

STAR - AUG 12 - 41

# Funeral Services For John G. Carter To Be Held Tomorrow

Lawyer and Author  
Was Son of Senator  
From Montana

Funeral services for John Galen Carter, 50, who died Sunday at his home, 3428 Ashley terrace N.W., after a long illness, will be held at 10 a.m. tomorrow at St. Paul's Church, Fifteenth and V streets N.W. He will be buried in Mount Olivet Cemetery.

Mr. Carter was born in Washington, the son of the late Senator Thomas H. Carter of Montana, and Ellen L. Galen Carter. His father first came to Washington as a delegate to the Fifty-first Congress from the then Territory of Montana.

He was educated in the public schools of Helena, Mont., the Georgetown Preparatory School, receiving his B. A. degree from Georgetown College in 1914, his M. A. in 1915, and his LL.B. degree from Georgetown Law School in 1918. He also attended George Washington Law School in 1915 and 1916.

Mr. Carter enlisted in the Army in 1918 and served until after the Armistice.

He became associated in 1921 with A. R. Serven in the presentation of cases involving Government departments, specializing in Indian affairs. He was a member of the American Anthropological Society and prepared a chapter entitled "The Doctrine of Indian Right to Occupy and Possession of Land," for Kappler's Indian Laws and Treaties. He also wrote "The Northern Arapaho Flat Pipe and the Ceremony Covering the Pipe," for a Smithsonian Institution publication.

Mr. Carter is survived by his widow, Celina C. Calvo Carter, daughter of Joaquin B. Calvo, for many years minister to the United States from Costa Rica; a daughter, Mary Ellen; and a brother, Hugh Thomas Carter of Round Hill, Va.

# Rawhide Rawlins Stories



By Charles M. Russell

# Rawhide Rawlins Stories

By  
C. M. RUSSELL  
*With Illustrations by the Author*

Printed by  
Montana Newspaper Association  
Great Falls, Montana  
1921

## FOREWORD

**W**HEN I came to Montana, which then was a territory with no railroads, reading matter of any kind was scarce. Where there's nothing to read, men must talk, so when they were gathered at ranches or stage stations, they amused themselves with tales of their own or others' adventures. Many became good storytellers. I have tried to write some of these yarns as nearly as possible as they were told to me.

C. M. RUSSELL,  
Great Falls, Montana.

To John Carter  
From  
C. M. Russell



1924

**T**HE c  
to th  
times  
nearest I  
I move to  
with me a  
Roslin. I

Bill c  
because hi  
he's out v  
it appears  
their lovin  
an' a doct  
with him  
the long t  
ever seen.

The w  
joint in L  
lovers, we  
Bill sugge  
the need o  
visit a frie  
after, and  
purple, an

For f  
we're heel  
and reg'la  
our hosses  
the reins,  
stage whe  
out I've g  
I'm not d  
beautiful  
from relig  
to sing, an  
he claims  
birds out  
and the la

## CONTENTS

A Ride in a Moving Cemetery . . . . .	1
There's More Than One David . . . . .	5
Highwood Hank Quits . . . . .	8
Tommy Simpson's Cow . . . . .	11
How Pat Discovered the Geyser . . . . .	13
How Louse Creek Was Named . . . . .	16
Some Liars of the Old West . . . . .	18
Mormon Zack, Fighter . . . . .	22
Johnny Sees the Big Show . . . . .	25
When Mix Went to School . . . . .	29
When Pete Sets a Speed Mark . . . . .	32
Bill's Shelby Hotel . . . . .	34
A Reformed Cowpuncher at Miles City . . . . .	37
The Story of the Cowpuncher . . . . .	41
Bronc Twisters . . . . .	46
Johnny Reforms Landusky . . . . .	54
The Horse . . . . .	57

# McCLURE'S MAGAZINE

VOL. XXIX

MAY 1907

No. 1

## THE FIGHT OF THE COPPER KINGS

BY

C. P. CONNOLLY

THE FIGHT BETWEEN F. AUGUSTUS HEINZE AND THE  
AMALGAMATED COPPER COMPANY—THE PICTURESQUE  
CAMPAIGN OF 1900 AND THE RE-ELECTION OF CLARK  
TO THE SENATE—BEGINNING OF THE GREAT  
LEGAL WAR OVER THE BUTTE HILL

ILLUSTRATED FROM PHOTOGRAPHS AND A DRAWING BY F. E. SCHOONOVER

F. Augustus Heinze now enters the remarkable warfare that grew out of the development of the Butte Hill, and with him enters another new and masterful power in Montana, — the Amalgamated Copper Company, an off-shoot of the Standard Oil. With their entrance the character of the struggle changed. It had been almost wholly political; it became partly commercial. The legislatures were no longer the chief battleground of the opposing factions in Montana; the fight, although still a dominant influence in State politics, was largely transferred to the courts.

At the time when he really became a factor in the affairs of Montana, F. Augustus Heinze was about thirty years old. Tall, well-proportioned, physically powerful, a combination of the Bohemian and the calculating man of affairs, he displays at all times a grace of pose which one is puzzled whether to characterize as a bit of splendid by-play or a natural quality from birth. With this personality at his command, he has played the boldest game of bluff that the West, accustomed to the methods of desperate challengers, has even seen. His feats of legerdemain in business affairs have dazed his enemies; his boldness, no less than his

eloquence, has governed mobs; his lightning changes of front have hypnotized courts. On occasions when Heinze has appeared as a witness before the Supreme Court of Montana, the sang-froid which he has imparted to some of his equivocations has been so pronounced as to border on contempt. He has smoothed and smiled his way through rigid cross-examinations with the most exasperating evasiveness, leaving on the spectator the impression that he was too keen for his opponents and too crafty for the reach of the ordinary judicial remedy. Heinze has read to me snatches of Ben Franklin's lighter philosophy in the corridor of the Butte courthouse while Judge Clancy was reading a decision in one of his cases involving two million dollars' worth of ore.

To his enemies, Heinze was always the unscrupulous charlatan — "the impossible," H. H. Rogers called him. To his friends, he was a man who, fighting for existence against unscrupulous and powerful foes, reached for any weapon in sight, whether it happened to be broadsword or coupling-pin. Not always having time to weigh calmly what was fair, not always seeming to care what might be the judgments of men who, not understanding him or his

cause, would look upon his downfall with indifference, with pity, or with satisfaction, he no doubt felt that his enemy was as treacherous and as cunning as the Indian, and that any rules of warfare were justifiable under the circumstances.

