DESERET EVENING NEWS SATURDAY JUNE 22 1907

HAYWOOD WILL HAVE TO DEFEND

Court Refuses Application for Order Directing the Jury to Acquit Prisoner.

DEFENSE WILL OPEN MONDAY.

Atty. Richardson Made Able Argument For His Client-Senator Borah Fully Answered Him.

Boise, Ida., June 21 .- When the state today closed its case against William D. Haywood, charged with the murder of Frank Steupenberg, the detense made an unsuccessful attempt to secure from the court an order directing the jury to acquit the prisoner. Judge Wood's ruling, which requires the defense to meet with evidence the case that the state has presented; was made at 5:15 o'clock, and it was then arranged that Haywood's counsel should make their opening statement and present their first testimony on Monday next,

and present their first lestimony on Monday next. When the trial opened this morning it was stipulated that the record should show that the date or the draft sent by Haywood to Jack Simpkins late 10 1905 was Dec. 21 and after that the prosecution proceeded to show by a handwriting expert that George Petti-bone, using the names of "J. Wolff" and P. Bone," made two remittances of money to Harry Orchard at San Francisco through the Pacific Postal Telegraph company in the fall of 1904. The state next called Jim Seahorn, a colored horse trader, who swore that he sold a horse and buggy to Orchard in Denver in 1905, and identified Hay-wood as one of the med who rode with Orchard. After that the defense ad-mitted that in June, 1903, Haywood sent \$75 to Steve Adams at Ogden and when the precessary showing had been made on the record the prosecution formally rested. The motion for an instruction to the jury to acquit was by agreement pre-sented at the afetrnoon session, and the jury was sent back to the jury house out of hearing of the argument. Atty. E. F. Richardson made the principal argument in support of the

house out of hearing of the argument. Atty, E. F. Richardson made the principal argument in support of the motion in a long, carefully prepared and eloquent speech. He took for his guide the Idaho statute which forbids conviction upon the uncorroborated testimony of an accomplice and quot-ing many authorities in support of his convintion there there must be convining many authorities in support of his contention that there must be convin-cing corroboration entirely independent of the testimony of the accomplice, made an analysis of all the testimony offered. He declared that none of the testimony could stand without the sup-port of Orchard's story, and that the statute specifically forbade its accept-ance under those circumstances. He al-so argued that the testimony of Or-chard was the only showing that in any way connected Haywood with the crime and that the statute forbade conviction under those circumstances. Senator Borah, who also spoke for the state, argued with like force and eloquence, that Haywood's connection had been independently shown and that Orchard's testimony had been cor-roborated by independent circumthat Orchard's testimony had been cor-roborated by independent circum-stances and evidence. He also sub-mitted a general argument to show that the state had established the ex-istence of a general conspiracy in which Haywood was a participant, and in which he strongly developed the al-leged connection of Pettibone and Simulting.

that the state had established the ex-istence of a general conspiracy in which haywood was a participant, and in which he strongly developed the al-leged connection of Pettibone and Simpkins. Clarence Darrow, who closed, pleaded that there was not a shred of evidence in the case capable of standing without "the rotten thread of Orchard's story." to sustain it and that the plain provision of the Idaho statute made the duty of the court clear. He ridiculed the idea of a general conspiracy and contended that if the most liberal al-lowance were made for the entire showlowance were made for the entire show-ing of the state that it yould not make out a case against the prisoner make out a case against the prisoner worthy of submission to the jury. Immediately after court was called to order after the recess, E. F. Richard-son, for the defense, announced that he had filed a motion with the clerk of the court. Judge Wood dismissed the jury, in charge of the bailiffs, pending the reading of the motion and the argument

"Fifth-Because the evidence received in the case is immaterial, irrelevant and insufficient upon which to found a "Sixth-Because the evidence wholly fails to disclose that the defendant is in any wise connected with or had knowledge of the perpetration of the offense charged in the indictment. "Seventh-Because, while it is charged in the indictment that this defendant was personally present and did com-mit the crime therein charged upon the body of one Frank Steunenberg on or about the 30th day of December, 1905, nevertheless, the evidence fails to dis-close that he was present, or that he was either an alder, abettor or procurr, or who committed the alleged offense which compassed the death of the said

or adviser of any one connected with, or who committed the alleged offense which compassed the death of the said Frank Steunenberg, in this to wit: that the evidence which tends to connect the defendant on trial therewith is given solely and wholly by one Harry Or-chard, who admits that he him? If was guilty himself of the perpetration thereof, and without the aid of the testimony of the said Harry Orchard, the self-confessed perpetrator of the said offense, there is no testimony or evidence which in any wise fends to connect the defendant with the com-mission of the said offense, and the said testimony and evidence of the said Harry Orchard is wholly uncorroborat-ed, within the meaning and intent of section 7871 of the revised statutes of the state of Idaho. "Wherefore, the defendant, William D. Haywood, asks the court to advise the jury to return a verdict in favor of the defendant. (Signed) "E. F. RICHARDSON, "JOHN F. NUCENT, "FEED MILLER, "EDGAR WILSON. "Attorneys for Defendant, William D. Haywood." RICHARDSON'S ARGUMENT

