

JURY IS PUZZLED IN CONVICT CASE

Deliberators Ask Further Instructions as to Attack Made on Guard.

TILTS MANY IN TRIAL

Death Is Penalty if Accused Prisoner Is Found Guilty of First-Degree Assault—Governor Attends Hearing.

SALEM, Or., April 4.—(Special).—At 11 o'clock tonight, after being out for six hours, the jury in the trial of Thomas O'Rourke, charged with assaulting Guard Jerry Simpson at the Penitentiary, was still undecided, coming into the courtroom to ask for instructions and again retiring.

The court had instructed the jury that three degrees of crime could be considered, one for assaulting an officer at the Penitentiary with a dangerous weapon, the penalty for which is death, and the other degrees being assault with a dangerous weapon, or simple assault.

The jury grappled over the question of whether O'Rourke knew Simpson to be an officer at the Penitentiary, and asked instructions on that point.

The trial today was replete with tilts between the opposing counsel, and accusations of political motives were flung back and forth between the attorneys. Governor West was an interested auditor behind the bar of the courtroom during much of the trial today.

Politics Enters Into Case.

Politics entered into the case when L. H. McMahon, one of the attorneys for O'Rourke, attempted to have introduced evidence tending to show that the prisoner had been driven to mental irresponsibility by the fare at the Penitentiary and he clashed with C. L. McNary, one of the attorneys for the state.

"I want to show that through the monotony of the food and because of food, most rank, given the prisoners even when there were worms in it, that this defendant has been driven to mental irresponsibility by the fare at the Penitentiary and he clashed with C. L. McNary, one of the attorneys for the state."

"I also want to show that for 20 days, 10 hours a day he was subjected to being tied to the bars of his cell, with his hands high above his head and his only diet was bread and water. There are other cruelties that I want to bring out to show that the treatment at the prison made this man mentally weak."

Attorney McNary objected, declaring that McMahon was in the case because of a personal animus against the administration and that his only desire in wishing to bring out this testimony was to discredit the treatment at the bar and not to save the prisoner at the bar.

Personal Animus Alleged.

"It is a matter of common knowledge that McMahon has borne a personal animus against the head of the institution for a number of years," he said. "This case should be conducted to determine justice for defendant and not to furnish sensational reading for the newspapers."

McMahon denied that he was in the case to injure the officials at the Penitentiary.

"On the other hand, however, Attorney McNary is in hand in glove with the administration and sits high in his counsel," he asserted. "It appears to me that the prosecutor is attempting to protect the administration rather than to see justice done for the prisoner."

Judge Kelly ruled for the prosecution and refused to allow the testimony to be admitted.

Trouble of Far Date.

The alleged personal animus that McMahon holds for Superintendent James of the Penitentiary is said to date back several years when J. K. Sears of McCoy brought suit against C. W. James. It being alleged that James converted state property to his own use while superintendent of the Penitentiary. This case was actually brought by McMahon, with Sears appearing as plaintiff. In a demurrer the defendant admitted the charges to be true, but the Supreme Court held that a suit of that nature could not be maintained by a taxpayer but must be instituted by the District Attorney.

During the trial today a number of convicts testified that Guard Jerry Simpson assaulted O'Rourke with a cane before O'Rourke stabbed Simpson. They stated that Simpson ordered O'Rourke "to shut up or I will break your head" and that he suited the action to the word and struck O'Rourke on the side of the head leaving an ugly gash.

Attorney Lord for O'Rourke subpoenaed five convicts for the defense and Attorney Winslow four for the state.

MANY MEET COMMANDER

Reception Given to Colonel and Mrs. Cornelius Gardner.

VANCOUVER BARRACKS, April 4.—(Special).—About 200 persons attended a reception tonight in honor of Colonel and Mrs. Cornelius Gardner. Colonel Gardner is acting commander of the Department of the Columbia during the absence of General M. P. Maas, who has been assigned to the maneuvers at the Mexican border. The reception was given by the officers and women of the post at the officers' club.

The receiving line included Colonel George K. McGinnis and daughter, Miss Isabel McGinnis, Colonel and Mrs. G. E. Bingham, Colonel and Mrs. James F. Rogers, Mayor and Mrs. H. C. Cabell. Many persons from Portland attended the reception.

HENRY CHILDREN TAKEN

(Continued From First Page.)

dren, custody of whom had been awarded to their father. The children were spirited away in automobiles and the fugitives are now believed to be headed for the Mexican border.

