

BEGIN REPEATING STATE'S EVIDENCE

Defense in Martin Trial Will Call Witnesses This Afternoon.

WOLFF'S GLOVES SHOWN

Murdered Man's Wife and Daughter Identify Them—Found in Martin's Suitcase—Befuddled Witness Placed on Stand.

With a formidable array of circumstances marshaled to show that Edw. Martin murdered Nathan Wolff, the state last but not least in its case in the State Circuit Court late yesterday afternoon.

Will Martin be able to escape the web of circumstances in which he is enmeshed? His lawyers say he will. Today they will begin taking up one by one the more important circumstances proved by the state. They will put on witnesses to show the fallibility of circumstances as a basis of conviction.

And that Martin's defense is a force to be reckoned with was very clearly brought out late in the afternoon, when one of the state's own witnesses dispelled one of its strongest points. This witness was John H. Beaver, who had known Martin for months. Deputy District Attorney Fitzgerald elicited from him the story of Martin's conduct in the Turin Hotel cafe this morning.

"Martin took the paper, read the headlines accusing him of the crime, laid the paper down and walked out without saying a word," Beaver testified, and having added this to his list of minor circumstances, the state excused the witness.

Overcoat Testimony Refuted.

But cross-examination was productive of unusual and unexpected results. Attorney Fouts began questioning Beaver as to how long he had known Martin. Beaver said he had known him for months, and had talked to him nearly every day.

"What kind of overcoat was he in the habit of wearing?" was then asked. "He had a long dark cravenette raincoat," was the astonishing reply.

Everyone in the courtroom caught the significance of this testimony, and a tense silence followed.

"Are you sure he wore a long, dark cravenette before the murder?" "Why, yes; I used to see him wearing such a coat," said Beaver.

Mr. Fouts then stepped over to get the long cravenette which Martin had when he was arrested and which the state had gone to great pains to show as belonging to Wolff. Martin, it had been contended by the state up to this minute, had never owned such a coat.

But at this belated moment the state awakened to the fact that this was not a proper line of cross-examination and entered an objection to the procedure as regards the coat. The objection was sustained, but Mr. Fouts immediately demanded that Beaver be subpoenaed as a witness for the defense. The subpoena was issued.

Mrs. Wolff Identifies Gloves.

Mrs. Nathan Wolff, widow of the victim, took the stand early in the afternoon and proved one of the most effective witnesses yet produced against Martin. She identified a pair of unlined kid gloves exhibited as having belonged to her husband.

The gloves she identified were found in Martin's suitcase—a suitcase he left at the Belvedere Hotel just previous to his arrest.

Mrs. Wolff, attended by a nurse and dressed in mourning, seemed on the verge of breaking down while on the stand. She not only identified the gloves, but the state's witness found on Martin. She was quite sure about the coat. One reason she advanced in her identification was that her husband invariably removed the tags and bands from all coats which he bought. The tags were gone from this coat. This testimony did away with the theory offered by the police that Martin removed the tags to prevent identification of the coat.

What Defense Must Answer.

As the case now stands, with the prosecution having called its witnesses to explain these things, or offer evidence to offset them:

How these gloves, recognized as Wolff's, came to be in his suitcase at the Belvedere.

Why he borrowed a revolver from Mrs. Grubb shortly before the murder; and what became of the weapon.

Where he spent his time May 1 between the hours of 4 P. M. and midnight.

How he came into possession of a long cravenette raincoat, precisely like the one owned by Wolff, and identified as having been purchased by Wolff at the Ben Selling store.

What he did with his box overcoat, the one precisely similar to a hood-stamped coat found in South Portland wrapped about a rifle identified as having been removed from Wolff's pawnshop.

How his face and head came to be marked with cuts which he has previously described as cat scratches, but which City Physician Ziegler testified could not possibly have been made by a cat.

Why he left his home in Sellwood the day after the murder and registered at the Belvedere Hotel under an assumed name.

Such is the essence of the case which has been made out by the state. And it is clear that the witness who identified Wolff or is the victim of a most remarkable set of incriminating circumstances.

