Crook County Journal.

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THURSDAY, OCTOBER 1, 1903.

AN UNANSWERED QUESTION.

Last Sunday's Oregonian contained a reply to the recent question raised by the Journal regarding the disposition of the $500 sent from this city last June to be used as a benefit fund for the Heppner sufferers. The reply was placed in an obscure column, and entirely overlooked the vital parts of the question raised. In answer the Oregonian states the sum expended by them and the amount on hand, which is all good and well. But does the Oregonian understand that the first thing wanted by Prineville was credit for the sum sent. Now inasmuch as that credit was never given, they naturally want a statement regarding that particular $500. At the time the appropration was made Prineville was just recovering from the effects of a small-pox epidemic, and the Journal personally knows many who made personal sacrifice in donating their contribution. These people with the others simply want a statement regarding the expenditure of their $500, and if spent, credit for it. If not spent they still think as was formerly stated that it can be used to good advantage in establishing a permanent relief fund for our city. If it was used for Heppner's relief give us credit, and a statement and we will only feel thankful that the little mite did something towards relieving the sufferings of an afflicted people.

ANOTHER CALL FOR HELP.

Speaking of myself, mention of which was made week before last I'm still the same Crooked river bridge. The little autobiographical sketch, which was furnished for the edification of the city fathers who have me in keeping, produced some startling results. They put a new rib in me. One new rib. The doctor says I need some 355 more together with some new ligaments, but I suppose I should be thankful for small favors. It's like giving the cook a small raise in salary about the time she is going to die of consumption.

Temporarily speaking, I'm not much better off than I was before the addition of my new rib; that is, things don't jar me quite so hard as they did, but to be very truthful—I'm sick. I'm sick of my own existence, and sick of the sickening way they try to patch me up. That new rib must have cost the city fathers 26 cents at least, an thats an awful lot to spend these hard times. Such expenditure is scrilegious, but it will cost more than that to bury me, and I may turn up my toes, and at the same time turn down a heavy load of freight, next week, who knows?

Secretary Hitchcock last week made public his final decision regarding the Warner Valley lands that have been in litigation for 20 years past. His decision was against the settlers and in favor of the Warner Valley Livestock Company, to which a patent for the lands has been issued. However Mr. Hitchcock always was a bitter enemy to corporation!

Central Oregon continues to figure in newspaper writings, and railroad magnates are said to even figure occasionally on putting a horse car line into Prineville to connect with the proposed line to the moon. When the latter is completed we will then look forward to a line leading into our section.

Suggestion to the various government timber inspectors operating in Oregon? When a person offers final proof on his timber claim make him swear he is going to work up by hand his whole 160 acres of pine into wooden pins to nail down the lies he is telling you.

New babies now arrive in New York city at the rate of 12 an hour, 288 a day, 8640 a month and 103,680 per year. Chicago's hopes towards becoming the metropolis of western hemisphere are now assuming infantile proportions.

A Few Remarks in Favor of Judge Bradshaw.

Editor Crook County Journal:

In your issue of Sept. 17th you made a great many misstatements in your write up of the Arch McKay case.

Now I was present in the court room and was one of the attorneys defending Arch McKay and therefore I had occasion to notice what actually took place at that trial. It hardly got far enough along to be called a trial. But the jury was empaneled and sworn and the opening statements were made to the jury by counsel for the state and defendant, according to custom, and Mr. W. W. Brown was called as a witness for the state. He was asked a few preliminary questions leading up to the introduction of the brand of Lyle & Brown, or preparing the way to introduce it. Mr. Brown said that the brand of Lyle & Brown was on record in Crook county, and that the paper which the deputy district attorney then showed to him purported to be a copy of the said brand of Lyle & Brown. The attorney for the state then offered the paper in evidence. Now that is as far as any evidence ever got in this case. McKay's name was never mentioned. The stealing of any steer was never mentioned in the evidence. The attorneys for the defendant promptly objected to the introduction of the paper shown to Mr. Brown and offered by the state's attorney in evidence on the ground that it did not have a certificate of the county clerk of Crook county, that it was a copy of the record of the brand in question. Its introduction was objected to on another ground which I will mention later, but the want of a proper certificate was the one that the Judge sustained the objection on.

