

SHADOWS IN PUBLIC LIFE.

As there is sunshine, so there are shadows in political life. Indeed, it is rare that any public man has ever entirely escaped the shafts of his enemies or their punishment, or is always immune from the many complications and the difficulties which beset him in official or political life. But the shadows which confronted me had an origin and a pursuit most unexpected, most causeless and without a precedent in judicial or detective annals. The Spanish-American War brought to our nation several great and some small Colonial possessions. Among these were the Philippines, Guam and Porto Rico. They were required to be platted upon the Cession Maps. That was the duty of the Secretary of the Interior under me as Commissioner of the General Land Office. That great map I had in readiness for platting these last additions to our Public Domain and I sought the Secretary's authority in the matter. This he declined to give. I promptly protested and appealed in person to the President. He saw at once the Secretary's error and directed him to issue his authority to me, which was done and the map then completed.

The Secretary accordingly became sore and indignant at my interference in his authority and harbored up against me a lasting revenge, which found vent on numerous occasions, and at last hastened my resignation as Commissioner on February 1, 1903. I then returned to Oregon, after six years continuous service in supervision over the Public Domain of the United States, and in the administration of the land laws of the government. A vacancy then existed in the Congressional Delegation from Oregon and I was at once elected to Congress and after serving that term, was again re-elected for another term. This was, however, taken by the Secretary as a rebuke to him by the citizens of my state and he determined to resent it. Without warning, I was dumbfounded one day to learn that he had himself gone before the Grand Jury of the District of Columbia with Francis J Heney to prosecute, and WJ Burns advising, and he there charged me with having wilfully destroyed public press copy books in my late office. An indictment was presented on his own complaint on March 3, 1905, in the United States District Court in Washington City. The trial began on February 7, 1907, and continued to April 27 following, occupying eleven full weeks. It was conclusively shown in that trial that the books destroyed with other official waste material were personal press copy books of my own containing private and personal correspondence. My testimony as a witness was confirmed by my secretary who had typewritten the same books from my dictation during six years of official service, and he had their custody. Former Commissioners of the same office had kept the same class of press copy books and had retained or destroyed the same, and they were also witnesses to confirm my own testimony. Above all was U S Senator Henry M Teller of Colorado, who had himself once been Secretary of the Interior and had kept similar books and removed them upon his retirement. They were never held, he testified, to have been official records. Various clerks of the office also testified to my personal use of these books and to their being marked "Personal". Among the more distinguished witnesses as to my own integrity were a Judge of the Supreme Court of the United States, a Justice of the Supreme Court of the District of Columbia, a Judge of the Court of Claims, several U S Senators and Representatives in Congress, and others who had long known me in official life. The contest was one of national note and its close in my full acquittal brought from all parts the severest criticism upon the Department of Justice for ever having permitted so frivolous an issue in the Courts. In the U S Senate in February, 1908, several years after the trial, references to the case were still made as statutory amendments to the trial laws were being discussed. Senator Teller and Senator Bacon

of Georgia, in their addresses before the Senate upon one such amendment reverted to my case, both asserting it to have been a gross persecution as well as prosecution. Congressman Mann of Illinois, in the House of Representatives, at another time in discussing a similar question then pending, declared to that body that: "Nobody pretended after the evidence was in that there was any case against Binger Hermann in the District of Columbia."

MORE PROSECUTION.

But notwithstanding the basic weakness of the Washington prosecution, the same Secretary's influence directed the Special Agents of his Department to prepare for another persecution in the State of Oregon, where it was now proposed to enlarge the scope of the former efforts and to involve a number of other public men with me, especially as to those holding high offices and forming one faction of the Republican Party favorable to Senator Mitchell, who had previously and publicly denounced Secretary Hitchcock. Against me the charge was that of conspiracy in aid and alleged knowledge of land entries by others contrary to law. To this effect there was preferred an indictment from the Grand Jury in the U S District Court of Oregon at the February term of 1905. It was followed by other indictments in which ~~were~~ others were named and occasioned profound surprise throughout the state. To prepare the judicial guillotine all present incumbents in the Federal offices connected with the Judiciary, and who were supporters of Senator Mitchell, were removed on various pretexts and others appointed who were in sympathy with the prosecution. The U S District Attorney, John H Hall, was among the first of these removals, and Francis J Heney appointed to the vacancy, and thereupon Hall was quickly indicted. Then the U S Marshall was displaced and a successor appointed. Senator Mitchell, Congressman Williamson, and others, were also indicted along with me, with several State Senators, ex U S Land Officers, and other prominent citizens. To superintend the inquisition, the already notorious Francis J Heney of California, and William J Burns of Washington City were to undertake the prosecutions in Oregon. To supervise the U S Marshall's office and attend to jury manipulation, William J Burns of Secretary Hitchcock's force was sent on from Washington City because of his special fitness in such dastardly work.