RICHARDSON'S ARGUMENT

RICHARDSON'S ARGUMENT Mr. Richardson, who had changed his place so as to face the bench, and standing just within the railing, com-menced his argument at once. He opened by reading from the statute of the state of Idaho, which says that a conviction cannot be had on the res-timony of an accomplice unless it is corroborated by other evidence which by itself and without the aid of the testimony of the accomplice tends to connect the defendant with the commis-sion of the crime. He read at length from authorities and opinions bearing upon this point, and upon the uncorreupon this point, and upon the uncorro-borated testimony of an accomplice or co-conspirator, laying stress upon the view that the corroboration must convlew that the corroboration must con-nect the defendant with the actual com-mission of the offense. Richardson took the testimony of Miss Cora Peabody as an instance of the failure on the part of the state to introduce evidence which, independently of the evidence of the accomplice, was sufficient to permit of an inference that the defendant was connected with the offense charged. He drew attention to the fact that Miss Peabody merely testified that she had seen two men near her carriage on a certain night. Orchard had said he was there, but there was, said Mr. Richard-son, absolutely no independent cor-roboration. The two statements taken together might create an inference, but Miss Peabody's evidence was worth-less without Orchard's testimony. Richardson mentioned other festi-mony for the state as having utterly failed to connect Haywood with the commission of the crime. He main-tained, and quoted many authorities to support the contention, that the court was authorized, and under certain con-ditions obliged, to instruct the jury to dismiss when the testimony of an ac-complice was not sufficiently corrobo-rated. "If the testimony of a witness is as nect the defendant with the actual com-

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rated, "If the testimony of a witness is as consistent with the innocence of this de-fendant," said Richordson, with marked and impressive emphasis, "if it is as consistent with his guilt, it will be your honor's duty—no matter how unpleas-ant it may be—to instruct the jury that the evidence is of no value. The evi-dence produced here does not, stand-ing by itself, corroborate the testimony of the accomplice Orchard or connect the defendant with the murder of Steu-nenberg.

of Simpkins. "This, too, action, and too, was an imporent trans-and only Orchard proves any lon. You are obliged to leave

At this point Mr. Richardson's an gument remained centered for a long-cr time than any he had covered. He traced the draft and concluded that the evidence was useless as showing Haywood's connection. Here Richard-son, changing his manner, talsed his

"I would shy to your honor." he shouled, "that if Haywood were guilty of the blowing up of the Vindeator mine, which he is not. if Haywood were guilty of the conspiracy on the life of Peabody, which he is not: if he kiled Wally, which he did not, if he kiled Wally, which he did not, if he planned to kill Bradley, which he did not-even if all these things were true, which they are not-all this would be insufficient to connect' him with a crime on the body of Steunen-berg. These were all crimes com-mitted in states other than the state of Janfo, and this man Haywood stands charged only with a crime com-mitted within the borders of the state of Habo.

come, therefore, to the proposi-

We come therefore, to the proposi-tion-by whom does this man stand connected with the murder of Steunch-berg, except by the mouth of the man whose unsupported word is not worthy of belief by any living person?" Here for the first time Richardson reached the point of declamation. He turned to the witness chair and shook his clenched hand at the place where Orchard ast for nearly a week under his cross-examination. As he referred to Orchard he hissed the words and turned from the chair with a gesture. urned from the chair with a generative expressive of the utmost contempt. "Gov. Peabody came here. He has been interviewed everywhere in this country and through plany states, and has announced the things he would testify to when he got here. When

bas announced the things he would bestify to when he got here. When he gets here, what does he do? He tells us that after giving up offlee he went to his home he Canon City and commenced to remodel his house and that some one pointed out to him a mon as Thomas Hogan. That's all." From witness to witness Richard-son passed, continuing his review of their testimony and in each case as-serting that there was nothing to con-nect Haywood with the murder. Tak-ing up the evidence of K. G. Stuart, who tostined yesterday to having heard Haywood criticize and denounce Steunenberg in 1899, during the trou-tiles in the Coent d'Alenes, Richardson said: "Why your honor we can find 5--