### *The Origins of Heinze*

According to his own statement Heinze is of German-Irish extraction. He was brought up in Brooklyn, New York, was educated partly in Germany, where he studied extensively in languages, and finished off with a course of theoretical mining at the Columbia School of Mines. After his graduation he spent some time in Colorado making a practical study of mines and smelting. He finally went to Butte, where he secured, in 1889, his first steady employment as engineer for the Boston & Montana Consolidated Copper and Silver Mining Company. By day he ventured the perils of underground employment; at night he donned conventional attire and was a social lion of the town. When not thus engaged, he lounged around the cigar stands and beer halls — the latter, in the absence of something better, being resorts of accepted respectability in Butte — gathering and mentally storing away the information that drifted through the gossip of miners and prospectors. He soon acquired an intimate knowledge of the Butte Hill, the trend of the veins, their pitch and strike, and their probable connection with veins in other properties. In the mining world of Butte he was a snapper-up of unconsidered trifles which his technical education and his foresight enabled him to use afterward.

Heinze early learned that there was an enormous profit in the smelting of ores at the going price in Butte. He conceived the idea of quitting his employment with the Boston & Montana Company and of forming a customs smelting company; that is to say, a company for the treatment of ores of small, independent mining companies and private individuals that were without smelting facilities of their own. He went to New York and had raised almost the required amount of capital, when the Baring Brothers' failure stopped all flotations for the time. Heinze, financially stranded, worked for six months as mining editor of the *Engineering and Mining Journal* in New York. In the course of his work he had charge of a compilation of all the copper statistics

published in the annual number of that journal, and so he learned the name of every concern engaged in the copper business in the United States. He negotiated with these companies and finally found a market through which he could dispose of copper-bearing material profitably, by shipping it to the Eastern seaboard. He bought all the copper-bearing material he could command and made large profits — so large, in fact, that the Lewisohn Brothers, big factors in the copper market, joined him in these speculations.

Heinze's first venture in mining was the Rarus property at Butte — and it is a singular coincidence that a large part of his litigation with the Amalgamated Company afterwards revolved around this claim. He secured a bond and lease on the Rarus, by the terms of which he was to pay \$150,000 for it in twelve months, in case his underground explorations satisfied him that the property was valuable. He worked the mine for a year and made some money, but concluded not to take it. After he had ceased operations on the Rarus, the owners of that property ran into a valuable chute of ore in following up Heinze's workings. Heinze then bought a half-interest in the property for \$200,000 and two months later bought the remaining half-interest for \$200,000 more.

### *The Raid on Canada*

It was after Heinze had got his Rarus property under way that he made his famous raid on Canada and the Canadian Pacific Railroad Company. The episode is interesting because his methods in Canada were so like his subsequent style of campaign against the Amalgamated. Heinze was about twenty-six years old when he went to Trail, a town in the Kootenay mining district of northwestern Canada, and built a small smelter for the treatment of Rossland ores, Rossland being the center of the Kootenay mining district. There was a mine in the Kootenay district called the Le Roi, which afterwards became a famous producer of rich ore. The owners of this mine, many of them, were stock-holders in the Canadian Pacific Company. The Le Roi entered into a contract with Heinze to supply six hundred tons of ore a day for treatment at his Trail smelter. Under his contract Heinze was entitled to damages for each ton of ore less than the stipulated



F. AUGUSTUS HEINZE AND JOHN MAGINNIS

Heinze, who is standing on the right, became at the age of thirty a dominating figure in Montana politics. In his spectacular campaign against the Amalgamated, in which he figured as the leader of the people against the trusts, he succeeded in electing his chosen judges to the Butte courts, where his litigation with the Amalgamated was decided. Maginnis, later Mayor of Butte, was Heinze's chief political lieutenant

six hundred, that the mine failed to supply. When Heinze had secured the contract from the Le Roi owners, he built a railroad from Trail to Rosslund. The Le Roi people soon discovered that their ore

supplies were entirely inadequate to enable them to keep their contract with Heinze, and that the young Montana miner, if he exacted his pound of flesh, would bankrupt them.



PANORAMA OF BUTTE

There is hardly a piece of ground in or about Butte Hill which, with ordinary development, has not on freight cars, would fill a train eight hundred miles long, and that the shafts, drifts, and cross-cuts of

### *The War on Canadian Pacific*

Heinze's next move was to beard the Canadian Pacific Railroad in its own exclusive territory. He bought out the *Rossland Miner*, practically the only newspaper in the district, and, picturing himself as a wealthy American, anxious for the welfare of the miners and the people of Canada, began to arouse public opinion against the monopoly and exactions of the Canadian Pacific. The Canadian Pacific felt the scorn of the popular feeling that has seemed to follow Heinze's leadership everywhere, but ignored it. They assumed the stern and exclusive attitude of entrenched power which has always brought into play Heinze's boldest master-strokes.

About this time there came to Heinze's notice an itinerant journalist, one P. A. O'Farrell, afterwards prominent in Heinze's Montana campaign, whose writings usually found a ready popular audience. The scheme to harass the Canadian Pacific, that Heinze outlined through O'Farrell and the press bureau which he controlled, was to build a railroad running from Rossland or Trail to Victoria on the western seaboard, to be called the "Great Western and Columbia." Heinze was looking for a land grant for his railroad. Months before the Canadian Parliament met at Victoria and at the

Dominion Seat at Ottawa, the press of Canada was filled with praises of the young liberator. Heinze took a following to Victoria, that charming but sleepy capital near the strait of Juan de Fuca, where the merchants breakfast at nine and open shop at ten. He found obstacles in his way. In this emergency he gave a banquet to the entire British Columbian Parliament at the Driard House in Victoria. When the echoes of that banquet had died away,—echoes that are even now pleasantly recalled in Victoria, — Heinze secured his land grant from the Canadian Parliament and returned to Trail with flying colors.

The "Great Western and Columbia" was never built. The stock-holders of the Le Roi Mine, fearful of the audacity of the American, brought pressure upon the Canadian Pacific to buy him out. With the threat of another road hanging over their heads, the Canadian Pacific people were only too glad to pay Heinze a good bonus on his Victorian banquet, and Heinze surrendered to them his land grant, his smelter, and his newspaper. It is possible that he would never have left so promising a field; but there were plots hatching in Boston which forced a hasty retreat into Montana. In meeting these plots, Heinze locked horns with the Amalgamated; which brings into the story this subsidiary company of the Standard Oil.