One of the two U S District Oregon Judges dying, his place was temporarily filled by Judge Hunt from Montana, and at another time by Judge DeHaven of California, who were detailed for this purpose as it was deemed unsafe for the prosecution that any Oregonian should be appointed to preside over that Court; and the only remaining Oregon Judge was detailed to preside over another Court in another state temporarily. These suspicious and high-handed preliminary moves were regarded with ill-concealed indignation. Public opinion resented this exclusion of Oregon judges, and a home appointment was demanded. Then there was a scramble as to the preferred one; finally Judge C E Wolverton was appointed, and it is significant to note that Heney and Judge Gilbert were his principal endorsers, upon which my old counsel Col Werthington, wrote me: "This explains some things we observed during the trial." The class of jurors as they were severally drawn from the panels boded ill for just and impartial trials in that court. And yet none could say with positive proof that the judicial machinery was not in its appointed place and of integrity. So difficult was it to prevent some honest ^{men} from being accepted on the jury that in the case of Congressman Williamson two juries failed to agree and only a third one convicted him. From this conviction he appealed to the United States Supreme Court, which promptly reversed Judge Hunt's charge to the jury and his rulings during the trial as it held that there was no offense in the matter charged in the Williamson indictment.

Some jointly indicted and convicted with Williamson were sentenced to jail punishment, and suffered in their lonely cells during the heated summer, not having the means to resort to the usual costly appeal to the Supreme Court as had Congressman Williamson, and they completed their sentence before the high Federal Court's reversal of the Williamson conviction. Senator Mitchell was also convicted of the offense charged against him and was preparing his appeal to the Supreme Court when he died suddenly. In the cases of District Attorney Hall, ex-District Attorney Mays, State Senator Jones, and others, convictions followed rapidly. These parties filed their petitions for a pardon to the President of the United States, on defects discovered in the trial which were gradually unearthed through investigation.

The real corruption, however, was yet to be revealed. My own case was not considered with the rest but was continued from year to year until about five years had elapsed, when at my own instance my friend the Vice-President of the United States, left his place in the Senate Chamber to call in person upon the Attorney General, and to insist that the indictment against me should either be dismissed or tried, and that no further delay should be tolerated. This ended the suspense and the trial began, with Heney and Burns still in the service and steeped in their villainous work as in the previous trials of others. Impatient at the delay and the apparent farce, the "Daily Oregonian" - Oregon's great newspaper - on June 8, 1908, said editorially: "Is there in reality any proof against him? Or is this an industrious proceeding on the part of detectives and prosecuting attorneys to make it appear that they have been earning their money? We now believe that Mr Hermann never will be brought to trial. This dirty and cowardly business is now at an end." Hon C N Bliss, former Secretary of the Interior, under whom I was Commissioner, wrote me from New York City on May 13, 1909: "I have an abiding confidence in your integrity as well as the great value of your services as Commissioner of the General Land Office when I was Secretary of the Interior. I am glad to testify to the great confidence that I had in you during our association, and I know that the President shared in that confidence."

THE TRIAL BEGINS.

