

U. S. SUPREME COURT DECISION

In the Railroad Commission Case of Caldwell and Pears vs. the Two Wilsons.

GOVERNOR RUSSELL'S ACTION SUSTAINED.

Last week THE OREGONIAN announced the decision of the U. S. Supreme Court in the Railroad Commission case. The Court decides that there was no error, and dismisses the contempt proceedings of the Wilsons against the new commissioners. The decision is as follows:

SUPREME COURT OF THE UNITED STATES

No. 558.—OCTOBER TERM, 1892.

James W. Wilson Plaintiff in Error, vs. The State of North Carolina on the relation of L. C. Caldwell.

In error to the Supreme Court of the State of North Carolina.

[March 21, 1893.]

Two motions were made in this case. The defendant in error made a motion to dismiss the writ on the ground of want of jurisdiction. The plaintiff in error obtained from this court a writ against the relator Caldwell to show cause why he should not be punished as for a contempt in proceeding upon the judgment of the State court after a writ of error from this court had been allowed and a supersedeas bond duly filed. The two motions were heard together. The following were the facts presented upon the motion to dismiss:

Here is set out a historical review of the case commencing with the first action of Governor Russell toward suspending the Wilsons down to and including the final decision of the Supreme Court. The facts of the case are as follows:

Under the statute of 1879, creating the railroad commission and providing for the appointment, suspension and removal of the officers of such commission, the act of the Governor in suspending the Wilsons was not a finality. Before there could be any removal, the fact of suspension was to be reported to the next legislature, and the Governor was to be reinstated in office, and he then became entitled to the salary during the time of his suspension.

In speaking of the statute and the purpose of this particular provision the Supreme Court of the State said: "The duty of suspension was imposed upon the Governor from the motives of public policy to prevent the danger to the public interests which might arise from leaving such great powers and responsibilities in the hands of men legally disqualified. To leave them in full charge of their office until the next biennial session of the legislature would be a violation of the public policy which the law intended to prevent."

The highest court of the State has held that this statute was not a violation of the constitution of the State; that the hearing before the Governor was not a contempt, and that the suspension was not a deprivation of property without due process of law, nor had been denied the equal protection of the laws.

The controversy relating exclusively to the title of the statute, created by a statute of the State, and to the rights of one who was elected to the office so created. Those rights are to be measured by the statute, and not by the constitution of the State, excepting in so far as they may be protected by any provision of the Federal Constitution.

The only question for us to review is whether the State, through the action of its governor and judiciary, has deprived the plaintiff in error of his property without due process of law, or denied to him the equal protection of the laws. We are of opinion the plaintiff in error was not deprived of any right guaranteed to him by the Federal Constitution, by reason of the proceedings before the governor and the suspension from office.

The procedure was in accordance with the constitution and laws of the State. It was taken under a valid statute creating a State office in a constitutional manner, as the State court has held. What kind and how much of a hearing the officer should have before suspension by the governor was a matter for the State legislature to determine, having regard to the constitution of the State. The procedure followed by a valid State law for the purpose of changing the incumbent of a State office in general involves no question for our review. A law of that kind does not provide for the carrying out and enforcement of the policy of a State without reference to its constitution, and a decision of the State court in regard to its construction and validity is generally to be conclusive. The State would have to show that the course pursued had been more rare and exceptional which would give rise in a case of this nature to a Federal question.

This court would feel justified in saying that there had been a failure of due legal process. We might ourselves have pursued a different course in this case, but this is not the test. The plaintiff in error must be deprived of one of those fundamental rights, the observance of which is indispensable to the liberty of the citizen, to justify our interference.

This statement is quoted with approval in *Hovey v. Elliott*, (167 U. S. 499, at 413.)

No such fundamental rights were involved in the proceedings before the Governor. In its internal administration the State is so far from being the Federal Government, has entire freedom of choice as to the creation of an office for purely State purposes, and of the terms upon which it shall be held by the person filling the office. And in such matters the decision of the State court, that the procedure by which an officer has been suspended or removed from office was regular and valid, must generally be conclusive in this court.

In *Kennard v. Louisiana*, (92 U. S. 180), the proceeding under which the title to the office of Justice of the Supreme Court of Louisiana was held not to violate the Fourteenth Amendment of the Constitution of the United States. The court said the officer had an opportunity to be heard before the suspension. There was no intimation in that case that a hearing such as we had here would be sufficient or that the officer would be entitled to a jury trial.