AND SURROUNDING COUNTRY

disclosed evidences of copper. It has been said that the annual output of the Butte mines, if loaded the Butte Hill, if put together, would make a tunnel that would reach from Butte to the Pacific

#### *First Quarrel with Amalgamated*

The Boston companies in Butte owned the mining claims adjoining Heinze's wealthy Rarus mine. Word reached Heinze that C. S. Batterman, his confidential mining engineer in Montana, was about to desert him and enter the employ of the Boston companies. This news was partially confirmed by Batterman, who told Heinze that the Rarus mine, for which he had paid \$400,000, was valueless, and that what mineral was in it belonged to the Boston companies, by reason of the fact that the ore bodies in the Rarus "apexed" in the Boston companies' properties. The "apex" theory, the basis of most of Heinze's law-suits, comes in extensively later in this story. Batterman suggested that the best thing Heinze could do was to sell out to the Boston capitalists for whatever he could get. Heinze immediately went to Boston (February, 1897) and saw A. S. Bigelow, president of the Boston companies. He told Bigelow that he did not want any litigation, and, rather than have any, would compromise by the payment of \$250,000. Bigelow replied that the Boston people had been badly treated in Montana; that from their standpoint it was desirable to make an example of some one, and that if they made an example of Heinze they were not likely to be

molested in the future. This is the story, at least, that Heinze has told from the public platform in Montana time and again.

"Mr. Bigelow," replied Heinze, "you have a great deal of property in Montana which is subject to the same kind of litigation as that which you say you will thrust upon me. If your program is fight, you will find I am prepared. Before you and I have finished, I will give you a fight that will be heard of from one end of this continent to the other."

These Boston companies were afterward absorbed by the Amalgamated; and this brings into the story Heinze's bitter enemy — the Amalgamated Copper Company.

#### *Daly's Scheme for Consolidation — Richness of the Butte Hill*

Marcus Daly had for many years dreamed of a great corporation that would at some time take over the holdings owned by him and his mining partners and enable him to rest from his labors, which had grown so onerous with the rapid development of the Butte Hill. As the Hill developed, it gave constantly renewed force to the general belief that its wealth was practically inexhaustible. Former Governor J. E. Rickards of Montana told the International Mining Congress, which convened in Butte in September, 1902, that the annual output of the Butte mines, if loaded on freight cars, would



A HEINZE CAMPAIGN CIRCULAR

The reverse bears the legend: "This is the Only Kind of Money Montana Will See If the Standard Oil Amalgamated Copper Win the Election on the 6th of November." These circulars were scattered broadcast

fill a train eight hundred miles long, and that the shafts, drifts, and cross-cuts of the Butte Hill, if put together, would make a tunnel that would reach from Butte to the shores of the Pacific, a distance of nearly six hundred miles. "In sulphur and arsenic, by-products of our copper ores," he added, "there is blown away annually through the smoke-stacks of the smelters fourteen millions of dollars." Clark's mines on the Butte Hill, the Butte & Boston, the Boston & Montana, and Daly's Anaconda Company, used annually 100,000,000 feet of sawed timber; and Daly controlled large lumber interests in the western part of the State. The smelters of Butte and Anaconda consumed daily 3,000 tons of coal; and the Anaconda Company alone owned and operated vast coal fields in Montana and Wyoming.

*The City of Butte*

Butte, which became the storm center of Montana after the entrance of the Amalga-

mated in the field, has, including its close-in suburbs, a population of 70,000 people. It is named after a big butte, or peak, to the northwest of the town, which rises high above the surrounding hills. There is a fascination about the freedom of its life and the lavishness of its every-day expenditure. A dollar in Butte has less vitality than a dime in the average eastern town of the same size. There is in circulation no coin smaller than a nickel. The customer at the stores of Butte who buys twenty-seven cents' worth of anything pays only two bits or twenty-five cents. If he buys twenty-eight cents' worth, he pays thirty cents.

There is hardly a piece of ground in or about Butte Hill which, with ordinary development, has not disclosed evidences of copper. Shafts sunk in the heart of the city have opened up large quantities of ore. Only within the last year some enterprising miners located a mining claim over the graves of the dead in the cemetery, a mile

and a half from the city. At about the same time the yard of a prominent citizen, in the more fashionable part of the city, caved in, indicating the ever eager search for the treasure somewhere beneath.

The population is drawn from every quarter of the globe. Some one, adapting Stevenson, has called it, "the smelting pot of races." Among the miners, Irish and Cornish predominate. The mining pay-roll is considerably over a million dollars a month. One who descends to the lower levels of the Butte mines, and who, under the glare of electric lights, scans closely the features of the average miner, will be surprised to note that they exhibit none of the dejection of the hard-conditioned Eastern miner. There is general contentment and a spirit of humor, peculiar perhaps to the West, and not often met with elsewhere in the army of toil.

When H. H. Rogers visited Butte, he had examined the map of Butte Hill; and he had been at once impressed with the marvelous opportunity for a copper consolidation which would startle the world. The consolidation

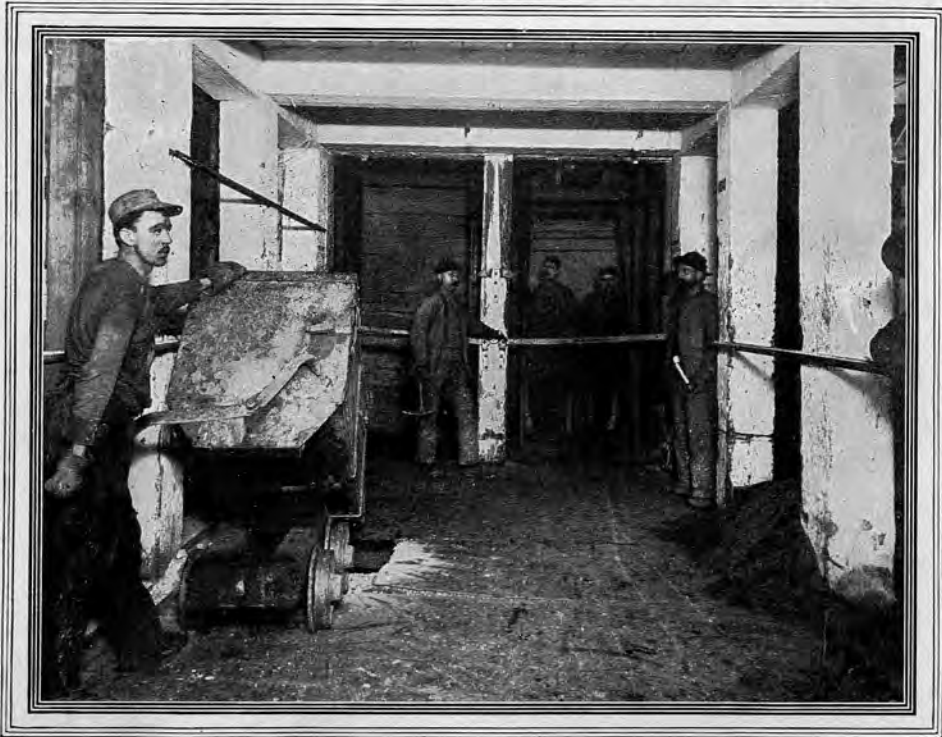
of the copper mines of Butte perfected, he had planned, it is said, to turn to Arizona, to Michigan, to southern California, and then to Spain; and ultimately to build up, with five hundred millions of capital, a copper trust that would more than rival in profits the great Standard Oil itself.