Mrs. Henry arrived in San Francisco from Seattle yesterday. She secured the services of half a dozen private detectives in opposition to a similar number employed by her husband to guard the children. She went to the St. Francis apartments at Clay and Jones streets and gained entrance through a ruse.

Detectives Carry Off Children.

Detectives employed by her husband were covered with revolvers by her own detectives, while the children were wrapped in blankets and spirited away.

Two automobiles had been left in waiting nearby and the woman with her children and the six detectives sprang into the machines and disappeared before those employed to guard the children were able to interfere.

No trace of the automobiles in which the woman and her children disappeared has since been found. It was carefully planned and skillfully executed. According to the facts set forth in a petition by Attorney W. H. Metson, for Mr. Henry, this morning, the man who supplanted Henry in his wife's affections and brought about a divorce was not content with that, but has now aided in stealing his children from him. The petition sets forth further that the mother is "of bad moral character and has been living with the said S. Foster Kelley." Thus far no trace of the fleeing woman, Kelley or the two children has been secured. Kelley is charged in the petition as follows:

Collision of Kelley Alleged.

"That the said S. Foster Kelley, affiant is informed and believes, is the 'angel and saint' of said Henry May Henry; that the said Ivy May Henry and said S. Foster Kelley have been living at the Hotel Savor, in said city, since the death of said Henry May Henry; that the said S. Foster Kelley is well supplied with money and, affiant is informed and believes, is colluding with the said Ivy May Henry and the said Pearl Wickoff to evade the law and deprive Albert J. Henry of his two children."

JAP TREATY IS RATIFIED

MIKADO PAYS HIGH HONORS TO AMBASSADOR O'BRIEN.

He Sends Personal Message to Taft Expressing Friendship—Treaty With Britain Signed.

TOKIO, April 4.—Ratifications of the American-Japanese commercial treaty were exchanged today, after a luncheon given at the palace by Emperor Meiji in honor of American Ambassador O'Brien. Premier Katsura and Foreign Minister Komura were present at the luncheon, preceding which the Emperor received Mr. O'Brien in private audience.

During the audience, His Majesty congratulated the diplomat on the share which he had in the negotiations, which made closer the relations between the two countries, and entrusted him with a verbal message for President Taft, in which the American executive is complimented on the conclusion of a treaty in which Japan places the highest possible value.

After the luncheon the Emperor personally handed to Mr. O'Brien an English translation of his formal message to President Taft.

The Anglo-Japanese commercial treaty has been signed and will be published tomorrow.

RULERS EXCHANGE GREETINGS

Mikado's Message Calls Forth Cordial Reply From Taft.

WASHINGTON, April 4.—As soon as President Taft received from American Ambassador O'Brien at Tokio, Emperor Meiji's message of cordiality, he cabled the Japanese ruler a reply in a similar vein.

The Emperor's message said: "The highest importance to the perpetuation of the relations of friendship and good understanding which have so long united our two countries, and believing that the treaty just ratified will serve to strengthen and render still more enduring those relations and knowing the important part you took in bringing about the fortunate results, I desire to express to you the sense of my high appreciation of your successful efforts and an assurance of my continued friendship."

The President replied: "I beg to assure Your Majesty of my deep appreciation of the friendly message sent through the American Ambassador on the consummation of the new treaty between our respective countries. I am happy to join with Your Majesty in the confident expectation that the treaty will result in binding still closer the ties that have so long united the peoples of the United States and of Japan in amity and peace. I also beg to assure Your Majesty of my hearty reciprocation of the sentiments of cordial friendship."

CREDITS NOT FOR PAROLE

Attorney-General Holds Only Convicts in Prison Get Privilege.

SALEM, Or., April 4.—(Special).—That credits given to criminals do not apply to those who are paroled, but only to those who are in the State Penitentiary, is the gist of an opinion announced by Attorney-General Crawford today in response to an inquiry from Governor West.

The Governor asked relative to the case of Arthur Hitchman, who was sentenced to serve four years from Marion County and paroled from the bench by Judge Burnett. He was sentenced three years ago at the April term of court. At the Penitentiary, had he served there, credits would reduce his term of servitude to three years, and in consequence, had he served, his term would have expired by limitation of law.

The Attorney-General says: "I beg leave to call your attention to section 10 of the Oregon Laws, which provides, in effect, that if a person paroled from the bench receives the minimum time, then the court may discharge such person or recommend to the Governor the pardon of such person, and shall recite the fact that such person earned such discharge or pardon by good behavior, and such discharge or pardon shall be as a complete satisfaction of the original judgment by which the fine or imprisonment in the Penitentiary was imposed, but the court cannot take into consideration any credits, other than to order good behavior generally, as to whether, if the person has served the minimum sentence provided by law, he shall grant an order of discharge."