"Why, your honor, we can find 5. 000 men in Idaho who are guilty of the murder of Steunenberg if a de-punciation of Steunenberg made a man guilty of that murder. Here was Haywood, whose brothers were op-pressed and imprisoned, without trial,

Haywood, whose brothers were op-pressed and imprisoned, without trial, and harshly treated, and in strong langunge he criticized and denounced the action of the man who was re-sponsible for the conditions then ex-isting. This was in 1899, and Steun-enberg was killed in 1905. Why, your honor, are we going to accept such language at such a time as evi-dence on which to hang this man." In conclusion Mr. Richardson said: "Now, your honor, I have shown you the law and I have given you the facts as to the evidence. I have pre-sented this case with all candor. "This case has been discussed from one end of this country to the other —by the newspapers and by all peo-ple—until we found extreme diffi-culty in getting a jury. It seems to me that to leave this case to a jury from this community is to leave it to passion and prejudice, when the rules of law ought to dispose of it here aad now. If this were an ordinairy case, I believe no court would be slow to act along the line of the motion we have tiled here. But your honor is only human, as all of us are human. I ask your honor to separate the judge from the humanity that con-trols us all. Here is the flattest case ever presented to a court of law if orch-we leave out the testimony of Orchever presented to a court of law in we leave out the testimony of Orchwe leave out the testimony of Orch-ard, the criminal whose testimony shows him to be the greatest criminal in all the ages before. Here is a case that has fallen flat without Orchard, and all the testimony falls to the ground without the aid of this foul fiend of murdering crime, and this is all the Pinkertons can produce to us after more than a year of work. "I ask your honor to instruct the jury to sign up a verdict acquitting this defendant."

Bradiey, who was manager of the Bunker Hill & Sullivan mine, on grounds parallel with the murder of Steunenberg, Senator Bornh said: against

Bradley, who was manager of the Bunker Hill & Sullivan mine, on grounds parallel with the murder of Steunenberg, Senator Boruh said: "Take what path you will, and fol-low which trail you will, it leads al-ways back to Denver. "In San Francisco we find that Or-chard is being sustained by a party whom we contend is a member of this conspiracy, and how? Not as Harry Orchard nor as Thomas Hogan, but as Jack Dempsey and Harry Green. Why? This money was sent to him by Pettl-bone, who committed forgery in doing so."

Senator Borah said that every person Senator Borah said that every person on the platform of independence station was an enemy of the Western Fodera-tion of Miners. Every man was marked as a victim by the conspiracy. Passing to the incident of the Stearns letters, he declared that Pattibone gave Orchard a letter under a false name at a time when he was going to Canon City to kill Gov. Peabedy.

Senator Borah contended that the let-er written by Haywood (o Mis, Or-hard, telling her that her husband was n Alaska when he was cas in Alaska when he was really in pur-suit of Gov. Peabody and Gov. Steun-enberg, was a circumstance indepen-dent of Orchard's tertimony that con-nected Haywood with the crime. Ho declared that when Haywood wrate the letter Orchard was at Caldwell with Simpkins, one of the lenders of the Western Federation of Miners, planting a bomb for Steunenberg. bomb for Steunenberg.

DARROW CLOSES.

Clarence Darrow Adlowed Senator Borah. He announce, that he had lit-tle to add to what his associate had already so eloquently and ably pre-

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tle to add to what its associate that already so eloquently and ably pre-sented. At the commencement he laid down the same general proposition that the direct connection of Haywood with a conspiracy must be shown. "Where is this conspiracy," he said. "Where is this conspiracy, he said. "Where, and when, and how? "It must be shown. Was there a conspiracy to kill Steunenberg? Was there a conspiracy to kill every one? It is ridiculous on the face of it. You must show more than fealing or di-temper to prove a conspiracy." Mr. Darrow warmed up to his sub-ject when he reached the articles in the Miners' Magazine. "Why, the man was a miner working in the bowels of the earth in Silver City," he said. "when the most violent articles have appeared. Within the last four years. Steumenberg's name has not appeared in the Miners' Magazine. Why, it would be better to shut down the printing presses and abolish news-papers if because of some intemperate criticism editors were to be charged with conspiracy and put in danger of their lives."

Mr. Darrow sketched through the evidence, and like Richardson, main-tained that without Orchard there was no evidence to show that any officer or member of the Western Federation of Miner to the Western Federation or member of the Western Federation of Miners knew anything about the crimes to which Orchard testified. The connection of Orchard with the Vin-dicator mine, the Independence depot, the killing of Lyte Gregory and the at-tempts on Bradley, were not supported Mr. Darrow held, by an¹⁰ proof except by the word of Orchard himself. The crimes had been committed and Or-chard says he is the guilty man, but there is no one else to prove that Or-chard was there. was there.

chard was there, "Where is there a witness in this case who has ever heard a lisp of Haywood's connection with this con-spiracy? We have nothing but the testimony of a man who is trying to convict three men to save his own life."