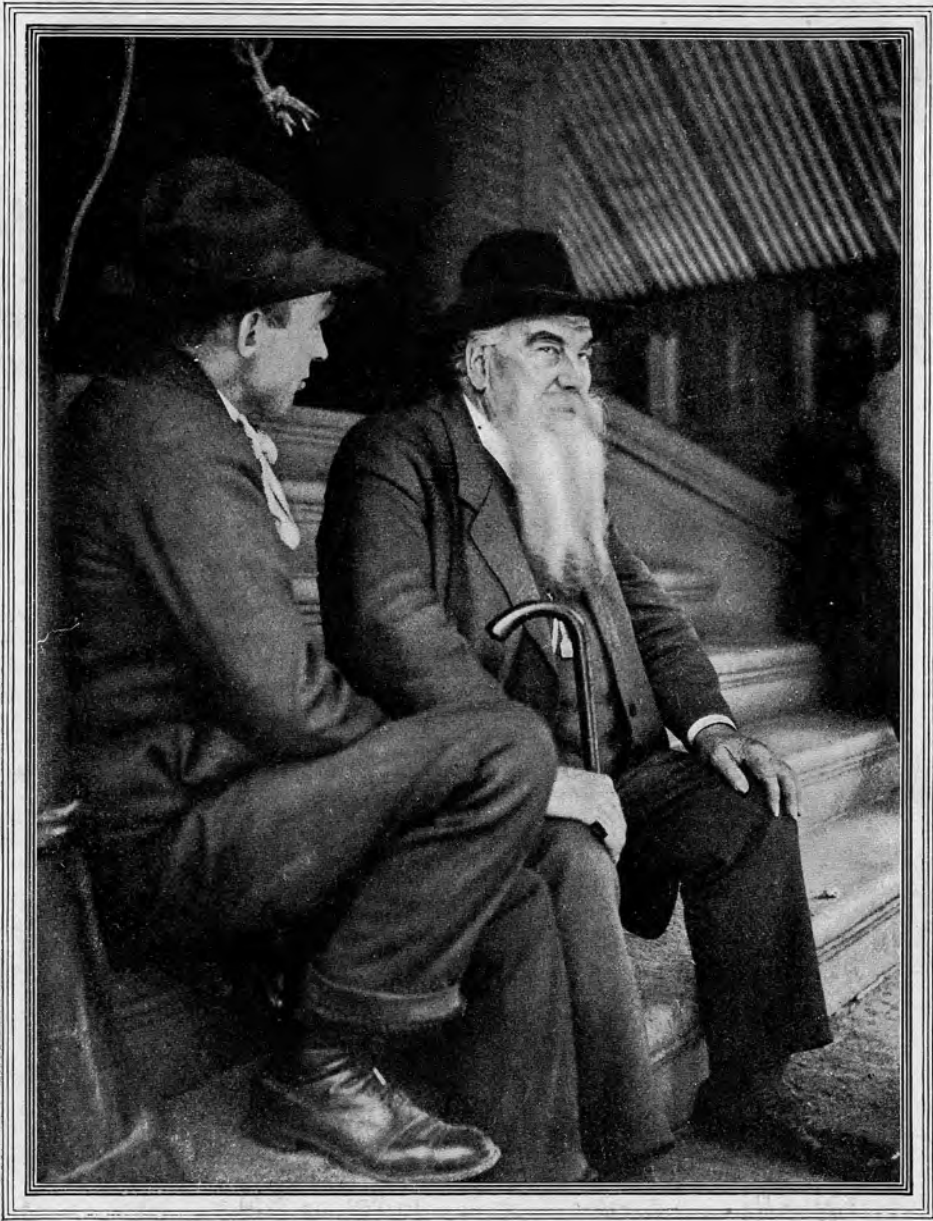
#### *Formation of Amalgamated*

During the summer preceding the legislative session of 1899, which elected William A. Clark to the United States Senate, Marcus Daly, H. H. Rogers, and their associates had framed up the incorporation of the Amalgamated Copper Company. Their first plans contemplated the purchase outright, either for cash, stock in the Amalgamated Company, or both, of all the properties on the Butte Hill which they might be able to acquire; and their entrance into the field was undoubtedly intended to serve tacit notice on all independent operators that it would be the part of wisdom to enter the alliance rather than be compelled to succumb after inevitable struggle.

#### STATION LANDING, 1500-FOOT LEVEL

This mine, one of the richest of the Butte group, is now being sunk to a depth of 2,400 feet





JUDGE CLANCY AND "SWEDE" MURPHY

Judge Clancy, the man on the right, with the flowing beard, had most of the Heinze-Amalgamated cases and decided the ownership of more millions than any other judge of his class in the United States. Heinze fought a hard political campaign for his election, and the Amalgamated won very few cases in Clancy's court

Shortly after Clark's election to the Senate, the legislature passed a bill which enabled two-thirds of the stock-holders of any mining corporation "to sell, lease, mortgage, or exchange for the whole or part of the capital stock of any other corporation, whether domestic or foreign . . . the mining ground, quartz mills, smelters, concentrators,

reduction works, or other property or assets" of such corporation. Any minority stockholder who dissented might receive the value of his stock, this to be fixed by appraisers appointed by the court. Other than to have his stock appraised and to accept that appraisal, there was no option left to the independent share-holder who was unwilling to sell. The consolidation which this act was intended to legalize contemplated not only the properties controlled by Daly, James B. Haggin, and others, but the properties of the Butte & Boston and the Boston & Montana companies, which, next to the Daly and Haggin interests, were the largest in Butte.

Governor Robert B. Smith vetoed this bill, which was known as House Bill No. 132, on the ground that Standard Oil and the Rothschilds were using it in an attempt to form a copper trust. "It has been rushed through with whip and spur," he said, "and every corporate lobbyist is at its back. The haste with which it has been railroaded through both houses ought to be a warning. They (the Standard Oil Company) control already the lamplights of America, and by controlling the production of copper they propose to control the electric lights of the world."