Some not seated. Then the crowd was excluded from the entire building. In establishing that the kid gloves were found in Martin's possession, the state called Detective Tichenor as the first of a succession of witnesses. He produced a suitcase, which he said had been turned over to him by the clerk at the Belvedere Hotel shortly after Martin's capture. This was found to contain a shaving outfit, pipe, handkerchiefs, razor, one pair of kid gloves and a few trinkets.

Tichenor said he talked with Martin about the case and that Martin admitted owning everything except the gloves.

The next step in the weaving of this important strand of evidence was effected with rare force when Juror P. A. McPherson, scanning the contents of the suitcase, saw a small parcel in one corner.

"What is that, open it up and let us see everything in the grip," said Mr. McPherson.

"That's a spool of black silk thread," said the officer.

"Where did you get it—was it in the suitcase?" pursued the juror.

"No, I didn't do anything of the kind," said Tichenor.

At another time when Tichenor was called to the stand to testify on some minor point, he was asked to confess that he was in the Reform School when a small boy. He explained, however, that he was sent there because his mother was too poor to care for him and that when he reached the Reform School he got the first full meal of his life. It is doubtful if the defense gained anything from this line of procedure.

Tichenor's frank statement and the element of pathos in what he said appeared more than to offset the mere fact that years ago he had been hungry and ragged to the Reform School.

Hotel Clerk Corroborates Defense. W. W. Webb's corroborative evidence removed any possibility of a successful contention by the defense that the gloves placed in Martin's suitcase by clerks at the Belvedere for years and is favorably known. He said Martin appeared at the hotel May 1 and rented a room, registering under the name of E. H. Barrett. He paid one day's rent in advance.

The next day he did not appear and the room was re-let. The clerk was then complaining that a suitcase had been left there. Webb said this suitcase was got by John Cordanio, the house detective.

Martin had just been arrested and his suitcase might contain something of importance, Webb said and Cordanio opened it. They saw a hat, pipe, shaving mug, razor, handkerchiefs and a pair of unlined kid gloves of Dent make. He positively identified the gloves and said he was sure they were in the suitcase of the man.

Webb was asked on cross examination what he did with the suitcase. He said he took it to the Police Station and then called on Martin in his cell to tell him about it. Martin at first told him to send the suitcase to Mrs. Martin, but Webb said, on being told that the police would take care of it, he said that would be satisfactory.

Mrs. Wolff's later testimony identifying the gloves as her husband's was supplemented by the testimony of her little daughter, Allene Wolff, who said she had helped sew up the gloves. She, too, was certain the gloves had belonged to her father.

"What size were the gloves Mr. Wolff wore?" Juror McPherson asked Mrs. Wolff, as she was leaving the stand. "I don't know that," she replied.

Cross examination of Mrs. Wolff and her little daughter developed the fact that Wolff owned another overcoat, which he had taken to the pawnshop for the purpose of giving someone. She was handed the blood-stained coat which the state alleges belonged to Martin and was sure that while she could not be sure, yet she did not believe her husband ever owned that coat.

Martin's Overcoat Identified. E. C. Eubanks proved one of the strongest witnesses developed by the state. The overcoat found on Martin had been purchased from Ben Selling's store, where Eubanks is employed.

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The state expects to finish before noon, having few more witnesses to call. Examination of Mrs. Wolff will then be taken up immediately. Martin's counsel continue to say they are confident of acquittal and that the case will bear a favorable aspect after several of their witnesses have been heard. The precise nature of the defense is being withheld by them at this time.

STORES MAY KEEP OPEN ON SUNDAY

Judge Gantenbein Makes Temporary Restraining Injunction Permanent.

FREEDOM IS VIOLATED

Constitutional Guarantee of Religious Liberty Set at Naught by Law—Unjust Discrimination Made—Text of Decision.

Why Law is Unconstitutional. The Sunday law, section 1968, violates the constitutional guarantee of religious freedom.