The jury was empanelled and the trial began January 11, 1910, in the U S District Court at Portland, Oregon - Judge C E Wolverton presiding. As I gazed upon the faces of the sitting jurors, I observed their indifferent attention to the testimony and a general listless and careless demeanor in many. Their very faces bespoke their entire inattention to the duty for which they were called, and I naturally imagined that more than one had antagonized me in my many campaigns and denounced my party beliefs. And yet not only my consciousness of right but reliance on the convincing testimony I had submitted, with the utter irrelevancy and contradictory testimony of that of the prosecution, had doubly convinced me that an acquittal would result without the jury leaving the box. To increase this assurance was Heney's admission in open Court in his argument to the jury that he did not claim that I had any motive of corrupt gain or had received any but that a conspiracy could be implied from decisions I had made in my official capacity favorable to certain land entries, especially those made by several members of the Legislature, before which he insisted I had aspirations to receive a vote for U S Senator. Several of these members he had indicted later on. And yet the vote of that Legislature submitted in evidence to the jury showed none for me by any of the members indicted. My own son, then a member of that body, did not even vote for me. I had sought no election as senator. Indeed, such an admission by the Government's prosecutor should have prompted the Court, especially when moved by my counsel, to instruct the jury to return a verdict of acquittal. But he did not. It should be understood at this point that an Oregon man had now been appointed to the judicial vacancy as before stated, and that it was he who

now presided at my trial. There appeared for me as character witnesses such eminent citizens of Oregon as H W Scott, Editor of the Oregonian, the Governor of Oregon, the Chief Justice of the State Supreme Court, Justices of the Circuit Courts, the Attorney General of the State, U S Senator Fulton, and many other distinguished citizens and old time pioneers. So wanting was the reputable evidence to sustain the prosecution that Heney wired to Washington and represented the necessity for having the testimony of Meldrum, a convict in the U S penitentiary with still two indictments pending against him, but which testimony under the law could not be received from a convict, and hence the necessity of a pardon to make that testimony valid. The convict was produced in Court and appeared upon the witness stand, and was at once challenged by us because of his supposed convict disability as a witness, when lo, and behold! there was thrust in our faces a telegram received that morning officially announcing a pardon for this criminal from the President of the United States.! The shadow of Secretary Hitchcock's hand was clearly seen. The scoundrel witness, with every assurance of immunity from the other still untried indictments, testified precisely as he had been prompted to do, though in Washington City when a witness there he stubbornly refused to testify as the prosecution wanted and distinctly, almost defiantly, stated that he knew nothing adverse to me. This was before he had been advised that his appeal before the Courts had not been sustained and that he must undergo his conviction under which he served his penalty until pardoned.

When, however, the long trial was concluded, great was the dismay when no verdict was returned by the jury, and a disagreement was reported. The jury was then discharged February 14, 1910. From people of Oregon who had read the testimony as published, as well as from those in attendance at the trial, disappointment and disapproval came from all parts because there had been no verdict of acquittal. The Oregonian after publishing from day to day all the testimony, said in part: "It is not wise to criticize the action of a jury in any case. But it is not improper to say that there is general surprise. Hermann interpreted and administered the laws as he found them and as they had been interpreted before his time. He was not guilty of participation knowingly. When however, the preponderant capitalistic power of the United States, employed without stint or limit, is thrown against a man even though the charge is founded on suspicion and supported only by allegations based on circumstances, it is a most unequal contest." Even Francis J Heney could proceed no further. Such a game could be played but once. It was therefore his certainty of a failure in a renewal of the prosecution and the biting censure of public opinion, that compelled him publicly in court upon his own motion to dismiss that case with others not yet tried of his packed grand and trial juries.

REJOICINGS AT TERMINATION.

But there was a relief that he at last surrendered. The same great Oregonian upon this ending again said, in part: "There will be a general satisfaction at the action of Mr Heney in terminating the prosecution of Mr Hermann. Persistent prosecution of a hopeless cause would benot only unnecessary and unwise, but cruel and unjustifiable. There is a new deal."

None rejoiced more than the leading press of my home town, one of which said: "This paper unites with our entire community in extending congratulations to the Honorable Binger Hermann on the summary dismissal by the Government of the long pending cases against him. It is the withdrawal of the charges by the very parties making them. Seven long years have rolled along their painful way. Pardons were extended and immunity offered persons themselves indicted to induce false testimony. Special agents were actuated by hopes of promotion and retention in service to report and magnify every trivial incident. Jurors were selected within a few counties and not from different counties of the state, as fairness

should suggest. In his time Mr Hermann has done much for the State of Oregon, and was a true representative of the plain people. This accounts for the glad words which now go out to the old pioneer in the vindication the Government concedes to him." Many similar expressions came from other newspapers all over Oregon, while different Grand Army Posts passed resolutions "congratulating him that the persecutions had ceased."