#### *Clark and Daly Forces Combine*

The Clark and Daly forces in the legislature, putting aside the frenzied hatred which had moved them during the election of Senator Clark a few days before, now combined against what influence F. Augustus Heinze could control, to pass the bill over the Governor's veto. Clark was in the alliance for political reasons. The representative of H. H. Rogers in Montana had led Clark and John B. Wellcome, his chief lieutenant in bribing the legislature, to believe that if the Clark faction would cooperate with the Daly interests in passing such measures as the Amalgamated agents wanted to have passed, there was not likely to be any challenge in Washington of Clark's title to the seat which he had bought at such lavish cost, nor need Wellcome worry about the threats of Whiteside, the scourge of the Montana vote-buyers. Those allied with both the Clark and Heinze forces have always insisted that this was the understanding, and their assertion is borne out by more or less convincing facts. John B. Wellcome immediately joined with the

Daly forces in lobbying for this and other measures favorable to the Amalgamated and the Daly interests. A hush fell upon the utterances of such of the State newspapers as were opposed to Clark's methods.

This same legislature launched the Amalgamated Copper Company; for, although it was not organized under the laws of Montana, it had to receive certain concessions before it could carry out its plans. The Amalgamated did not take advantage of House Bill No. 132 after all, for it was believed that the law as passed was unconstitutional. Instead, it became a holding company and purchased a majority of the stock of the companies entering its combine. The bitter complaints of those in other states, who felt that they had been unjustly crushed by Standard Oil, had preceded the formation of the Amalgamated Company; and its entry into the warfare of the Butte Hill did not tend to allay apprehension of brewing trouble. The public did not, however, foresee the character of the struggle that was now to ensue. The feud between Marcus Daly and W. A. Clark it had come to consider a part of the strenuous life of the mountains. But, although Clark and Daly operated mines side by side, the question of the right to the titles to ore bodies had rarely arisen between them, a circumstance in striking contrast to their envenomed political strife. Now, however, there came in upon the courts such a flood of legal contention that the legislature was compelled to create a commission of three members to assist the Supreme Court of the State, and to pass a law creating a third judgeship in the City of Butte. Even with these additions to the judiciary, private individuals were obliged to allow their lawsuits to remain untried until the warfare of seven years between F. Augustus Heinze and the Amalgamated Copper Company had run its wild course and worn itself out.

One legal principle was the keynote of nearly all this litigation,—the so-called "apex theory." To understand Heinze's position, it will be necessary to understand this troublesome feature of Western mining law.

#### *The Troublesome Apex Theory*

The prospective mine discoverer goes upon unoccupied Government land and finds a vein — a comb of quartz rock — cropping out of the earth's surface. It has been forced

up, or the surface of the earth has perhaps been worn down to it. The prospector stakes his ground, according to law, so that he has fifteen hundred feet along the course of the vein and three hundred feet on each side of its median line, making a parallelogram fifteen hundred feet in length by six hundred feet in width. On the surface he is shut off completely from exploration or mining in adjoining ground; but if his vein, under the surface, dips or slants to one side or the other, along its fifteen hundred feet, through the side of his own claim into that of his neighbor, he may follow it and take out its wealth — it is his, not his neighbor's. The property is in the vein — the precious ores that lie between the walls — not in the surface ground, which is merely taken up to enable him to conduct his operations on the surface. In ordinary real estate the owner is entitled to anything within his boundaries, above or below; but if a miner in the Rocky Mountain regions has, within the two sides of his claim, the top or apex of a vein, he may follow it outside those side-lines anywhere, though at the ends of his claim he must stop, both above and below the surface. This peculiar law has caused endless litigation in Montana and in the West generally. It has been clung to tenaciously by the law-maker and the public alike, because of the powerful incentive it affords the prospector, to whom the mineral-bearing regions of the West owe so much in the way of material advancement.

Heinze, under this law, laid claim to many immensely valuable ore bodies which were being extracted from their own properties by the Amalgamated Company. He asserted that the tops or apexes of these veins came to the surface within the side-lines of his adjoining claims. He could show the tops of veins within his own side-lines. The question to be determined by the courts was whether these tops or apexes belonged to the veins in adjoining Amalgamated properties, which were being worked out two thousand feet below the surface. To demonstrate this by excavations would not only have cost several millions of dollars, but would have made a hollow, an eggshell, of the Butte Hill. The question was submitted to the judges of the district court, not to a jury, for these cases were what is known in law as equity cases, and the judge not only decided the fact of ownership upon the uncertain testimony of experts employed by

each side, but his decision, barring some error of law in the trial, was final — so far as the question of fact was concerned, always final. The only remedy a losing suitor had was to fight for time by a slow appeal to the Supreme Court, take the chance of having the case reversed, and await the result of the next election, in hope of a change of judges. Heinze went into Amalgamated properties, often without waiting for the decisions of the courts, and took what he declared was his ore. It was proved afterwards in court that the Amalgamated had been guilty, in one instance, at least, of this same practice — its officials were, in fact, fined by Judge William H. Hun, of the United States Court, for taking ore in violation of an injunction.

#### *Clark Selects Heinze for His "Vindication"*

F. Augustus Heinze was the man whom W. A. Clark selected as his lieutenant in his campaign of "vindication," upon his return in disgrace from Washington. Clark, in making this combination, wanted the legislature in order that it might reelect him to the Senate; Heinze wanted the Butte judges, who, under the law, and without approval of juries, had power not only to protect him in his lawful rights, but to turn over to him every Amalgamated mining property to which he cared to claim title.

Clark had picked upon a political comrade with the intelligence and adroitness of Daly and with a mental cultivation and a knowledge of human nature far surpassing his own. When he returned to Butte in June, the hand of Heinze had already begun to show. Accustomed to plan his battles in advance, he had mapped out a course of action. Clark was to furnish the money, Heinze to take the center of the stage, and together they were to lead a bold, aggressive assault upon the Amalgamated, with Standard Oil for a battle-cry.

The Miners' Union of Butte had a membership of seven thousand; the Trades and Labor Assembly, governing the downtown labor unions, about twenty-five hundred. Between these two, the destinies of political candidates and policies were ruled. The Amalgamated Company, representing now the old Daly-Bigelow interests, employed about ten miners in Butte to one employed by Clark and Heinze. Clark and Heinze reached controlling factors in the Miners'

Union; and they intimated that a demand for eight hours a day underground, instead of ten, and at the same wages, would meet with a favorable response from them. Daly was ill in New York. The Miners' Union committee waited upon William Scallon, the local representative of the Amalgamated in Daly's absence. Scallon informed the committee that he would submit the matter to the New York office, but that it would be a month before an answer could be received. When it came, the miners were angered by a refusal. Clark and Heinze, in the meantime, had put eight-hour shifts in operation in their mines. On June 13, 1900, Miners' Union Day in Butte, Clark and Heinze rode in a carriage at the head of the procession.