The Oregon Sunday law has been tested and found unconstitutional. Presiding Judge Gantenbein, of the Circuit Court, handed down a decision yesterday morning declaring that through its operation the religious freedom guaranteed under both the Federal and state constitutions, is taken away.

Further than this, he said that the present Oregon statute unjustly discriminates, and that even though the law were otherwise valid the exemption of theaters is arbitrary and unreasonable. Judge Gantenbein made the law for the first time in 1884, saying in effect that this statute shows on its face that it was an act framed to further a religious dogma, and not made for the purpose of promoting the health or happiness of the state's citizens.

Injunction Made Permanent. The injunction issued against District Attorney Cameron Saturday, October 3, restraining him from arresting any more violators of the blue law, was made permanent.

Not only are the cigar dealers and confectionery stores given free reign on Sunday through the law, but all other stores or establishments open for business or not as they desire. There are only two exceptions, saloons and barber shops, these being provided for under sections 1974 and 2067, respectively.

John Logan, one of the attorneys for those under indictment for the alleged infraction of this statute was jubilant over the court's decision and said he would welcome an appeal of the case by District Attorney Cameron to the Oregon Supreme Court.

The District Attorney was so busy with the Martin murder trial that he said he has not had time carefully to go over Judge Gantenbein's decision. He did not know yesterday whether or not the case would be appealed.

"We are ready to fight this Sunday-closing proposition right down the line," said Mr. Logan last night. "It is up to Judge Cameron, whether or not we shall go on with the demurrers which have been interposed to the indictments returned by the grand jury against the cigar dealers, confectioners and small shopkeepers. Although they were not parties to the case just decided in the Circuit Court the keepers of billiard halls and poolrooms will benefit by the court's decision."

Judge Gantenbein's decision is as follows: Text of Decision. Upon application of the plaintiffs, a temporary injunction was granted by this court, enjoining the defendants (District Attorney Cameron, Sheriff Stevens and the police), from molesting the plaintiffs or any of them in the conduct of their business, and from complaining against, indicting, arresting, incarcerating or taking bail from the plaintiffs or any others similarly situated, by any manner or proceeding whatever, for alleged violations of the so-called Sunday closing law, until the further order of this court. The plaintiffs in their complaint also pray that upon a hearing a perpetual injunction be granted to them against the defendants.

A demurrer has been interposed to this complaint, challenging the authority of a court of equity to issue an injunction in cases of this character.

The complaint, however, is not to be enjoined by a suit in equity. There is, however, a well-recognized exception to this rule laid down in *Sandys vs. Williams*, 46 Oregon, 227, in which the court says:

"Where a criminal prosecution under color of a void law is threatened, which, if enforced, would deprive a party of a property right, a preliminary injunction may properly be issued to prevent the threatened injury. Equity has jurisdiction to interpose an injunction where public officers, under a claim of right, are proceeding illegally to injure the property of individuals or corporations."

It is contended by counsel for the plaintiffs that the defendants are proceeding illegally by act which they are attempting to enforce being void. The act reads: Section 1968—If any person shall keep open any store, shop, grocery, hall alley, billiard room or tipping house for the purpose of labor or traffic, or any place of amusement, on the first day of the week, commonly called Sunday or the Lord's day, such person shall be guilty of a misdemeanor and be punished by a fine of not less than \$50 nor more than \$50. Provided that the above provision shall not apply to theaters, the keepers of drug stores, doctor shops, undertakers, livery stable keepers, butchers and bakers; and all circumstances of necessity shall be treated as questions of fact for the jury to determine when the offense is tried by a jury.

History of Statute. A brief reference to the prior legislation of this state upon the subject will serve to give a clear understanding of the situation, and aid us materially in arriving at a correct and final solution of the controversy.

Section 1 of this act, when taken effect, provided that no person shall keep open any store, shop, grocery, hall-alley, billiard room or any place of amusement, or do any secular business other than works of necessity and mercy on the first day of the week, or Sunday, except as hereinafter provided. It is not intended to have effect where the circumstances of the case render it necessary that the above provisions not observed, and the same shall be treated as questions of fact for the jury to determine when the offense is tried by a jury. Laws 1866, page 10.

