension to the postoffice at Sioux

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NEBRASKA WEATHER FORECAST

Fair and Warmer Tuesday and Wednesday.

Hour.	Deg.	Hour.	Deg.
5 a. m.	10	1 p. m.	13
6 a. m.	9	2 p. m.	14
7 a. m.	9	3 p. m.	16
8 a. m.	10	4 p. m.	13
9 a. m.	10	5 p. m.	17
10 a. m.	11	6 p. m.	15
11 a. m.	12	7 p. m.	15
12 m.	13	8 p. m.	13
		9 p. m.	12

MISSISSIPPI WINS LAWSUIT

State Railway Commission Has Right to Enforce Square Deal on Shipments.

WASHINGTON, Dec. 17.—In the case of the Alabama & Mississippi Railroad Company against the Mississippi Railroad Commission, the supreme court rendered a decision today in support of the contentions of the state. The case involved the right of the commission to fix a flat rate of 3½ cents per mile per 100 pounds on carload lots of grain from Vicksburg to Meridian, both in Mississippi. The water rate to Vicksburg figured in the case, but the action of the commission in making the rate was based upon the allegation that the Vicksburg railroad was in the habit of giving that figure to patrons, who also gave their business to the Shreveport & Pacific road, an allied concern, while the rate to other patrons was 10 cents per 100 pounds. The Mississippi supreme court sustained the action of the commissioners and that finding is upheld. The opinion was handed down by Justice Brewer, who said:

"We are not construing an act of the state of Mississippi or passing upon the powers which by it are given to the state railroad commission. The question we have to consider is the power of the state to enforce an equality of local rates as between all parties shipping the same distance over the same road. That a state has such power cannot be doubted, and it cannot be thwarted by any action of a railroad company which does not involve an actual interstate shipment, although done with a view of promoting the business interests of the company. While a state may not compel a railroad company to do business at a loss, and while a railroad company may insist as against the power of the state, upon the right to establish such rates as will afford reasonable compensation for the services rendered, yet when it voluntarily establishes local rates for some shippers it cannot resist the power of the state to enforce the same rates for all. The state may insist upon equality as between all its citizens, and that equality cannot be defeated in respect to any local shipments by arrangements made with or to favor outside companies."

BAT MASTERSON IN COURT

Attorney for Writer Holds it is Legal to Comment on Case After Trial is Over.

HERKIMER, N. Y., Dec. 17.—Henry N. Casy, publisher, and W. B. Masterson, special writer of the New York Morning Telegraph, were called to Herkimer today to plead to indictments charging them with violating section 143 of the penal code in printing unfair comment in the Gillette trial. William E. Lewis, editor of the paper, is also under indictment, but was detained in New York by illness.

When the party reached the court house papers in an action for contempt were served on them. This action is brought by Judge Devendorf. Clarence J. Shearn, their attorney, said: "We shall claim that comment on a court trial published after a trial closes cannot be in contempt."

The article in question was signed "Bat Masterson." It appeared on December 9 and called the trial a travesty on justice, intimating that the jury was intimidated into bringing in a verdict of murder in the first degree.

The defendants made no answer to the order in court today, but Mr. Shearn made a motion to have the proceedings dismissed on the grounds of insufficiency of the papers. The motion was denied. Mr. Shearn told the court that the defense would be that the article referred to was not a report of the trial, but merely comment on the trial after the trial was closed. He argued that the statutes did not mean that a paper could not criticize a court proceeding after it was closed. Mr. Shearn filed demurrers and the case was put over until tomorrow.

OBJECT TO LAFOLLETTE BILL

Railroads and Employes to Propose Substitute for Measure Limiting Hours of Trainmen.

CHICAGO, Dec. 17.—A conference will be held here tomorrow between railroad officials and the representatives of labor organizations in order to agree on a substitute for the LaFollette bill regarding the employment of men in the train service, now in congress. The railroad companies are opposed to the LaFollette measures, because it imposes a fine of $1,000 on every railroad company and official who permits an operating employe to remain on duty more than sixteen consecutive hours or to resume work without ten hours' rest. The labor leaders who will attend the conference are A. B. Garrettson, for the conductors; John J. Hannahan, for the firemen; P. H. Morrissey, for the trainmen, and W. S. Stone, for the engineers. The railroads will be represented by Vice President J. W. Kendrick of the Santa Fe, President Felton of the Chicago & Alton, Vice President McKenna of the St. Paul, Vice President Gardner of the Chicago & Northwestern, President Winchell of the Rock Island and Vice President Willard of the Burlington and others.

M'CABE'S CONDITION CRITICAL

Methodist Bishop May Not Survive Apoplectic Stroke Suffered Last Week.

NEW YORK, Dec. 17.—The condition of Bishop McCabe of Philadelphia, who was stricken with apoplexy here last week, is now regarded as extremely precarious. He has not regained consciousness since he was taken to the hospital and it is said today, that he seemed to be gradually sinking.

Bishop McCabe's condition took a serious turn for the worse this afternoon and it was announced at the hospital that death might be expected at any moment.

Street Cars Run Slowly.