The statute for credits does not apply to persons paroled from the bench, but only to those who are paroled from the Penitentiary.

Homeowners! Chehalis, Washington.

Surrounded by largest dairy, fruit and farming country in Pacific Northwest. Acreage inducements for intensive farming. County seat, Lewis County, where land is cheaper and the best. Chehalis is the liveliest inland Washington town of 5000 people. Paved streets, electric lights, sewerage, water, gas and all modern comforts. Has \$25,000 in public improvements under way now. Visit Chehalis and see Southwest Washington's largest farming section before locating elsewhere. Chehalis has a variety of manufacturing with large monthly payroll. For details, visit Chehalis, or address Citizens Club, Chehalis, Wash.

Dallas Brick Plant Begun.

DALLAS, Or., April 4.—(Special).—The Dallas Brick & Tile Company, with G. M. Partridge as manager, has commenced work on the construction and equipment of its large brick and tile factory east of this city. The plant will employ from 20 to 40 men.

STREET DIRT GIVEN

Property Owner May Claim Soil of Thoroughfare.

SUPREME COURT DECIDES

Holders of Abutting Land Can Demand Earth Excavated to Middle of Road, Says Justice McBride.

Other Cases Completed.

SALEM, Or., April 4.—(Special).—That a property-owner on an abutting street in Portland owns the soil to the middle of the street and that he still owns it when it is excavated to the middle of the street for the improvement of the street and that he has a right to take it away promptly without delaying the work of improvement, are points in a decision by Justice McBride. The decision was handed down by the Supreme Court today in the case of the John P. Sharkey Company, respondent, vs. the City of Portland, M. J. Connelley, W. Scott and T. McDougall, appellants.

The opinion is a reversal of the lower court, the suit being to restrain the city and contractors from removing the earth from an excavation made on Franklin street. The decree is reversed as to the City of Portland.

It is held that if there is a place convenient for the contractor to dump the surplus dirt it is the right of the owner to have it dumped at such place as he so indicates at the commencement of the work, and as dirt taken from such excavation is usually valueless unless the claim is made seasonably, it is further held, however, that the owner cannot require the contractor, at the contractor's expense, to transport the dirt at a distant or inconvenient place. To have the dirt so removed the owner must remove it promptly himself.

Krebs Wins Case.

Another of the famous Krebs vs. Livesley hop cases was decided by the Supreme Court today in an opinion by Justice Bean, to which Justice McBride dissents. The action was affirmed, Krebs winning this case.

The action was brought because of failure of Livesley & Co. to conform to certain conditions of a hop contract. The principal question in this case was that the contract was not severable and the respondent, having brought a prior action upon the same contract, could not sue again. The contract is held to be severable, however, at the option of the party, where the contract provides for separate settlements upon the delivery of a portion of the goods.

The action for damages of Gerking vs. Laidlaw, appealing from Multnomah County, is also before the court. The action for damages sustained by false and fraudulent representations respecting title to real property, the court holding there was not sufficient evidence to submit the cause to the jury.

In another Multnomah County case, Lane vs. Portland Railway, Light & Power Company, judgment was reversed in an opinion by Justice Bean, the action being brought for personal injuries and the court below directing a verdict for the defendant. The higher court finds sufficient evidence to submit the question to a jury.

Multnomah Case Returned.

Reversal of another Multnomah County case, Rail vs. Olson, in an opinion by Justice Burnett sends the case back, it being held that a reasonable time for an agent to procure a purchaser, where a time limit is prescribed in a contract and what would be a reasonable time is a question of mixed law and fact for the jury. Gunst & Co. vs. Bertha Myers, appealing from Multnomah County and an action of contract below directing a verdict for the defendant. The higher court finds sufficient evidence to submit the question to a jury.

In the case of Winslow, as administrator, vs. Rutherford, from Marion County, an appeal concerning the construction of a deed, the decree of the court below is modified in an opinion by Justice McBride. In this case a grantor made a deed to the appellant in trust for the use and benefit of his son, until the son should attain the age of 25 years. Prior to that time the son died. The court holds that the estate goes to the heirs of the son.

In Parker vs. Daly, appealed from Columbia County, a reversal is contained in the opinion of Chief Justice Eakin, the suit involving the right of a purchaser of real estate under a tax sale. It is held that the owner of the parcel title cannot be allowed by equity to stand by and allow a bona fide purchaser to make improvements and refuse to reimburse him. But it is held that the owner of a tax title is not a bona fide purchaser. The suit is dismissed.