In 1908 this law was amended by excepting theaters from the provisions of the act. The object of the Legislature in passing these acts and the amendment thereto was to prevent the profanation of Sunday. Profanation is defined as: First, the act of profaning, the Sabbath, or any other day of rest, by the use of profane language, or the use of profane or irreverent treatment of things sacred or divine; or, Second, the act of profaning, the Sabbath, or any other day of rest, by the use of profane or irreverent treatment of anything that should be held in respect; also misuse, misappropriation.

Law is Unconstitutional. If, then, the object of the law in question is primarily to prevent the desecration or profanation of the Sabbath, rather than to promote health, and therefore enacted under the police powers of the state, it is unconstitutional. The violation of the constitutional guarantee of religious freedom is not a crime.

It is contended by the state that the original act of 1864 was entitled: "An act to amend the criminal code of 1864 by designating the crime of Sabbath-breaking as a misdemeanor." The act of 1864, and also in 1887, was entitled: "An act to amend the criminal code of 1864 by designating the crime of Sabbath-breaking as a misdemeanor." The act of 1864, and also in 1887, was entitled: "An act to amend the criminal code of 1864 by designating the crime of Sabbath-breaking as a misdemeanor."

It is the interest of the state to have strong, robust, healthy citizens, capable of self-support, of bearing arms and of effecting this purpose by protecting the citizens from overwork and mental exhaustion, and by preserving their health and vigor, and by promoting their physical welfare of the citizen is a subject of great importance to the state, and has such a direct relation to the general good, as to make laws tending to promote that object proper under the police power, and hence valid under the constitution, which presupposes its existence and is to be construed with reference to that effect.

Idaho Law is Recommended. There can be no question that the Legislature would be authorized to prescribe a day of rest and recreation, and to exempt therefrom certain occupations. But such laws would have to be based on reason, and be consistent with common sense. It is the interest of the state to have strong, robust, healthy citizens, capable of self-support, of bearing arms and of effecting this purpose by protecting the citizens from overwork and mental exhaustion, and by preserving their health and vigor, and by promoting their physical welfare of the citizen is a subject of great importance to the state, and has such a direct relation to the general good, as to make laws tending to promote that object proper under the police power, and hence valid under the constitution, which presupposes its existence and is to be construed with reference to that effect.

China Troops Will Attend. MOY, Chinese, Oct. 12—General Swoon, with 1000 soldiers and 200 military cadets, has arrived here from Foo Chow to take part in the reception to the American battleship fleet.

FRAUD TRIALS BEGUN

Pacific Furniture & Lumber Co. Before Federal Court.

ONLY FIVE TO BE TRIED

Eleven Indictments Issued, but Three Plead Guilty—Others Fightives From Justice—Some Resist Extradition.

The trial of what the Government officials claim will develop the third largest attempt to secure illegal title to Oregon timber lands, began yesterday morning before Judge Wolverson in the United States Court. The case involves the Pacific Furniture & Lumber Company, a concern that had its headquarters in Los Angeles, and indictments were returned against 11 people, but at the present trial only five will be tried. Three of the defendants, when court was convened, entered a plea of guilty, one of the defendants is still a fugitive from justice, as well as others were in the indictment, while several others were successful in resisting removal from California.

Those who pleaded guilty yesterday morning were Freeman A. MacLemore, William T. Kerr and Ames S. Johnston, all of Curry County, Oregon. They were represented by their attorneys, and preferred to throw themselves upon the mercy of the court rather than stand trial. They announced that they reserve the right to present argument before sentence should be pronounced.

Marcus C. MacLemore, a prominent Los Angeles attorney, will defend William H. Smith, Richard Hynes, Lee R. Myers and A. H. Hedderly, and Jeremiah Huntley, ex-United States Commissioner, another of the defendants, will conduct his own defense.