Among the assets that Marcus Daly had turned over to the Amalgamated was the D. J. Hennessy Mercantile Company, a great general store, housed in the best business block in the city. This establishment, where one could buy anything, was known as the "company store," and by its enemies was termed in derision, "the big ship." It was charged by some that the Amalgamated miners were compelled to trade there; by others that if they were not actually compelled to trade there, the miners felt more secure in their positions while doing so. The Clerks' Union was a strong labor factor. Getting into communication with the leaders of this organization, Heinze and Clark induced them to have a resolution passed in their body demanding the closing of all stores at 6 P.M., instead of 8 P.M., the closing hour hitherto. They surmised that this demand likewise would be refused by the Amalgamated, who were, in all their campaigns, always confident of victory over Heinze until the last ballot was counted. Clark and Heinze used painstaking means to see that every other business house in Butte acceded to the urgent demands of the Clerks' Union. The plan worked out as anticipated, the Hennessy Company being the only establishment in town to refuse the demand. The refusal was the signal for a vigorous assault upon the establishment by some union sympathizers. The Clerks' Union paraded the streets carrying placards denouncing "the big ship." Thus, early in the campaign, and by two almost simultaneous strokes, Clark and Heinze had arrayed against the Amalgamated, and in favor of themselves, almost the entire army of organized labor in Butte, the labor center of the State.

### *The Split in the Democratic Convention*

Clark and Heinze's next move was to secure control of the State Democratic Convention. This was begun by having their delegates walk out of the regular Democratic County Convention in Butte, which was ruled by the Amalgamated or old Daly forces. The Clark-Heinze people made the charge of fraudulent primaries and later organized a separate State convention. The meeting of the State Democratic Committee in Butte, preceding the organization of the two Democratic State conventions, was one of the most tumultuous in the warfare between factions in Montana. The anti-Clark forces took possession of the entrance of the Auditorium in Butte, the meeting-place for the regular convention, while the Clark-Heinze forces formed in ranks and marched away to another hall to the strains of stirring music.

The question of approving one set of delegates or the other was "up to" the National Democratic Convention, about to assemble in Kansas City; and to that convention the struggle was transferred. Men of standing from the various states of the Union fought for places on the Credentials Committee, in the belief that a vote for Clark meant a life competence. Montana, as a writer for the Chicago *Inter-Ocean* said, seemed, for the time being, the center of attraction for everybody. By his spectacular speech-making on the streets and in the hotels of Kansas City, Clark once more attracted the attention of the press of the country, which had apparently lost interest in him since his expulsion from the Senate.

The Clark State Democratic Convention in Montana was declared regular by the National Committee on Credentials, and his delegation was seated. This gave Clark control of the regular Democratic organization in the State—which body had already, by resolution, declared for his reelection to the Senate.

### *Heinze's Spectacular Campaign*

The campaign, by this time in full swing, was a fierce and fantastic one. Heinze organized into a political party every remnant of opposition to the Amalgamated. He had at the end of his string the Democratic party, the anti-trust Republican party, the eight-hour Republican party, the Populist party, and the Labor party. The Amalgamated controlled the Republican party of Silver Bow

County, where Butte is situated, and the Republican State organization was friendly. The Independent Democratic party, a State organization, was also formed in the interest of the Amalgamated, ostensibly for the purpose of holding in line the forces in the Democratic party opposed to Clark, but mainly to secure in Butte a local Democratic organization in aid of the Amalgamated candidates for judges. The Amalgamated had subsidized, in large measure, the press of the State. But the public paid little attention to the political farrago of either the Amalgamated newspapers or the ones which remained loyal to Clark. The real press influence of the campaign was the *Reveille*, a little "bob-tailed" newspaper in Butte which Heinze had started, and in which P. A. O'Farrell, the literary Don Quixote of his Canadian campaign, opened a line of peculiarly virulent attack upon Standard Oil.

Acting on the principle that to arouse the public, which in Butte was composed of all nationalities, it was necessary to use every artifice, Heinze neglected nothing. In preparation for this campaign, he had taken unlimited Clark capital to the theatrical rialtos of New York, Chicago, and Boston, and secured the best singers. He had prepared popular songs in which the history of Standard Oil was told in humorous verse. Colonel W. A. Thompson, formerly of the Boston Lyric Opera Company, managed the vaudeville end of the campaign. A traveling theatrical company was offered as high as \$500 a week to permit "Cissy" Loftus to sing one of the Heinze campaign songs between the acts. To these spectacular stage performances was added the work of brilliant cartoonists, imported from the East. Tally-hos rattled up and down the streets, carrying glee clubs whose popular refrain,

"We must down the Kerosene, boys,  
We must down the Kerosene,"

to the air of "The Wearing of the Green," was cheered to the echo. Heinze spent a small fortune of Clark's money in lithographs and wood-cuts representing the Amalgamated miners working ten hours in the hot and oppressive atmosphere of the mines, while beside them were their more fortunate comrades working in the Clark-Heinze mines eight hours at the same wage.

#### *Heinze Takes the Platform*

Heinze's personal appearance on the platform lent form and substance to the

campaign. He had never delivered a public speech until one night in Butte, early in the campaign, when he took the platform and, throwing away his manuscript, told with real oratorical genius the story of the Amalgamated's attempts to drive him from the State. It was cleverly and masterfully done. When he had concluded, miners who did not dare to cheer, for fear of losing their bread, went away full of unyielding antagonism to Standard Oil. They had the Australian ballot, and they meant to use it. Heinze blossomed out as an orator. Clark had offended the miners, dressed in their regular digging clothes and ready to go on shifts, by appearing on the platform in conventional dress suit at one of the evening meetings. Heinze dressed in the rakish apparel of the Western mining-camp. From the stages of beer halls, from hotel balconies, from the court-house steps, and wherever a platform could be improvised in the open, he addressed the crowds, speaking to them equally well in English and German.

No political orator dared defend Standard Oil and the Amalgamated against the heat of popular indignation which Heinze and Clark had fomented; but the Independent Democratic orators attacked Heinze and called attention to the "looting by judicial process of the Amalgamated properties." The response of Heinze's street orators to these charges was boisterous allusion to the "honesty" of the Amalgamated, and the assertion that if Heinze did not attack the Amalgamated in every quarter, he would soon find himself without wealth and the people without a champion.