In *Foster v. Kansas*, (112 U. S. 201), the *Kennard* case was distinguished. The court held that a hearing was given in this case which would be insufficient under the Fourteenth Amendment.

Nothing in that amendment was intended to secure a jury trial in a case of this nature. The defendant in error for such a trial in the court below must have been made for the purpose of submitting to the jury the question of the validity of the suspension.

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RISEING RIVERS

In Ohio and Indiana Caused Great Destruction to Property and Many Homeless.

WHEELING, W. Va., March 23.—There is an unprecedented rise of the Ohio river, which has sent thousands of families in this city and vicinity out of their homes and caused great damage to the factories and other property. Railroads running out of the city are under water, and street traffic is suspended. This evening the water is rising at the rate of four inches an hour.

CINCINNATI, Ohio, March 23.—The Ohio river and its tributaries have risen to danger point here, and from places on the banks come reports of great damage and death. Railroads have been the greatest sufferers, traffic being partly suspended.

Three thousand are homeless at Asseville and many are missing and street traffic is suspended. A number have been drowned at other towns, also, it has been ascertained.

COLUMBUS, Ohio, March 23.—The Scioto river, has overflowed the banks breaking through the big levee on the west side of the city, inundating that part of the town and already caused an estimated loss of \$1,000,000.

Five hundred families here have become homeless and destitute. Only \$750,000 while the manufacturing interests are so severely crippled, though it is feared that when the worst is known more will be added.

PITTSBURG, Pa., March 23.—The three great rivers Monongahela, Alleghany, and Ohio, are now in a flood condition and there is every indication that the loss to property holders in general, will eclipse that of the freshet of 1894.

Already the river coal interests have suffered losses aggregating \$750,000 while the manufacturing interests are so severely crippled, though it is feared that when the worst is known more will be added.

PHILADELPHIA, March 25.—The Peoples' Bank closed today. Clay Kambie, an American cashier, was appointed receiver. This is believed to be a connection between the failure of the Guarantors Company and the Peoples' Bank, but nothing can be confirmed.

One of the most expert cases of robbery in California occurred last week on the Southern Pacific Railroad near Goshen, in the heart of the San Joaquin Valley. Two men stopped the northbound Los Angeles express, blew up the express car and carried off the cash and treasure as well as considerable money from the registered mail.

The Navy Department has arranged for the practical withdrawal of all its naval officers from Havana, and the abandonment of the wreck of the *Indiana* demoralized all forecasts. River men, who habitually underestimate great floods, set the maximum of the present one at fifty-one feet. None were more surprised than they when the river, at noon today, passed the fifty-foot mark here, ten feet above the danger line, and rising rapidly.

PHILADELPHIA, March 23.—What promises to develop into the ugliest political scandal ever inflamed upon this city was revealed in court here today, when one member of the council confessed the acceptance of a bribe; another was accused of a bribe offense, and two others were charged with receiving the same.

CHICAGO, March 23.—The first annual meeting of the Vice President National Sound Money League, founded a year ago to uphold the gold standard, was held today at the headquarters, in the Monadnock Building. The purpose of the meeting was the election of the Executive Committee, and officers, as well as a general interchange of opinions on the campaign work during the current year.

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CURRENT EVENTS OF THE DAY.

Epitome of the Telegraph News of the World and Terse

TICKS FROM THE WIRES

An Interesting Collection of Items in a Condensed and Comprehensive Form and Matters of General Interest to our Readers.

Small-pox is still spreading in East Tennessee. Five new cases have developed at Knoxville and there are many in the smaller towns.

A wrecking train on the Pennsylvania Railroad, near Columbus, Ind., went through a bridge last week with thirty men aboard. About a half-dozen were rescued. The rest were drowned.

Hon. Thomas E. Watson, who was nominated for Governor by the Populists, is out on a letter of disqualification to accept the honor. After saying that he could not be elected, no matter how the ballots went, he announced that he is out of politics for good.

MOUTRIE, Ga., March 23.—James Allen, a negro, was taken from a Sheriff here this afternoon by a mob and his body riddled with bullets and sunk in Oklawaha creek, in the dense swamps. The negro had attempted to assault the wife of Professor Ingalls. She successfully resisted him and fired six shots at him. When captured he admitted the crime.