Six Rehearings Denied.

Other opinions were handed down today as follows:

Miles vs. Hemenway. Mandate recalled and rehearing allowed.

Baker City Mutual Irrigation Company vs. Baker City. Rehearing denied.

Dowe vs. Courtney Lumber Company et al. Rehearing denied.

Davis vs. Manges. Rehearing denied.

Bennett Trust Company vs. Sengstacken. Rehearing denied.

Calapoola Lumber Company vs. Rice. Rehearing denied.

Purdy vs. Rice. Rehearing denied.

Zellig vs. Blue Point Oyster Company. Motion to dismiss appeal denied.

Francis vs. Mutual Life Insurance Company of New York. Motion to dismiss appeal denied in per curiam opinion.

Roads to Be Oiled.

At a meeting of the Ivanhoe Push Club

Care of the Hair in Cold Weather

(From the Southern Christian Chronicle)

"Many women take a needless risk in caring for the hair and scalp in cold weather. In spite of the utmost precautions danger of catching colds and colds is always present when the hair and scalp are washed."

"It is said that too much moisture is bad for the hair because it makes the scalp hard and scaly and the hair coarse and brittle. A dry shampoo not only removes all dust and excess oil, but is soothing, refreshing and invigorating to the hair follicles. Some use plain olive root for shampooing but it is not so satisfactory as a mixture of 4 ounces of orris root and 4 ounces of theriac."

"If anything will grow hair, theriac will, and it at least will make any hair light, fluffy and luxuriantly glossy. Just sift a tablespoonful on the head once a week, or whenever you wish to dress the hair for a special occasion, and brush the orris root and theriac completely through the hair."—Adv.

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Come to this EXTRAORDINARY SALE and buy your NEW EASTER SUIT at about HALF price, as these are the greatest bargains ever offered in Portland.

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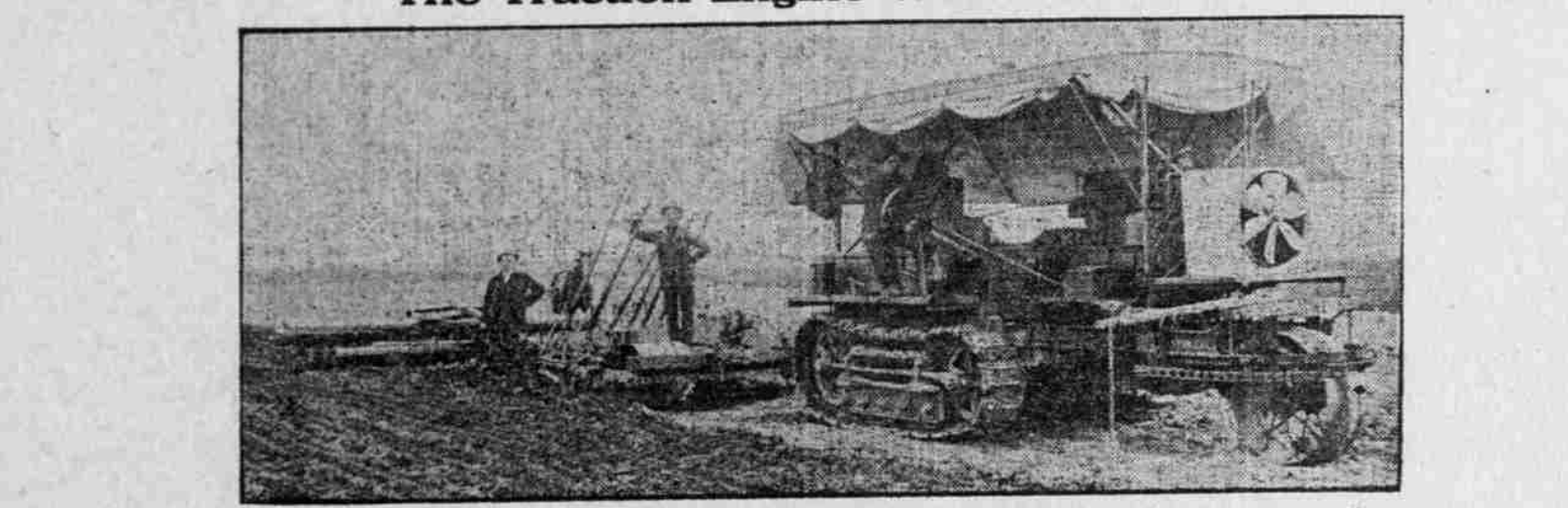
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