This campaign, in short, was probably never equaled for political astuteness or appeal to popular prejudice. "Drive Standard Oil out of the State," became the rallying cry, the catch-word of the streets. So masterfully had Heinze spoken his piece from public platforms, so masterfully had he arrayed facts against Standard Oil, that his larceny of Amalgamated ores was forgiven in the belief that he was fighting a battle royal against a coterie of public enemies and judicial bribers, and was, therefore, justified in the use of any weapons. In Butte, at least, the people paid little attention to Clark. The public eye was focused on this young, daring, resourceful freebooter. They little cared how selfish his motives might be — his fight was their fight. They admired his boldness; they sympathized with his

unequal struggle against a powerful clique that had forced so many other struggling competitors to walk the plank.

Daly's machine, once the best organized political force in the State, collapsed. At the polls, the Amalgamated miners, covertly and openly, went over in squads to Heinze. Bryan, Clark, and Heinze swept the State like the swell of a rolling sea over the gunwales of a listing ship. Both Heinze and Clark attained their objects. The former elected Clancy and Harney, his candidates for judges in the Butte district, and the latter a State legislature pledged to send him to the United States Senate.

This campaign of vindication is said by those best informed to have cost Clark over a million dollars. Throughout the State his supporters spent money recklessly and exhibited large rolls of currency. A vast sum of money was distributed at the local headquarters in Butte. The Amalgamated Company likewise spent heavily. During the campaign Clark told one of his chief political supporters that he did not understand why it was necessary to spend so much money; that he was greeted by immense audiences everywhere.

"Well, Senator," replied the distributor of funds, "you must not mistake curiosity for popularity."

#### *Clark Deserts Heinze—His Election to the Senate*

Within a month after the election, Clark, turning his back upon Heinze, was holding political conference with Amalgamated officials on the sixth floor of the Hennessy Building in Butte. Thomas W. Lawson always declared that the true inwardness of Clark's alliance with the Amalgamated was the fact that H. H. Rogers confronted Clark in New York — where the latter had gone directly after the election — with the declaration of two-thirds of the members of the United States Senate that they would again unseat Clark. Whatever his motive, Clark did enter into a compact with the Amalgamated. Heinze afterward publicly charged that he also formed a conspiracy with the Amalgamated officials to secure the passage of an eight-hour law which would be both defective and unconstitutional. In Colorado such a ruse had brought about the labor troubles which later stirred that State so deplorably.

A week after Clark's "vindication" at the

hands of Montana's voters, Marcus Daly died at the Hotel Netherland in New York. Just before his death he sent for his old mining partner, James B. Haggin, and told him that it would be their last talk; that he felt he could no longer struggle against the end. The toil of the world and the bitterness of its feuds were behind him; for weeks he had been drifting back across the years in the placidness of resignation, recalling his early struggles and his poverty.

After the election the Amalgamated put its men on eight-hour shifts, anticipating the passage of an eight-hour law by the legislature, and the Hennessy store closed at six o'clock. The Amalgamated had been overwhelmingly defeated at the polls and had brailed its sails after the storm.

Frank E. Corbett, who had figured in the attempt to bribe the Supreme Court, was elected speaker of the House of Representatives at the next session of the legislature, and on the 16th of January, 1901, W. A. Clark was reelected to the United States Senate. He received fifty-seven votes, three more than his supporters had claimed for him in the preceding legislature two days before the Whiteside exposure. Five days after the adjournment of the legislature, Frank E. Corbett died in Butte, a martyr to the cause of Clark. The excitement of the legislative session, coming upon the heels of the long, bitter, harrying, bribery fight, proved too much for him.

"It is daylight until half-past seven o'clock to-morrow morning," was the cry of the crowd, as they filed out of the Auditorium in Helena, after Clark's election. The Boston & Montana Band of Butte was telegraphed for and arrived on a special train that evening. Charlie Clark had sent out earlier in the evening to purchase all the hotel bars in the city. "Turn them loose," was his command. Champagne and cigars were as free as water. The crowd marched in procession to serenade Senator Clark at the Helena Hotel.

"I thank the people of Helena for their loyalty and friendship exhibited on so many occasions," said Senator Clark to the crowd.

"You gave us the capital, Senator," shouted an admirer.

All this time the fight between Heinze and the Amalgamated had been crowding the Butte courts. The details of this litigation explain why Heinze made his personal fight

for the Butte judges, and especially for the reelection of Judge Clancy.

### *Judge Clancy: a Political Accident*

To understand something of Judge Clancy's Butte career, it is necessary to go back to the campaign of 1896, when the silver interests of the country found a champion in William Jennings Bryan. Those who live in the East remember the force and fierceness of that campaign; but if Bryan succeeded in arousing the East, what must conditions have been in the mining regions of the West? One Western politician was asked by an Eastern friend why he had ever followed such a false light as the silver cause. "Did you ever see a herd of stampeding buffalo on the plains?" he replied. "No? Then don't ask. If you ever get within sweep of their hoofs, you have got to keep in front of the stampede, or you'll be crushed to death." Republican ranks in Montana dwindled from legions to a corporal's guard. Populism ran fiercely, arrogantly riot. The local Democratic and Populist parties in Butte, holding separate conventions, agreed to fuse on certain offices. Among these were the Butte judgeships. The Democratic Convention nominated John Lindsay, a clean, ruggedly conscientious character, for one of these places. The Populist Convention nominated William Clancy, then a portly, curbstoney lawyer, of recent advent in Butte. He was from Edina, a small town in northeastern Missouri. A very respectable lawyer had been the choice of a majority of the Populist delegates prior to the Convention, and the leaders of the Populist party had offered Clancy the nomination for justice of the peace. But Clancy, illiterate but cunning, coarse but shrewd, secured the promise of certain delegates to vote for his nomination as judge on the first ballot, urging that a complimentary vote of good proportions would give him a standing in the community: that all he desired was a chance to make a showing in the Convention. Clancy had been a saloon lounge, and the prominence given by a mention from the Populist Convention, he said, would aid him in a professional way. His small following in the Convention urged other delegates to vote for Clancy; it would do no harm, they said; he could not, of course, get the nomination, but a showing of hands might do him some good. The Convention

cast two votes more than a majority for Clancy.

When the news of Clancy's nomination reached the Democratic County Convention, then in session, there was wild indignation. A recess was taken, and Marcus Daly was implored to use his influence in securing a reversal of the action of the Populist Convention, which body, it was said, was already conscience-stricken; but Daly declared that the Democrats had agreed to endorse the nominee of the Populist party, and that the contract ought to be carried out. Daly lived to regret Clancy's nomination more than his own defeat in the capital fight.

