

WRONG SECTION AMENDED, STATE EVANS LAWYERS

Attack Constitutionality of Death Penalty

BRIEF IS COMPLETED

Change in Constitution Made as Affecting Boozing Section Cited in Effort to Save Slaying of James Doran

When the 1920 legislature, by passage of senate joint resolution No. 8, reinstated the death penalty for first degree murder, subject to popular vote, it amended the wrong section of article one of the Oregon constitution. This is the declaration of W. P. Myers of Bend, and John Gavin of The Dalles, in their brief in the Abe Evans murder case, in which they seek to free Evans, now under sentence of death, by attacking the constitutionality of capital punishment in Oregon.

The brief sets forth that section 36 was the section amended, and that this is the amendment prohibiting the liquor traffic, or the manufacture, sale, or barter of intoxicating liquor in Oregon. The amendment abolishing the death penalty, which should have been the one affected by the law of 1920, was section 37, it is pointed out. Quoting exactly, section 36 provides that "No intoxicating liquors shall be imported into this state for beverage purposes."

Vote May Be Obstacle

"It appears almost inconceivable that the irregularities and inconsistencies of the senate resolution, so proposing the last amendment to restore the death penalty, should have been overlooked until a number of lives have been forfeited, but this, unfortunate as it is, can be no reason for keeping silent as to such inconsistencies," the attorneys emphasize in their statement.

The fact that popular vote in the May, 1920, elections, without reference to article or section of the Oregon constitution, sanctioned the reinstatement of the death penalty for first degree murder may prove an obstacle in the effort to free Evans through an attack on the constitutionality of punishment by death. The measure as it appeared on the ballot made no mention of the section to be amended.

Guilt Admitted

Evans, by his own confession, and as found by the jury which tried the case in The Dalles, shot and killed James Doran, Bend logger, on the night of September 10, 1921, with robbery as the motive. The murder was committed near The Dalles, Evans also shooting and wounding William Ducharme, the third member of the auto party which had started from Bend on a trip to Portland. Evans was arrested on the following day in Jefferson county as he was returning to Bend.

FIRE FAILS TO HALT CREAMERY OPERATION

Small Blaze in Building Calls Department—Cause Not Learned—Snow Hinders Truck

Operation of neither the Central Oregon Farmers' creamery nor the ice plant of the Bend Water Light & Power Co., was interrupted more than momentarily by the fire which broke out in the building occupied by them jointly, calling out the fire department at 8:30 o'clock Monday morning. Snow covered streets kept the truck from making the fast time usual.

The fire started in the attic, and did no appreciable damage. The firemen were hindered in extinguishing it by the dense smoke and the fact that the building consists of numerous compartments. No cause for the fire has been given.

NIGHT BEST TIME TO DRIVE TO COLUMBIA

At night is the best time to travel between Bend and The Dalles, says Donald McBain, who made the round trip last week, returning to Bend Saturday. At night the roads are frozen and firm, while in day time they are slippery. It can be made without difficulty if chains are used, he reports.

DRUG STORE OPENS IN THE OWL ANNEX

C. A. Plath has opened a pharmacy in the annex at the rear of the Owl pharmacy, which has been closed as a result of bankruptcy proceedings. Plath will move into the Owl location as soon as the litigation is settled, he announces.

The CROSS-CUT



by Courtney Ryley Cooper

ILLUSTRATIONS by R.B. Van Nice

They started up the mountain side, skirting the big gullies and edging about the highest drifts, taking advantage of the cover of the pines, and bending against the force of the blizzard, which seemed to threaten to blow them back, step for step. No one spoke; instinctively Fairchild and Anita had guessed Harry's conclusions. The nearest mine to the Blue Poppy was the Silver Queen, situated several hundred feet above it in altitude and less than a furlong away. And the metal of the Silver Queen and the Blue Poppy, now that the strike had been made, had assayed almost identically the same. It was easy to make conclusions.

They reached the mouth of the Silver Queen. Harry reconnoitered a moment before he gave the signal to proceed. Within the tunnel they went, to follow along its regular, rising course to the stope where, on that garish day when Taylor Bill and Blindeye Bozeman had led the enthusiastic parade through the streets, the vein had shown. It was dark there—no one was at work. Harry unhooked his carbide from his belt, lit it and looked around.

"It ain't coming from 'ere," he announced. "It's—" then his voice dropped to a whisper—"what's that?" Again a rumbling had come from a distance, as of an ore car traveling over the tram tracks. Harry extinguished his light, and drawing Anita and Fairchild far to the end of the stope, flattened them and himself on the ground. A long wait, while the rumbling came closer, still closer; then, in the distance, a light appeared, shining from a side of the tunnel. A clanging noise, followed by clattering sounds, as though of steel rails hitting against each other. Finally the tramping came once more—and the light approached.