Mr. Darrow turned to the evidence of the draft sent to Simpkins on Dec. 21. "Why," he said, "If Haywood had sent it, would he be guilty? Is Gus Paulson guilty of the murder of Sta-nenberg because he gave Orchard \$300 on which Orchard, according to the evidence produced by the state, trav-eled to Caldwell to kill Steunenberg?" Now vigorously denouncing Or-chard in scathing words, now turning to counsel for the state, specing and satuatic, and again discussing the legal aspect of the case, Darrow was the picturesque figure of the after-noon's argument. "The state has promised to con-nect-connect-connect," he cried, and turning to Senator Borah he sneered. "connect with what? The rotten thread of the testimony of Orchard, the traitor, the assassin, the informer, and the murderer." Mr. Darrow turned to the evidence

the murderer." In conclusion, he appealed to the court to withdraw the case from the jury and dismiss the case. Judge Wood immediately announced his decision, refusing the motion.



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MOTION FOR ACQUITTAL.

MOTION FOR ACQUITTAL. The text of the motion is as follows: "Now on the 21st day of June, A. D. 1967, comes the above named defendant, William D. Haywood, by his attorneys, and moves the court to advise the jury in the above entitled case to acquit the defendant, William D. Haywood, in ac-cordance with section 7877 of the re-wised statutes of the state of Idaho, for the following reasons and each and ev-ery one of them. to wit: "First-Because the only testimony which tends to connect the defendant, William D. Haywood, with the homi-ide charged in the indictment herein is that of Harry Orchard, who testi-fed that he was an accomplice in the commission of said offense. "Second-Because the testimony of the alleged accomplice in this case is uncorroborated by any other evidence which, in itself and without the aid of the testimony of the accomplice, tends to connect the defendant with the com-mission of the offense or the ch-mission of the offense or the ch-euminssion of the

either connects of tends to connect this defendant therewith. "Fourth-Because the testimony in this case is wholly insufficient to war-rant the rendition of a verdict, or the pronouncement of sentence thereof, un-der section 7871 of the revised statutes of the state of Idaho.

PURELY VEGETABLE

either.

for over half an hour. Once the court interrupted counsel.

Interrupted counsel. "If you have any Idaho authorities, Mr. Richardson, I'd like to have them." "Yes, sir, I am coming to them," said Mr. Richardson. Later he quoted from two Idaho cases

where there was reversal because of the failure of the state to convict on the

failure of the state to convict on the testimony of an accomplice. Passing from this branch of argu-ment, Richardson said he would pass to the discussion of the nature and effect of the testimony. He said he would pass over the Caldwell witnesses, and named all the Caldwell witnesses, and named all these who had been called to prove the presence of Orchard and Growbies in Coldwell and the murder of prove the presence of Orchard and Simpkins in Caldwell and the murder of

Simplins in Caldwell and the inurder of Steunenberg. None of those witnesses had in any way connected Haywood with the murder of Steunenberg. Taking up the San Francisco witness-es, he went over the testimony of each witness, from Mrs. Sadie Swan, the servant in the Bradley house, to the dairyman who sold milk and the chem-ist who found polson in it, and at the end of each ruling of the evidence. Richardson said: "There may appear some repetition in my statements to your honor, but I will repeat because I desire to impress upon your honor's mind, beyond a shadow of a doubt, that in all this mass of matter there is no basis for the statement that this evidence connects Haywood with the murder of Steumen-berg.

"We have the assistant postmaster of San Francisco, who testified to a registered letter having been received. Witnesses come here to show that Or-chard, under the name of Green, re-ceived a package and telegram from one "J. Wolff." But I maintain that beyond the uncorroborated testimony of Orchard there is not one scintilla of evidence to connect Haywood with the murder of Steuneherg, and even if it were proved that Haywood, over his own signature or in a signed letter. "We have the assistant postmaste

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the unpleasant symptoms of the disease commence. The nostrils are

culation, and cures this disgusting disease permanently. When S. S. S. has

BORAH'S REPLY.