THE INFAMY EXPOSED.

But it is a long lane that has no turn. The sequel of that strange jury disagreement came at last and with it a sensation that convulsed the state. In the previous trials of these cases convictions had been rendered by juries drawn from that same mysterious and corrupt box. The unfortunate victims were either sentenced to jail or penitentiary commitments and in some of them appeals were pending when the great exposé came. Petitions for pardon were presented to the President of the United States. Foremost among these was that of Willard N Jones, a wealthy resident of Portland, and sentenced for one year to U S penitentiary, but who having the means and the determination to ferret out if possible what seemed to him and many others, a most suspicious and preconcerted procedure by court processes, by juries and witnesses, employed ex-Chief of U S Field Service H H Schwartz to investigate. Soon evidence of gross irregularities were discovered in the empanelling of the juries, and it further appeared that the original jury list from which was drawn the grand and trial jurors had been tampered with. Witnesses interviewed by Mr Schwartz confessed to have been coerced and intimidated with threats of indictment, while jurors admitted to have been questioned beforehand as to their religious or political or partisan bias, or their unfriendliness to the prominent men intended by Heney and Burns for the sacrifice. But evidence of a still greater outrage was unearthed by the merest accident and its atrocity passes all belief. When all the prosecutions had ceased and the convictions and dismissals had been entered of record, there was found left in the U S Marshall's office, much occupied by Heney and Burns during the trials, a suspicious looking box - marked "Confidential. Not to be opened." It was securely nailed. It was turned over by the Marshall's successor to the U S District Attorney and when opened by him found to consist of a vast mass of written correspondence, telegrams, and lengthy lists of the selected jurors by Burns, with reports from his several agents in different counties and their expressions as to the various persons named on such list. The fitness of those for the dastardly work and the notes of approval of those marked for it were indicated by certain remarks often in most profane comments. The original signatures of the Burns' agents were all recognized with those of Burns and his low and degraded notes upon various papers. That box of corrupt and self-convicting material had been negligently overlooked and forgotten by the departed Government prosecutors. Mr McCourt, the U S District Attorney, then prepared his report to the Attorney General of the United States, and forwarded to him the shameful deposit which had been discovered. This report was on April 24, 1911.

McARTHUR'S CONFESSION.

To add double confirmation to this startling revelation, but since these disclosures were made and exposed, the Attorney General received a written statement from Hon C N McArthur - then already a prominent man and now the Oregon representative in Congress from the Portland City District. It almost challenges belief. Yet it is his own voluntary confession of his complicity in these terrible outrages and foul persecutions upon innocent citizens and pioneers of his own native state. He admits in this to have been em-

ployed by Burns, especially to interview many of the prospective jurors as their names appeared upon Burns' list.

In submitting to the President a condensed statement of the revolting crime the Attorney General says of McArthur that he confesses: "That on or about July 25, 1905 - the jury box having been filled with the fraudulent names on August 17, 1905 - that Burns telephoned him that he wishes to see him in the District Attorney's office, and that while there, and in the presence of Francis J Heney, Burns handed him a typewritten list and said as nearly as Mr McArthur can remember: 'Here, Mc, is a list of prospective jurors from several counties. Take it, weed out the S-'s B-'s who will not vote for conviction and return to me as soon as possible, for we are going to make up a new jury box, and we want to be sure that no one's name goes into the box unless we know that he will convict, for by God! we are going to get Williamson this time, you can bet your sweet life, and we will send the whole damned outfit to jail where they belong. We are going to stack the cards on them this time.'" "McArthur", the Attorney General further reports to the President, "says that he became indignant and denounced the proposal." He then further reports that on or about September 1, 1905, McArthur met Burns who said to him: "Well, Mc, we weeded out the S-'s B-'s, at least I think we did. Old Sladen (the U S Clerk) kicked like H-1 because my men worked the lists over before they went to the jury commissioners * * * and the corrected list went in anyway." McArthur admits, says the Attorney General, "that he furnished Burns many of the reports which are on file in the Department. He claims, however, that he did so with great reluctance and under duress, and after much persuasion. He does not state the nature of the duress, but I am informed is willing to do so if you insist." The Attorney General also expresses the belief that witnesses were intimidated in their testimony. "The daring effrontery was also shown" he says "wherein one Sorrenson^{ap} indicted and presumptively being tried by the Government was in the active employment of Burns and received compensation from the Government under the name of George Edwards."