The statute provides that no evidence of ownership by brand shall be permitted in any court of this state on or after Nov. 1, 1894, unless such brand shall be recorded, as in said statutes provided. And after providing the manner of recording, it adds. "Proof of the right of any person to use such brand shall be made by a copy of the record of the same, certified to by a county clerk of that county or in any county in which the same is recorded under hand and seal of office of such clerk."

There was no proper certificate attached to the paper offered in evidence in this case that it was a copy of the record of the brand in question. And as the statute is direct and emphatic as to how proof of the right to use a brand shall be made; that is, by a copy of the record of the brand, duly certified to be such by the county clerk, and this paper having no such certificate of the clerk that it was a copy of the record of the brand as aforesaid, Judge Bradshaw could not do otherwise than reject the proffered paper in evidence. It was not competent to be introduced as such. Even Judge Barnes an able lawyer assisting the prosecution from your city, after arguing the case on the other objection raised, passed the objection to the certificate by with the remark as he sat down that he was not prepared to say that it was a good certificate. The certificate did not pretend that the paper annexed to it was a copy of the record in fact. Judge Bradshaw rendered quite an exhaustive decision, and stated very plainly several times that the paper offered in evidence could not be allowed because it was not properly certified to entitle it to be introduced in evidence in the case, and that he decided it solely on that ground.

The other objection raised to the introduction of the proffered certificate of brand was that it appeared that the crime was alleged to have been committed not later than Dec. 6, 1902, while the brand purported to have been adopted and recorded not earlier than April 27, 1903, nearly five months later than the time when the animal was butchered.

In answer to this objection Judge Barnes stated that Judge Bradshaw had ruled in a larceny case in Crook county some years ago that the record of the brand could be introduced in evidence although recorded after the crime had been committed.

Judge Bradshaw in summing up his decision wherein he rejected the evidence offered for want of the certificate as stated showed that he had decided as stated by Mr. Barnes on that point over in Crook county some years ago, and stated that there had always been some doubt in his mind as to the correctness of that ruling, and he had hoped that the matter would get up before the Supreme Court and be decided by that tribunal once and for all. He intimated that he would not reverse his former ruling until he had to by force of superior argument or a reversal in the Supreme Court, or by other Circuit Judges holding contrary to him. That he was in doubt, he was frank to admit, but that in the condition this case was in it was not up to him to pass upon that point, as owing to the rejection of the proffered brand and defective certificate there was no record of any brand of Lyle & Brown in evidence in this case, and hence it did not appear by legal evidence when Lyle & Brown's brand was adopted or recorded or if they had any brand at all, so far as the necessary statutory evidence is concerned. So Judge Bradshaw did not pass on that question; did not reverse himself; and of course his former decision in Crook county must be assumed to be the law of his court until reversed by himself or the Supreme Court.

So you see your article does Judge Bradshaw a manifest injustice. As there is considerable feeling among stock men on account of what they think was a miscarriage of justice, I write this to show you that it was not on Judge Bradshaw that any blaim should fall. Mr. Brown did not know the steer and could not claim it except by the brand upon it. And failing in the introduction of the brand—not because it was recorded after the steer was said to have been stolen, but because it was not certified to in such manner as to entitle it to be used in evidence—there was nothing for the District Attorneys to do but dismiss the case. They were not denied the privilege of proving Lyle & Brown ownership of this steer if they could by any other means of knowledge than by brand. Stock men with few cattle or horses would be able to swear to any one of them independent of the brand But if they rely upon proof by brand as all stock men with large bands have to do, the statute provides the manner of such proof, and specifies that there shall be none other by brand. It is a good law after all, because it makes the brand on the animal prima facie evidence of ownership of the person whose brand it may be, if the brand is recorded and evidence of it properly introduced, and it is on the animal in dispute; then the burden of proving that the animal is not the property of the party whose brand is upon it, is entirely upon the other party claiming the animal.