BORAH'S REPLY. Senator Borah, who, in behalf of the prosecution, opposed the motion, began by congratulating Mr. Richard-son on what he called his eloquent and moving address. He then ex-pressed the belief that the prisoner would receive a fair trial in Boise. Taking up the principles of law gov-erning the testimony of accomplices. Taking up the principles of law gov-erning the testimony of accomplices. He contended that it was not necessary that the corroborative evidence should completely sustain the charge. He said that the state alleged that there existed a general conspiracy in which the leaders of the Western Federation of Miners were the principals. The icstimony of Orchard could be entirely left out of consideration and it would be found that the state had shown the existence of the conspiracy. He contended that having established the existence of the conspiracy and that

existence of the conspiracy, and that one participant in the conspiracy had gone to Caldwell, it was not neces-sary to show that Haywood was at

sury to show that Haywood was at Caldwell, 'It is customary in proving a con-spiracy,' said Borah, 'to show a number of acts having a common pur-pose or aim, and we can eliminate Orchard's testimony and show that the state has established the existence of the conspiracy by other proof.' Mr. Borah then sketched the earlier events in the Coaur of Alenes, and de-

Mr. Boran first sketches, and de-events its the leaders of the federa-tion had placed upon Gov. Steunen-berg the brand of traitor, a brand that could only be wiped out with

berg the brand only be wiped out with that could only be wiped out with blood. Mr. Borah then reviewed the part of Simpkins in the Caldwell crime and scathingly denounced his part in it. He said that here, entirely indepen-dent of Orchard, was shown an act in the conspiracy that began in 1899, when the Bucker Hill & Sullivan mill was blown up. "Here," he said, "is this man Simp-kins, representative of this organiza-tion, who is found in company with Or-chard at Caldwell, who is sleuthing the governor of this state, who had given offense to this organization in 1899, when the Bunker Hill & Sullivan mill was blown up, and who, under his outh as governor, protected the property. We find this agent of the organization tracking this doomed governor's home, and then we find him sleeping with this criminal, Orchard, who, with 20 scalps hanging to his belt, is waiting for an-other victim. Then we find him getting out of town to save himself. That's not Orchard's testimony."

Borah referred to the circumstances under which Orchard's associates in Denver had known him as Thomas Ho-gan at Caidwel, and asked if this was the guise of innocence. He declared that Haywood was bound by the acts of all his co-conspirators.

Going over the San Francisco chap-er and accounting for the attempt on

"The court is thoroughly satisfied that the case should be submitted to the jury. If I felt differently I would not hesitate to so rule." The court then explained that he would not review the evidence in a written opinion, because there were two more defendants to be tried later. Court then adjourned until o'clock on Monday morning.

PORTE MAKES TERMS WITH AMERICAN EMBASSY.

Constantinople, June 21.—The porte has addressed a communication to the Amer-ican embassy here giving satisfaction in the case of the last outstanding question between the embassy and the porte and thus removing the final obstacle in the way of America's adherence to the 3 per cent customs increase which will follow in the course of a day or two. Ambassador Leishmann yesterday visit-ed the porte after two months' abstention and today will attend the zelamilk, after which he will be received in audience by the sultan.

5:45 p. m. 6:30 p. m. 7:15 p. m.

Leave City.

THE LAGOON ROAD.

Salt Lake and Ogden Railway

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and Farmi

he sultan. Mr. Leishmann later notified the porte of the adhesion of the United States to he increase in customs.

Washington, June 21.-First of the ques-tions in disputte was one relating to change in tenure of tille deeds to Amer-ican Institutions. This was of import-ance to the American colleges in Tur-key, which otherwise must have lost most of their real estate and buildings. Second was permission to erect build-ings at Cassarea. This was also an incl-dent of importance to American educa-tional institutions. Third was the grant of customs immunity at Beirut. Presby-

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Hours-9 a. m. to 5 p. m.; evenings, 7 to 8:30; Sandars, 9 a. m



If they unsire to reach the people of the Western States and Territories in their bomes.

purified the blood every part of the system receives a supply of fresh, healthy blood; then the inflamed membranes heal and every symptom of Catarrh passes away. Write for our book containing information about Catarrh, and ask for any medical advice you desire. No charge is made for THE SWIFT SPECIFIC CO., ATLANTA, GA.

stopped up and a constant dropping of mucous back into the throat keeps up a continual hawking and spitting. The patient has dull headaches, ringing noises in the ears, and often slight fever and a depressed, half-sick feeling accompanies the disease. The blood becomes so fully charged with catarrhal matter that stomach troubles are brought on, the kidneys and bladder are affected, and if the blood is not purified of the poison the lungs become diseased because of the constant passage of impure blood through them. Catarrh cannot be cured with washes, sprays, inhalations and such treatment; these cannot reach the poison-laden blood where the real cause is located, and can only give temporary relief