ASKED TO EXPLAIN.

In the face of all this and much more, which limited space forbids, the Attorney General informed the President: "That Mr Burns has been given the fullest opportunity to make a statement. The Pardon Attorney went to New York and interviewed him by appointment but could not obtain a statement from him even though he informed Mr Burns that he had with him all the documents that had been filed and would be glad to show him every one. * * * * Thomas B Neuhausen - Burns' right-hand man in the investigation and also closely connected with Mr Heney in the prosecution of the cases - has been given an opportunity to make a statement and informing him of the nature of the representations made and documents filed, and indicating the conclusions to which the documents unanswered and unexplained must lead. No reply has been received. Even Judge Gilbert" (who had insisted that no Oregon Judge be appointed until the close of the prosecution) "has submitted an explanation of his former emphatic statement denying that the charges made could be proved. The President on April 28, 1911, reported that he had delayed action on the petition for pardon until Mr Heney, who had conducted the prosecution, had presented to him for comment and answer the criticism involved in this procedure."

THEY CANNOT DEFEND.

While neither Burns nor his guilty assistant, Neuhausen, made no denials, yet Heney - with his characteristic brazenry - "replied in a lengthy document of 77 pages on May 23, 1911, from California, and denied the charges against him. The Pardon Clerk then again reviewed all the proofs on file from Oregon in a supplemental report of October 10, 1911, promising a still further investigation and statements from others engaged in the Heney prosecution, and then he reported a second supplemental showing of such conclusive facts in the judicial outrages in Oregon, the desecration of the jury box, and the general confirmation of the accusations made by many." The Attorney General then tells the President that the proofs are complete and that the convicted man, - Jones - should not "be required to serve a day of imprisonment or be otherwise punished." "The charges", he says, "have been substantially proven, particularly those relating to the irregularities in the filling of the jury box."

THE PRESIDENT PARDONS.

President Taft's pardon of Jones, soon followed by that of others of the Heney victims, was announced on June 3, 1912.

Of this pardon, the Press dispatch reports that "It contains a scathing arraignment of Burns and others implicated with him for unlawfully removing names from a jury box lawfully placed there, for intimidating witnesses by detectives, and even by a member of the Grand Jury. But Burns will escape punishment for his violation of the law and ethics notwithstanding that his guilt is established by his own record, some in his own handwriting, now in possession of the Attorney General, as the Statute of Limitations has run and nothing can be accomplished by attempted prosecution." The dispatch also stated that "these charges if ever made public in their entirety will make one of the most sensational records in the history of American Procedure."

Some gifted pen, like a revenging Nemesis, will yet reveal to the nation the hideous drama. It was fortunate that Mr Taft was then President, as it was his predecessor so constantly asserting to the world his devotion for a square deal, who had approved the prosecutions by Hitchcock, Heney and Burns, and was deaf to any appeal in protest of their wholesale persecutions. His play was to the galleries and his arrogant ambition was fed with the belief that public opinion would applaud an administration that seemed to be reforming the Civil Service by accusing prominent public men of misconduct regardless of the reckless accusers and high-handed means employed. With him to undo a wrong and acknowledge an injustice in his executive acts seemed not to be a square deal.

THE PRESIDENT AMAZED.

The President was amazed at the revelations made to him, especially as to the coolly prepared and criminally stuffing of the jury box with names previously interviewed, and found to favor conviction. He found the charges against Heney, Burns and others, fully proven. In pardoning the convicted men he said to the Attorney General for the public files: "The manipulation of the jury box was the most high-handed outrage that had ever come to his attention in his entire experience on the Federal Bench." He designated Heney and Burns by name and said that their conduct was reprehensible in the extreme.