Now then those who were disappointed in the result of the McKay case, might ask who is to blame for the miscarriage of that case so far as the defective certificate is concerned. Well it was one of those accidents that now and then happen even among careful attorneys and other people. Your County Clerk is not to blame because he is not an attorney, and it is a technical job to comply with the terms of this particular statute and matters of evidence in criminal cases are always technical. The record came over to Fossil by mail. The deputy here supposed it was examined before the clerk sent it, but he did not happen to. Mr. Barnes no doubt supposed that if it was not right when it came that the deputy district attorney would send it back for correction. It laid in its envelope almost till the moment of offering it in evidence and the catastrophe happened.

Mr. McKay was not indicted in the Lister case at all, though he had been bound over. Perhaps the doubt in the minds of attorneys as to the introduction of evidence of brands recorded subsequent to the commission of the offense may have had something to do with McKay not being indicted on the other charge preferred by Joseph Lister. I do not know as to that, and I am not going to discuss the merits of McKays case in the papers. However I do not want the prejudice that is against Mr. McKay and cattle stealing generally to be worked by misstatements against our good, able and upright Circuit Judge, who did not reverse himself and who is most seldom reversed by the Supreme Court.

H. H. HENDRICKS.

Fossil, Oregon, Sept. 23, 1903.

OUR HONOLULU LETTER.

Honolulu, H. I., Island of Oahu, Sept. 15, 1903.

Editor Crook County Journal:

Dear Sir:

Pursuant to your request I will drop you a few lines descriptive of nature's wonderland, that your readers may know something of the beauties of the islands of the south seas.

We have now been in the beautiful cosmopolitan city four days, awaiting the ship's discharge of cargo, and tomorrow she will weigh anchor and again point her nose towards the Orient.

The few days spent here are a revelation to me, a lumberjacker, for nature's grandeur is ever evident. Wonderseeing is like all fascinations; there is that constant craving of the desires to be further satisfied, and I can say how one can spend three life in travel. Honolulu's matchless drives, surf bathing and tropical scenery are all inspirations and vastly different from the bleak, trade wind swept coast of our own fair California, from which we sailed but a few days ago.

Last evening in company with a lady friend from the ship I went to Waikiki park, where we were entertained by the Hawaiin national band. This band is led by M. Berger, a german bandmaster of worldwide reputation, and is composed of different nationalities but they are mostly Kanakas. It is their duty to do nothing but give a nightly concert at one of the many parks in and around Honolulu. This concert is always the event of the day. In the cool of the evening, the dude dressed in white duck, with white canvas shoes, and with his sweetheart on his arm, joins the merry crowd of tropical recreation seekers, and all listen to the music of the waltzes—that soft dreamy music that carries one away, that rests the nerves and stimulates day dreams.

But I must change from sentiment to fact, and will give a brief description of Molokai leper settlement as a party of us saw it today through the kindness of the government leper commissioner. This leper colony is situated on an island of the same name, not seen in the bay and straits of Honolulu, and is composed of about 900 afflicted persons with some 25 attendants, physicians and missionaries. The settlement is under the supervision of the Hawaiin government, and is situated in a cove back of which raises perpendicularly cliffs thousands of feet high, while on the other side there is nothing but water, thus making escape impossible for the unfortunates.

The Molokai leper settlement is composed of neat little white buildings, a beautiful chapel and hospitals, and boasts of schools, societies and a good band of musicians. But withal the neatness and exultation of this living sepulchre the awful condition of the lepers is very evident. They crave death and when the latter comes to their relief rejoicing takes the place of sorrow, the settlement band plays "There'll be a Hot Time in the Old Town Tonight," "Yankee Doodle," etc., and a genuine Irish wake follows the burial.

Two hours spent there was sufficient and an invitation from the government official to accompany him back across the bay was gladly welcomed by us all. I assure you, tomorrow we proceed on our journey and in my next letter I shall try and describe my impression of the Philippines.

L. M.