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FIGHTING POPULISTS.

The Peoples' Party Congressmen are Battling Nobly for the Masses.

THE POSTAL ROBBERY

Shown up in the House: The Cost of Mail Cars—The Loss to the Government in Twenty Years, \$60,000,000. Resolution to Amend Constitution to Permit for an Income Tax—Other Interesting Matter.

WASHINGTON, D. C., March 23, 1893.—California has in its Congressional delegation two staunch, true and active Populists who are and Congress is expected to amend the Constitution of the United States in order to permit the levying of an income tax.

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AN EXTERNAL EXPLOSION

To Congress With the President's Message—A Brief Summary of the Findings.

THE "MAINE" REPORT SUBMITTED

Not the Court Does Not Fix the Responsibility—A Floating Submarine Mine the Agency Employed Then an Internal Explosion Occurred.

WASHINGTON, D. C., March 23.—The President to-day sent the following message to Congress:

To the Congress of the United States: For some time prior to the visit of the Maine to Havana harbor our consular representatives pointed out the advantages to flow from the visit of naval ships to the Cuban waters, in accustoming the people to the presence of our flag as the symbol of good will and of our ships in the fulfillment of the mission of protection to American interests, even though no immediate need therefore might exist.

Accordingly, on the 24th of January last, after conference with the Spanish Minister, in which renewal of visits of our war vessels to Spanish waters was discussed and accepted, the peninsular authorities at Madrid and Havana were advised of the purpose of this government to resume friendly naval visits at Cuban ports and that in view of the Maine would forthwith call at the port of Havana.

This announcement was received by the Spanish government with appreciation of the friendly character of the visit of the Maine and with notification of intention to return the courtesy by sending Spanish ships to the principal ports of the United States. Meanwhile the Maine entered the port of Havana on the 25th of January, her arrival being marked with no special incident besides the exchange of customary salutes and ceremonial visits.

The Maine continued in the harbor of Havana during the day, and on the following day, the 26th, she was accompanied by the Spanish cruiser Albatros, the Queen Regent, and I do not permit myself to doubt that the sense of justice of the Spanish nation will indicate a course of courtesy and honor and the friendly relations of the two governments.

It is expected to complete the branch of the Southern Railway system between Mooresville and Mooresville by May 15. One contract, that of the Carolina Lumber Co., has been completed.

At Mooresville Thursday afternoon about 4 o'clock quite a little cyclone swept over the town, doing considerable damage. The Methodist school house was lifted from its pillars and set on the ground. The house was full of school children, and a few of them were slightly injured. The colored school house was blown down and badly damaged.

A meeting of the building committee of the Oxford Orphanage was held at Durham last week to make arrangements for the early construction of a dormitory building for the girls of the orphanage. The committee will decide upon the plans of the building and complete arrangements for its immediate construction. As will be remembered, Mr. B. N. Duke very generously donated \$5,000 to be devoted to the construction of the building, with the condition that a similar and like amount should be raised for the building. There is no doubt that Mr. Duke's donation will be duplicated and the building assured.

A telegram was received here Friday announcing the death of Senator W. T. McCarthy which occurred at the home of his father in New York at 1 o'clock Friday morning. Senator McCarthy served in the legislature as the Republican Senator from that district. He was married and about 27 years of age. He was a member of the Roman Catholic church. The cause of his death was consumption. Mr. McCarthy was very popular in Raleigh. He had a generous warm disposition and made many friends.

For some time the Atlantic Coast Line authorities have been troubled about freight trains on the main line between Wilmington and Washington being robbed, says the Greenville Register. A detective was put at work on the matter and the result was that an organized band of robbers was discovered and several of them captured. They were given a preliminary hearing at Weathersville and while the trial was in progress one of them escaped. Four others were bound over to court and have been placed in jail at Tarboro.

The prosperous little town of Elkin experienced a \$20,000 fire last week. The fire originated in the postoffice which was consumed. The flames then spread to adjoining buildings but by heroic efforts were subdued. The cotton warehouse of the Elkin Manufacturing Company came near burning several times, but did not burn. The fire was of the same section. It looked for awhile as if the entire town was doomed. It is the generally held belief that the fire was the work of an incendiary.