The combination of Democrats and Populists swept Silver Bow County at the polls. There were but 1,200 Republican votes cast in the County, out of a total of 15,000, and Clancy was overwhelmingly elected. He took his seat on the bench at the beginning of the year, and for eight years his backwoods humor kept the benches in the rear of his court-room in one continual roar of merriment. His ample beard, the ancient emblem of the Western Populist, flowed in patriarchal opulence down his chest. He had a deep, crashing, bear-like voice, which, when he became angry, growled and thundered through the court-room. He consorted with all sorts and conditions of men, and freely discussed on the street corners his judgment of cases pending in his court. Often he rendered written opinions which he stumbled through in the reading. He tried, at first, both civil and criminal cases. On one occasion he tore up a verdict of murder, returned by a jury in a criminal case against a "hold-up," who had shot and killed one of Butte's leading citizens, and wrote out a verdict of acquittal in his own handwriting.

On another occasion the prosecuting attorney scored him in open court for an instruction practically directing the jury to return a verdict of acquittal in a case of murder, the defendant being one of F. Augustus Heinze's smelter foremen. This performance on the part of the State's attorney put new courage into the hearts of those who had been at one time or another the target of Clancy's judicial abuse. On the following morning one of Butte's old-time lawyers appeared before Clancy, in another case, and, during the course of the trial, stood up to enter an objection to the court's rulings. "Sit down," said Judge Clancy. "I will not sit down," said the

lawyer. "I am here defending the interests of my client, and—" "Sit down," again roared the Judge, and he wheeled round in his chair and pointed his long index finger at the tall figure facing him. The lawyer shot into the seat from which he had risen, his countenance undergoing sudden change. To the right of the lawyer, and about six feet away, was a vacant chair. "Not in that chair," thundered the now irate Clancy, "but in that one," pointing to the vacant seat. The lawyer, losing no time, jumped from his own seat to the one indicated by the Judge, and thereafter maintained a judicious regard for his Honor's rulings.

### *Some Characteristic Decisions*

One day a case was being tried before Judge Clancy, involving the legal title to some mining property. One of the attorneys was arguing against the introduction of the location notice offered in evidence by the other side. This location notice is the grounding of the title to mining claims. The attorney asserted that the location notice was defective, and read from the paper: "Thence from the point of discovery to a corner post marked 'one'; thence to a corner post marked 'two'; and thence to a corner post marked 'three'—" and there the description stopped. "Where did he go from corner post three?" shouted the lawyer. Judge Clancy, who had been leaning his head on his hand and gazing out of the window on that "sand and barrenness" which drove Mary MacLane in distraction from her Butte home, turned round and said: "I don't know, John; but if you're asking me, and this fellow was within a mile of a saloon, I'd guess that he went to get a drink."

Judge Clancy had tried one case in the district court before his elevation to the bench; and for some questionable methods growing out of the case he had been tried in disbarment proceedings. Clancy's defense was that his guilt, which he admitted, was the result of ignorance of the law. On this plea the court had dismissed him with a reprimand. The judge who charged Clancy with his dereliction was afterwards Heinze's chief attorney, and never lost a case before Clancy in which Heinze was interested.

During the years of the judicial warfare between Heinze and the Amalgamated, Judge Clancy closed down by injunction several properties of the Amalgamated Company; on the slightest pretext he granted to Heinze

inspection orders, permitting him to enter the mines of the Amalgamated Company and ascertain what they were doing. He refused the same right to the Amalgamated. On several occasions he levied heavy fines on Heinze's opponents for refusal to obey his orders; sometimes these punitive judgments were sustained by the Supreme Court, more often they were reversed. He would make characteristic Populist addresses from the bench, when these reversals came, telling the Supreme Court of Montana at long range what he thought of them. At one time the Supreme Court issued a supervisory writ directing Judge Clancy to make a certain order in a case, either granting or refusing a right to the Amalgamated, so that the matter might be finally determined in the higher tribunal. When this was brought to the Judge's attention, he announced that he would take the matter under advisement. The Judge had taken other matters under advisement, and they had never been heard of afterwards; it was one way of allowing Heinze ample time to extract valuable ore bodies from disputed ground.

"Under the decision of the Supreme Court, we are entitled to an immediate order," said L. O. Evans, the Amalgamated attorney, who presented the matter in court.

"Well, I'm not going to give it to you," came back the reply from the bench.

"Our only recourse will be another appeal to the Supreme Court," said Mr. Evans.

"You can go to the Supreme Court, or—anywhere else you please," said the Judge.

"This court can be punished for contempt—"

"Go away, go away," shouted the Judge, waving his long arms belligerently toward the lawyer. "You talk like a town fool I used to know back in Missouri. Bailiff, adjourn court."

William Scallon, at the time leading attorney for the Amalgamated, was one day making an oral argument in court in a case involving several millions of dollars. He was cut short by the Judge. "I won't listen to you any longer. I'm tired of this whangdoodling," roared the Judge.

"But, your Honor—"

"That'll do, now; that'll do. if you say another word, I'll send you to jail. I'll have no more of your shenanigan. Bailiff, adjourn court." And, without waiting for the court-crier to make the usual announcement, the Judge left the bench.

The day after Judge Clancy's second election to the bench, he was reposing on a settle at the top of the court-house steps, receiving the congratulations of his friends.

"I've got these shuttle-headed Amalgamated lawyers where I want 'em now," said the Judge. "I'll fix 'em. I'll make bumpin' posts out of 'em."

Judge Clancy tried and decided more litigation of importance than any other judge on the *nisi prius* bench in the United States during the eight years of his term.

"It would require a long investigation to state, or even to estimate, in how many hearings I have been engaged during this litigation in Judge Clancy's court," said John F. Forbis, one of the Boston & Montana lawyers. "It would not be an exaggeration to say that they must have run into the hundreds. In six and a half years we obtained in Judge Clancy's court, in Butte, only two fruitless injunctions. Before Judge Harney, the score of our successes is absolutely blank."

---

## ONE WAY OF PEACE

BY

PAUL KESTER

TO live within walled gardens,  
 Once again to bound my life  
 This side the distant  
 Woodlands and blue hills ;  
 To know  
 Neither the mystery of the river's source  
 Nor where it widens to the open sea,  
 To seek only the short beaten paths  
 Where the dew clings  
 To cowslips after dawn.  
 To find no new way out  
 Upon the uplands,  
 Never to measure  
 Eternity's long ways  
 Up to the distant stars,  
 Never to know the meaning of the sun's fierce fires  
 Except upon brown cheeks.  
 Never to greet the rushing tumult of the storm  
 With kindred tumult ;  
 Only to know the breath  
 That shakes  
 The orchard petals down  
 Upon the low bent grass  
 Or drives the shadows  
 Of flecked clouds  
 Across the sunny  
 New mown meadow lands :—  
 Has peace a surer price ?