Demurrer Takes Long Argument. The action of the defendants Stewart, Kerr and Johnston in pleading guilty, was the first surprise of the trial. They announced that they reserve the right to present argument before sentence should be pronounced.

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ROYAL Baking Powder Absolutely PURE Insures delicious, healthful food for every home, every day. The only baking powder made from Royal Grape Cream of Tartar—made from grapes. Safeguards your food against alum and phosphate of lime—harsh mineral acids which are used in cheaply made powders.

DECLARE WAR ON PESTS FRUITMEN ARE WORKING FOR CLEANER ORCHARDS. Horticultural Board Plans Estimate of \$4,275,000 as Receipts of Oregon Growers.

Interesting discussion of the best means of fighting the various pests that are the enemies of fruitgrowers was listened to at the semi-annual meeting of the State Board of Horticulture, which convened in the Chamber of Commerce auditorium yesterday morning and lasted all day.

Each Commissioner present submitted an extended and detailed report showing the results accomplished in each district during the past half-year since the last meeting. Better methods of orchard culture, more scientific work in fighting pests and better fruit throughout the state as the result, was the unanimous report of the Commissioners. Optimism was a marked feature of the meeting and it was predicted that within the next few years the Oregon apple will rule the world, as it does now the markets of the United States.

Wider distribution of Oregon fruits of all kinds was predicted as the result of the opening of the Orient to American production and the education of the Oriental people to the use of the products of the United States. President Newell predicted that within the next few years the fruit crop of the Pacific Northwest will be practically exhausted in supplying the demand of the Orient.

It was brought out by the reports of the Commissioners that the fruit crop of this year will about hold its own with the record yield of last season, although short crops in some lines, notably peaches and pears, will cut down the total value. The Commission is unanimous in its recommendation of smaller fruit farms and more intensive cultivation and says it will result in better fruit and higher prices for the Oregon yield.

Says Wife's Love Was Stolen. A. J. Noyes charges George Soller with alienating his wife's affections, in a suit for \$10,000, which he has filed in the Circuit Court. He says that he married in September, 1888, and lived happily with his wife, Josephine Noyes, until April 30, 1907. Then says Noyes, the defendant "intending to defraud the plaintiff of the love, affection, society and companionship of the said Josephine Noyes, plaintiff's said wife, and with plaintiff and said Josephine Noyes were living happily together as husband and wife, did entreat, induce, persuade and entice her to transfer her love and affections from the plaintiff to the defendant."

Stationers Printers Engravers Fifth and Oak Streets Rent a Piano You will want a piano in your home this Fall and Winter. It will afford you much pleasure. Perhaps you feel that you are not ready to purchase the piano you desire to own. Most musicians look forward to the time when they will own a Steinel Piano. Rent a piano from us and all the music you desire is at your command. We have the largest stock of pianos in the city and the finest line of old standard, reliable, well-known makes. Read the names of old friends—Steinel, Knabe, A. R. Chick, Everett, Loring, Peckard, Conover, Kingsbury, Wallington, Evey, Emerson, Kurtzman and others. Our music saloon is on the second floor, Sixth and Morrison. Entrance to store opposite Postoffice. Sherman, Gray & Co. "The Home of Dependable Pianos" Yin Kin Lum Chinese Restaurant Chop suey and puddies, Chinese and American cook. Merchant's lunch 25c. Open day and night. 1010 NORTH FOURTH STREET, Corner Everett. Home Phone, A 2768

COURTROOM SCENE AT THE MARTIN-WOLFF MURDER TRIAL. Martin is shown in the very center of the picture. The Oregonian photographer caught him unaware and in characteristic attitude. The unconcerned expression has occupied his features since the beginning of the trial. At his right are shown his lawyers, Seneca Fouts and J. A. Jeffrey. Mrs. Martin is obscured by Mr. Fouts. The other woman is Mrs. Martin's sister, Miss Griffin. At the right of the picture the state's attorney, J. J. Fitzgerald, is shown talking with Deputy County Clerk Wells.