Tuesday morning just before the west-bound train reached the depot here Horace Davis died on the depot platform. He had been insane for about six months, and his two brothers had brought him here from his home near Huntsville, Yadin county, with the intention of taking him to Morganton. They were carrying him on a stretcher on the depot platform when they discovered that he was dying. They laid him down on the platform and he soon expired. He was 55 or 56 years old and was raised near Huntsville.—Statesville Mascot.

The following appointments of storekeepers and graziers for the Fifth District of North Carolina were announced last week: William D. Jones, Jas. W. Anderson, William B. Getty, Horace W. McAnister, Jas. W. Peiham, Hunter Arnold, David V. Nichols, Thos. W. Lambeth, Miles Parker, William E. Lawrence, George T. Smith, Robert H. Brisker, Elisha D. Stafford, Leonidas O. Mack, Peter M. Rhine, William J. McDaniel, T. Hamilton Steele, G. W. Wagoner, Daniel G. Wagoner, Samuel L. King, William D. Walker, Elisha P. Mendenhall, Edward O. Masten, Wylie P. Jones, Sidney T. Shore, Chas. H. Tulbert, Franklin B. Benbow, Edmund T. Wakefield, Samuel H. Hingins, Wm. H. Henry, Albert S. Bowers, James T. Britt, William H. Hudro.

We heartily recommend Dr. Hathaway & Co., of 22 1/2 South Broad St., Atlanta, Ga., as being perfectly reliable and remarkably successful in the treatment of chronic diseases of men and women. They cure where others fail. Our readers if in need of medical help should certainly write these eminent doctors and you will receive a free and expert opinion of your case by return mail without cost; this certainly is the right way to do business. They guarantee their cures. Write them to-day.

At forty minutes past nine in the evening of the 15th of February the Maine was destroyed by an explosion by which the entire forward part of the ship was utterly wrecked. In this catastrophe the lives of one hundred and sixty-four of her crew perished, those who were not killed outright by her explosion being penned in the hold and suffocated by the smoke and drowned by the immediate sinking of the hull.

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At forty minutes past nine in the evening of the 15th of February the vessel was suddenly destroyed. There were two distinct explosions, with a brief interval between them. The first lifted the forward part of the ship very perceptibly; the second, which was more open, prolonged and of greater volume, is attributed by the court to the partial explosion of two or more of the forward magazines. The evidence of the divers established that the after part of the ship was practically intact and sank in that condition a very few minutes after the explosion. The forward part was completely demolished.

CONCLUSIONS OF THE COURT.

The conclusions of the court are: That the loss of the Maine was not in any respect due to the fault or negligence on the part of any of the officers or members of her crew. That the ship was destroyed by the explosion of a submarine mine, which caused the partial explosion of two or more of her forward magazines; and that no evidence has been obtained fixing the responsibility for the destruction of the Maine upon any of the officers or members of her crew.

I have directed that the finding of the Court of inquiry and the views of the Spanish government be communicated to the government of the United States. I do not permit myself to doubt that the sense of justice of the Spanish nation will indicate a course of courtesy and honor and the friendly relations of the two governments.

It is the duty of the Executive to advise the Congress of the results, and in the meantime deliberate consideration is invoked.

WILLIAM MCKINLEY.

REPORT ON MAINE DISASTER.

The Associated Press presents herewith a complete abstract of the report of the Court of inquiry into the disaster which wrecked the battleship Maine. This abstract is made from the report itself, access to which was obtained from the files of the official records of the court. It is a summary of the facts and conclusions of the court, and is published for the information of the public.

First.—The Court finds that at the time of the explosion the battleship Maine was lying in five and one-half fathoms water in the harbor of Havana. The ship was in the act of being moved from the harbor to the open sea.

Second.—The discipline aboard the ship was excellent; everything stowed according to order—ammunition, guns, stores, etc. The temperature of the magazine at 8 p. m. was normal, except in the after 10-inch magazine, and that did not explode.

Third.—The explosion occurred at 9:40 o'clock on the evening of February 15. There were two explosions, with a very short interval between them; the ship lifted on the first explosion.

Fourth.—The Court can form no definite opinion of the condition of the mine as lying in five and one-half fathoms water in the harbor of Havana, except in the specific finding that a mine was exploded under the ship, and the opinion that the explosion was caused by the explosion of a mine.

The report is unanimous, and signed by all the members of the Court. It does not refer to the existence or non-existence of a submarine mine in the harbor of Havana, except in the specific finding that a