

## GOES TO THE JURY

### Argument in the Kennedy Case is Begun.

#### DOUBT IS PLEA OF DEFENSE

#### Minister Takes the Stand in His Own Cause—Used Bicycle to Take Trip on Night of the Burglary

**HAVE NOT YET AGREED.**  
HILLSBORO, Or., Jan. 17.—(Special.)—The jury in the Kennedy case has shown no disposition to agree on a verdict tonight. It is expected the discussion will last all night, with a possibility that a sealed verdict will be given in the morning.

HILLSBORO, Or., Jan. 16.—(Special.)—Before an audience that jammed the Washington County Courthouse this evening, District Attorney Harrison Allison closed the argument for the state in the case of Rev. E. H. Kennedy, on trial for burglary of the Warren house September 1. His was a brilliant effort, and the summing up was followed with the closest attention. At a late hour the case went to the jury, after instructions by Judge McBride.

About 2:30 this afternoon E. H. Tongue opened for the state in a carefully prepared arrangement of the testimony. Judge Hewitt, of Albany, for the defense, made a splendid argument. He was followed by Hon. F. B. Huston, of counsel for Mr. Kennedy, in an eloquent plea, using every possible argument touching on the question of doubt.

**Swears She Did Not Swear.**  
Miss Eva Weathered, stenographer, and who reported the preliminary, was a witness for the defense, and read her notes, showing that she had reported Mrs. Mackinder as saying, when she first met Kennedy:

"That man is a black man; he is not good."  
Mrs. Mackinder had testified that she did not so swear at the preliminary examination, according to her best memory. The idea of this was to show that the witness was prejudiced from the first against the defendant.

Mrs. Mackinder was again placed on the stand and questioned as to what she had sworn at the preliminary, and said that it was his pose in general, in holding the pistol, that made her say to herself: "The man that killed the man."

Sheriff Sewell was called and testified that he had searched the Kennedy home for the stolen goods and money, but nothing had been found, and that they were not yet recovered.

**"Could" With an Accent.**  
Miss Warren was then placed on the stand by the prosecution, in regard to her former testimony. The District Attorney, in direct, had her testimony reviewed, against the objection of the defense, so that she could explain the passage where she had sworn, at the preliminary, that she could be mistaken.

The state had asked her this question at that time, and after she said she could be mistaken:

"Do you believe it was Kennedy, the answer was: "I do."

"Witness remarked, in reply to defendant's counsel, Mr. Huston, if she had not sworn that she could be mistaken, that she had replied, "I could be mistaken," but that she had emphasized and infected the word "could." She said she was not positive whether she had told the robber, when he was committing the hold-up, that she never told a story, but that she had told him words to that effect.

**Generally Wears a Prince Albert.**  
Mrs. Kennedy testified that Kennedy had left home the Saturday before the robbery; that he had returned the night after the robbery on the evening train; that she had told Mr. Kennedy of the robbery at the Warren home, after he had returned from a trip to the postoffice in the evening; that he was not home the night of the robbery; that she had no knowledge of the stolen property; that Kennedy had but one Prince Albert coat at the time of the crime; that her husband was away a great deal of the time; that he had a bicycle and a motorcycle, and had sold accident insurance.

She said he had usually worn on his trips a short, square-cornered coat, and that he now had two Prince Albert coats, as one had been sent him from Pepper, Mass., some time in December, 1903.

Attorney Huston went on the stand to show that Mrs. Ingram had told him, the week after the robbery, that she had not seen a light in the room earlier in the evening (she testified in her deposition that she had seen a light earlier in the evening), but had only seen the light in the room between 11 and 12, August 12. This was done to show that she had told another story than that furnished by the deposition.

**In His Own Defense.**  
The defendant was then placed on the stand. He gave his story as follows, in effect:

Will be 35 next May; was born in Little Rock, Ark.; spent his boyhood days in Virginia, and then went to East Tennessee. In 1882 he was at Chattanooga, Tenn., as a printer, and worked in the composing-rooms of the Times and the Commercial; was in Chattanooga until 1888, when he went to Nashville, entering the university, and spent his vacations in the printing office of Chattanooga. In 1890 he left the university, and later went to Boston and then entered Harvard College.

He left Harvard in 1893, after three years; did clerical work for the secretary of the college, and his tuition at college was largely paid by this labor. He preached at odd times, at Malden, being ordained in 1894. He went from Malden to Pepper, in 1895, and stayed there two years. From there he went to San Mateo, Cal.; had preached in San Francisco once; remained at San Mateo until 1900, when he went to Albany. He was not in Albany in July, August or September, 1903, and there was no truth in Landis' testimony saying that he had seen him there this last summer; had crossed the Albany bridge once, when residing there, to play golf on the links.

In August, 1903, he was writing life insurance, and in quest of this business had visited John's sawmill, south of Hillsboro, had written three policies in this city and had written one at Boring, Clackamas County; left Boring on Monday morning, August 31, the night on which the burglary was committed, came back to Portland, reaching there at 11 o'clock; went to see Mr. Wetzel, for whom he was writing, as agent, and also saw the magazine, publisher, relative to an article on "Our Forest Trees and How to Recognize

Them" (published in Pacific Monthly); afterward made some purchases, and then went to a store where there was a special sale on coffee, where he waited in long time, as there were many after the bargain on account of the low price; then went and secured a room at the Multnomah block, registering at that time.