Into view came an ore car, and behind it loomed the great form of Taylor Bill as he pushed it along. Straight to the pile of ore he came, unhooked the front of the tram, tripped it and piled the contents of the car on top of the dump which already rested there. With that, carbide pointing the way, he turned back, pushing the tram before him. Harry crept to his feet.

"We've got to follow!" he whispered. "It's a blind entrance to the tunnel south-eres."

They rose and trailed the light along the tracks, flattening themselves against the timbers of the tunnel as the form of Taylor Bill, faintly outlined in the distance, turned from the regular track, opened a great door in the side of the tunnel, which, to all appearances, was nothing more than the ordinary heavy timbering of a weak spot in the rocks, pulled it far back, then swerved the tram within. Then, he stopped and raised a portable switch, throwing it into the opening. A second later the door closed behind him, and the sound of the tram began to fade in the distance. Harry went forward, creeping along the side of the tunnel, feeling his way, stopping to listen now and then for the sound of the fading ore car. Behind him were Fairchild and Anita, following the same procedure. And all three stopped at once.

The hollow sound was coming directly to them now. Harry once more brought out his carbide to light it for a moment and to examine the timbering.

"It's a good job!" he commented. "You couldn't tell it five feet off!" "They've made a cross-cut!" This time it was Anita's voice, plainly angry in spite of its whispering tones. "No wonder they had such a wonderful strike," came scathingly. "That other stope down there—"

"Ain't nothing but a salted proposition," said Harry. "They've cemented up the top of it with the real stuff and every once in a while they blow a lot of it out and cement it up again to make it look like that's the real vein."

"And they're working our mine!" Red spots of anger were flashing before Fairchild's eyes.

"You've said it! That's why they were so anxious to buy us out. And that's why they started this two-million-dollar stock proposition when they found they couldn't do it. They knew if we ever 'it that vein it wouldn't be any time until they'd be caught on the job. That's why they're ready to pull out—with somebody else's million. They're getting at the end of their rope. Another thing; that explains them working at night."

Anita gritted her teeth. "I see it now—I can get the reason. They've been telephoning Denver and holding conferences and all that sort of thing. And they planned to leave these two men behind here to take all the blame."

"They'll get enough of it!" added Harry grimly. "They're miners. They could see that they were making a straight cross-cut tunnel on to our



"We've Got to Follow."

vein. They ain't no children, Blindeye and Taylor Bill. And 'ere's where they start getting their trouble."

He pulled at the door and it yielded grudgingly. The three slipped past, following along the line of the tram track in the darkness, Harry's pick handle swinging beside him as they sneaked along. Rods that seemed miles; at last lights appeared in the distance. Harry stopped to peer ahead. Then he tossed aside his weapon.

"There's only two of 'em—Blindeye and Taylor Bill. I could whip 'em both myself, but I'll take the big 'un. You—" he turned to Fairchild—"you get Blindeye."

"I'll get him."

Anita stopped and groped about for a stone.

"I'll be ready with something in case of accident," came with determination. "I've got a quarter of a million in this, myself!"

They went on, fifty yards, a hundred. Creeping now, they already were within the zone of light, but before them the two men, double-jacking at a "swimmer," had their backs turned. Onward—until Harry and Fairchild were within ten feet of the "high-jackers," while Anita waited, stone in hand, in the background. Came a yell, high-pitched, fenshish, racking, as Harry leaped forward. And before the two "high-jackers" could concentrate enough to use their sledge and drill as weapons, they were whirled about, battered against the hanging wall, and swirling in a daze of blows which seemed to come from everywhere at once. Wildly Harry yelled as he shot blow after blow into the face of his ancient enemy. High went Fairchild's voice as he knocked Blindeye Bozeman staggering for the third time against the hanging wall, only to see him rise and to knock him down once more.

Dizzily the sandy-haired man swung about in his tracks, sagged, then fell, unconscious. Fairchild leaped upon him, calling at the same time to the girl:

"Find me a rope! I'll truss his hands while he's knocked out!"

Anita leaped into action, to kneel at Fairchild's side a moment later with a hempen strand, as he tied the man's hands behind his back. There was no need to worry about Harry. Glancing out of a corner of his eye, Fairchild saw now that the big Cornishman had Taylor Bill flat on his back and was putting on the finishing touches. And then suddenly the exultant yells changed to ones of command.

"Talk English! Talk English, you bloody blighter! Talk English! 'Ear me—I'll knock the bloody 'ell out of you if you don't. Talk English—like this: 'Throw up your 'ands!' 'Ear me?"