PORTLAND, Ore., Dec. 17.—The street car company is using its best endeavors to maintain regular traffic on the system today, but is meeting with only fair success. The strikers say today that a victory is in sight, while the corporation persists that it will not surrender. No serious disorders have been reported today.

PRESIDENT ON CANAL

Special Message of Chief Executive Tells of Observations on the Isthmus.

FOUNDATION FOR WORK IS WELL LAID

Type Selected Has Already Been Shown to Be Right One.

SANITARY CORPS HAS DONE GOOD WORK

Sickness and Death Rate Decreases at All Places on Zone.

CRITICS AND LIBELERS CONSIDERED

President Says There Are Some Honest Critics, but Slanderers Have Been at Work in Matter.

WASHINGTON, Dec. 17.—A pictorially illustrated message from President Roosevelt, portraying conditions as he found them on the isthmus of Panama during his visit, occupied the attention of the senate during the greater portion of the session today. Printed copies of the message, handsomely bound, were placed on each senator's desk, and the reading of the message was closely followed. Preceding the Panama message the president's recommendations regarding public lands and the naval personnel were read.

The senate agreed to the holiday adjournment resolution and there will be a recess from the end of the session on Thursday next to January 3. Resolutions were agreed to directing an investigation by the Department of Commerce and Labor of the International Harvester company to ascertain whether it effects a restraint of trade; also directing the senate judiciary committee to report what authority congress may have under the commerce clause of the constitution to prevent interstate commerce in child-made goods.

Resolutions to guard against infringement of state rights were presented by Senators Whyte and Rayner of Maryland for future discussion.

Message on Canal Affairs.

The president's message on Panama canal affairs in part follows:

To the Senate and House of Representatives: In the month of November I visited the Isthmus of Panama, going over the canal zone with considerable care; and also visited the cities of Panama and Colon, which are not in the zone or under the United States flag, but as to which the United States government, through its agents, exercises control for certain sanitary purposes.

I chose the month of November for my visit partly because it is the rainiest month of the year, the month in which the work goes forward at the greatest disadvantage, and one of the two months which the medical department of the French Canal company found most unhealthy.

Immediately after anchoring on the afternoon of Wednesday there was a violent storm of wind and rain. From that time we did not again see the sun until Saturday morning, the rain continuing almost steadily, but varying from a fine drizzle to a torrential downpour. During that time in fifteen minutes at Cristobal 1.05 inches of rain fell; from 1 to 3 a. m., November 16, 3.2 inches fell; for the twenty-four hours ending noon, November 16, 10.24 inches fell. The Chagres rose in flood to a greater height than it had attained during the last fifteen years, tearing out the track in one place. It would have been impossible to see the work going on under more unfavorable conditions. On Saturday, November 17, the sun shone now and then for a few minutes, although the day was generally overcast and there were heavy showers at intervals.

Each day from twelve to eighteen hours were spent in going over and inspecting all there was to be seen, and in examining various employes. Throughout my trip I was accompanied by the surgeon general of the navy, Dr. Rixey; by the chairman of the Isthmian Canal commission, Mr. Shonts; by Chief Engineer Stevens, by Dr. Gorgas, the chief sanitary officer of the commission; by Mr. Bishop, the secretary of the commission; by Mr. Ripley, the principal assistant engineer; by Mr. Jackson Smith, who has had practical charge of collecting and handling the laboring force; by Mr. Bierd, general manager of the railway, and by Mr. Rogers, the general counsel of the commission, and many other officials joined us from time to time.

At the outset I wish to pay a tribute to the amount of work done by the French Canal company under very difficult circumstances. Many of the buildings they put up were excellent and are still in use, though, naturally, the houses are now getting out of repair and are being used as dwellings only until other houses can be built, and much of the work they did in the Culebra cut, and some of the work they did in digging has been of direct and real benefit. This country has never made a better investment than the $40,000,000 which it paid to the French company for work and betterments, including especially the Panama railroad.

An inspection on the ground at the height of the rainy season served to convince me of the wisdom of congress in refusing to adopt either a high-level or a sea-level canal. There seems to be a universal agreement among all people competent to judge that the Panama route, the one actually chosen, is much superior to both the Nicaragua and Darien routes.

Preliminary Work Being Done.

The wisdom of the canal management has been shown in nothing more clearly than in the way in which the foundations of the work have been laid. To have yielded to the natural impatience of ill-informed outsiders and begun all kinds of experiments in work prior to a thorough sanitation of the isthmus, and to a fairly satisfactory working out of the problem of getting and keeping a sufficient labor supply, would have been disastrous. The various preliminary measures had to be taken first; and these could not be taken so as to allow us to begin the real work of construction prior to January 1 of the present year. It then became necessary to have the type of the canal decided, and the only delay has been the necessary delay until the 29th day of June, the date when the congress definitely and wisely settled that we should have an eighty-five-foot level canal. Immediately after that the work began in hard earnest and has been continued with increasing vigor ever since; and it will so continue to progress in the future. When the contracts are let the conditions will be such as to insure a constantly increasing amount of performance.

Successful Sanitation.

The first great problem to be solved upon the solution of which the success of the

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