Anita swerved swiftly and went to her feet. Harry looked up at her wildly, his mustache bristling like the spines of a porcupine. "Did you 'ear 'im say it?" he asked. "No? 'Sye it again!"

"Throw up your 'ands!" came the answer of the beaten man on the ground. Anita ran forward.

"It's a good deal like it," she answered. "But the tone was higher." "Raise your tone!" commanded Harry, while Fairchild, finishing his job of tying his defeated opponent, rose, staring in wonderment. Then the answer came:

"That's it—that's it. It sounded just like it!"

And Fairchild remembered too—the English accent of the highwayman on the night of the Old Times dance. Harry seemed to bounce on the prostrate form of his ancient enemy.

"Bill," he shouted, "I've got you on your back. And I've got a right to

kill you. 'Oonest I 'ave. And I'll do it too—unless you start talking. I might as well kill you as not. It's t penitentiary offense to 'it a man underground unless there's a good reason. So I'm ready to go the 'ole route. So tell it—tell it and be quick about it. Tell it—wasn't you him?"

"Him—who?" the voice was weak, frightened.

"You know 'oo—the night of the Old Times dance! Didn't you pull that 'old-up?"

There was a long silence. Finally: "Where's Rodaine?"

"In Center City." It was Anita who spoke. "He's getting ready to run away and leave you two to stand the brunt of all this trouble."

Again a silence. And again Harry's voice:

"Tell it. Wasn't you the man?"

Once more a long wait. Finally: "What do I get for it?"

Fairchild moved to the man's side. "My promise and my partner's promise that if you tell the whole truth, we'll do what we can to get you leniency. So tell the truth; weren't you the man who held up the Old Times dance?"

Taylor Bill's breath traveled slowly past his bruised lips.

"Rodaine gave me a hundred dollars to pull it," came finally.

"And you stole the horse and everything—"

"And cached the stuff by the Blue Poppy, so's I'd get the blame?" Harry wiggled his mustache fiercely. "Tell it or I'll pound your 'ead into a jelly!"

"That's about the size of it."

But Fairchild was fishing in his pockets for pencil and paper, finally to bring them forth.

"Not that we doubt your sincerity, Bill," he said sarcastically, "but I think things would be a bit easier if you'd just write it out. Let him up, Harry."

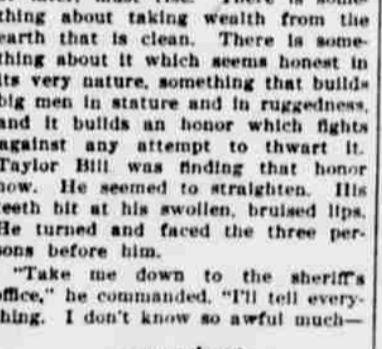
The big Cornishman obeyed grudgingly. "Make hit fulsome, Bill—tell just 'ow you did it!"

And Taylor Bill, bloody, eyes black, lips bruised, obeyed. Fairchild took the bescrawled paper and wrote his name as a witness, then handed it to Harry and Anita for their signatures. At last, he placed it in his pocket and faced the dolorous high-jacker.

"What else do you know, Bill?"

"About what? Rodaine? Nothing—except that we were in cahoots on this cross-cut. There isn't any use denying it—there had come to the surface the inherent honor that is in every metal miner, a stalwartness that may lie dormant, but that, sooner or later, must rise. There is something about taking wealth from the earth that is clean. There is something about it which seems honest in its very nature, something that builds big men in stature and in ruggedness, and it builds an honor which fights against any attempt to thwart it. Taylor Bill was finding that honor now. He seemed to straighten. His teeth bit at his swollen, bruised lips. He turned and faced the three persons before him.

"Take me down to the sheriff's office," he commanded. "I'll tell everything. I don't know so awful much—"



"That's Maurice! I got a Glimpse of His Face!"

because I ain't tried to learn anything more than I could help. But I'll give up everything I've got."

"And how about him?" Fairchild pointed to Blindeye, just regaining consciousness. Taylor Bill nodded.

"He'll tell—he'll have to."

They trussed the big miner then, and dragging Bozeman to his feet, started out of the cross-cut with them. Harry's carbide pointing the way through the blind door and into the main tunnel. Then they halted to bundle themselves tighter against the cold blast that was coming from without. On—to the mouth of the mine. Then they stopped—short.

A figure showed in the darkness, on horseback. An electric flashlight suddenly flared against the gleam of the carbide. An exclamation, an excited command to the horse, and the rider wheeled, rushing down the mountain side, urging his mount to dangerous leaps, sending him plunging through drifts where a misstep might mean death, fleeing for the main road again. Anita Richmond screamed:

"That's Maurice! I got a glimpse of his face! He's gotten away—go after him somebody—go after him!"

But it was useless. The horseman had made the road and was speeding down it. Rushing ahead of the others, Fairchild gained a point of vantage where he could watch the falling black smudge of the horse and rider as it went on and on along the rocky road, finally to reach the main thoroughfare and turn swiftly. Then he went back to join the others.

"He's taken the Center City road!" came his announcement. "Is there a turn-off on it anywhere?"

"No." Anita gave the answer. "It goes straight through—but he'll have a hard time making it there in this blizzard. If we only had horses!"

"They wouldn't do us much good now! Climb on my back. You can handle these two men alone?" This to his partner. The Cornishman grunted.

"Yes. They won't start anything. Why?"

"I'm going to take Miss Richmond and hurry ahead to the sheriff's office. He might not believe me. But he'll take her word—and that'll be sufficient until you get there with the prisoners. I've got to persuade him to telephone to Center City and head off the Rodaines!"

(To Be Continued.)

BEFORE LIFE WAS COMPLEX

Prehistoric Woman Whose Remains Have Just Been Found Had Comparatively Placid Existence.

Bones of a prehistoric woman, believed to have been a tree-climber, have been found in the bed of the River Cam, and are being submitted to expert opinion in London, England.

The bones were brought to the surface by a dredger within a quarter of a mile of the famous Fenland Inn, "The Five Miles From Anywhere; No Hurry!"

The whole district is one vast forest of buried oaks, which were in existence many thousands of years ago, before the Fens were formed, and it is hoped to recover the complete skeleton.

"The find is a most interesting one," said a Fellow of the Royal Society.

"The leg bones are undoubtedly those of a woman, but they are of extraordinary conformation.

"Whoever she was, she had a pretty foot.

"If alive today, she would be a short, deep-chested creature, covered with hair, and with long, ape-like arms and prehensile toes.

"Her home would be a rudely built platform of sticks, with a family likeness to a glorified crow's nest. From this, excursions would be made among the tree tops, and her mate swinging himself, monkey-fashion, from bough to bough.

"When on the ground, her gait would be that of a monkey, with the arms swinging to the knees."

EXAMPLE OF FOOL PARENTS

Onlookers Doubtless Would Have Said the "Twig" Might Have Been "Bent" to Advantage.

"They" boarded an outbound street car. "They"—father and mother, mistakenly, unfairly adoring and old enough to be wiser, and sturdy, handsome, adorable (at times) two-year-old son, wise beyond his years and beyond his parents. Not quite so adorable at this particular time, for he was screeching, yelling, howling, screaming, kicking and doing everything else in his small but mighty power to make known his wants and attain his desire. His attention refused to be distracted. Older people might have envied him his power of concentration.

"What do you want, darling? Come on, let's have a little lunch. Oh, look at the pretty lights. Tell mother what sweetheart wants"—repeated in tones of varying invitation and hopefulness—were all in vain. "Darling, sweetheart" refused to be diverted from his purpose or to vouchsafe a single word of reply.

After two blocks of this uninterrupted performance the small family rose to leave the car, the mother explaining to an obviously curious beholder: "We have to get off. He won't ride in a street car. He must have a taxi." Last seen, adored and adoring were hiking up Sixth avenue to a taxi station, adored all smiles and sunshine in his father's arms.—Rehoboth Sunday Herald.

Versatile Cacao Tree.

The cacao tree is an evergreen and bears fruit and flowers all the year round, but the usual times for gathering the fruit are June and December. Chocolate is made from the seed or beans. When oil is extracted it makes cocoa butter, and the residue is ground and marketed as cocoa.

WORKMEN'S ACT CHANGE SOUGHT

Introduction of Waiting Period Most Desirable, Says R. D. Moore

(By United Press to The Bend Bulletin.)

SALEM, Dec. 1.—That certain Oregon lumber interests are preparing for a fight against the workmen's compensation act as it is now on the statute books, was learned here today. They want modification and a change to the company self insurance plan.

It is intimated that the next legislature will be torn by the fight over the new bill.

R. D. Moore, assistant vice president of The Shevlin-Hixon Company, member of a special committee of the Western Fine Manufacturers' association appointed on this question, stated that practically the only change now under consideration to be asked would be the introduction of a waiting period, which would reduce the number of trifling injuries which now draw compensation. The saving so effected, he stated, could be used in increasing the compensation in serious cases.

SCARLET FEVER ON WANE, IS INDICATED

With four families released from quarantine last week, the number quarantined for scarlet fever is reduced to 14, reports City Physician C. A. Fowler. No new cases have been reported for several days. Patients released were Joseph Lawton, Ed Barrett, William Sullivan and Claude Wanichek.

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