He then went and inquired about the cars to St. Johns, contemplating a trip to the electric sawmill, on the accident insurance business; concluded that he would go over on a wheel; after much difficulty finally secured a wheel; wanted to go on wheel because he was informed he could not get back from St. Johns after 9 in the night. He had to go to St. Johns' restaurant, and met John Gault at that time, told him he was going to St. Johns. He says he took the wheel because he could not get a better one; gave the bicycle man his card and told him he was stopping at the Multnomah block, and that he would return the wheel the next morning; left lodging-house about 7:30 P. M., walked down to Fourth and finally mounted bicycle, crossed the steel bridge, went out on Williams avenue to the transfer station, from there to Oakley Green, where he stopped; he asked the way of Mr. Garrison (who yesterday testified that he did not remember the incident), and was told "straight ahead"; noticed there were two boys in the porch.

He finally made his way to the Peninsula schoolhouse, and then asked Mr. Frank Harrington the way to the electric sawmill. This was about 8:45, or between 8:45 and 9. Mr. Harrington testified that he testified that Kennedy had at one time, about two weeks prior to September 15, asked him the way to the mill, at about 8:45, or between 8:45 and 9. He said that it was the night of the robbery, the night before, or the night after. Kennedy said that he received his answer, and started on, meeting two men beyond Fortmouth, from whom he inquired the way. He says he then gave up the trip, as they apprised him there was no place to stay all night at the mill, and it was getting late. He asked them to instruct him, as to a better road back to Portland, conversed a few minutes, and then started on the return trip; crossed back by the steel bridge, and stopped to rest at the candy stand on the Portland street.

Walked his wheel up Third street, as he had no light on the wheel; walked to Fourth and Stark, then rode to the lodging-house, tying his wheel to the hall railing with a twine string, dark in color, that it might not fall down, and went to his room, where he read a while, and then made a splendid argument. He was followed by Hon. F. B. Huston, of counsel for Mr. Kennedy, in an eloquent plea, using every possible argument touching on the question of doubt.

He returned from Oregon City to Portland, arriving just before 12, and took lunch at Watson's, at sharp noon. From lunch he went to the Public Library, then to the Marquam building to see his insurance employer; met Rev. A. Robinson; went back to the library, and from there to his lodging-house, where he told the maid he would not want the room that night. He gathered up his effects and went back to the Union Depot, leaving out for Hillsboro, where, the next day, he was arrested.

Mr. Kennedy said he had no personal knowledge of the robbery; swore he was not there; was at no other place than related in his story; had never rode a wheel over the Portland-Hillsboro road; had ridden a wheel at Albany some; was not on a wheel while at Forest Grove, living there, and had owned no wheel while at Hillsboro; had moved to Hillsboro in February or March, 1903, and testified that, altogether, since being at Hillsboro, he had not ridden more than 40 miles on a bicycle; admitted that he had ridden in and around this place on borrowed wheels, or hired wheels, 10 or 12 times; said that when arrested he did not use the expression "job," but said, knowing the Warren house had been robbed, "Are they accusing me of entering Mr. Warren's house?"

On cross-examination he said he understood the difference between burglary and larceny, knew the robbery had occurred, as his wife had told him the evening before he had sworn, at the preliminary, that she could be mistaken.

He said he had not seen a light in the room earlier in the evening (she testified in her deposition that she had seen a light earlier in the evening), but had only seen the light in the room between 11 and 12, August 12. This was done to show that she had told another story than that furnished by the deposition.

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## HE FINDS NO CAUSE

### Chief Justice Refuses Stay in Armstrong Execution.

#### THREE JUDGES SIT EN BANC

**Probable That the Decision on the Case Next Wednesday Will Be in Accord With Order Made Yesterday.**

SALEM, Or., Jan. 16.—(Special.)—Chief Justice Moore, of the Supreme Court, has refused to grant a stay of execution in the Pleasant Armstrong murder case. Armstrong is condemned to hang next Friday. He took an appeal to the Supreme Court, and, pending the hearing, asked for a certificate of probable cause for appeal.

**Chinese Without Certificates.**  
WEISER, Idaho, Jan. 16.—(Special.)—Three Chinese are held in jail here pending their trial before the United States

**DEBATING TEAM OF THE UNIVERSITY OF OREGON DEFEATED BY THE TEAM FROM WHITMAN COLLEGE**



Ralph Eason.

District Court. They were arrested by Chinese inspectors Hampden and Ebera, Helena, Mont. They could not produce certificates entitling them to remain in the country, and there is no evidence of their having registered as required by law, although they claimed to have been in the country for about 12 years.

Two other Chinese who were known not to have papers escaped from the officers. Inspectors Hampden and Ebera are making a thorough canvas of the state and are rounding them up wherever they are able to find a Chinese without a certificate.

**Plan for a Y. M. C. A. Building.**  
CORVALLIS, Or., Jan. 16.—(Special.)—The erection of a Y. M. C. A. building, in connection with the college, is a plan that is under consideration by the Y. M. C. A. organization. About \$4000 is available for the purpose from funds secured by dona-

peal, in order that the execution might be stayed.

After Chief Justice Moore made the order denying this application, the court directed the clerk to notify Armstrong's attorney, George J. Bentley, that if he will appear here next Wednesday the case will be tried on appeal on the merits.

The order made by the Chief Justice does not necessarily dispose of the case. The appeal is still pending. The Chief Justice certified that after inspecting the record he could find no error, and therefore is of the opinion that there is no probable cause for appeal. It is possible that after a hearing before the court upon the merits, an error might be found, but this is unlikely.

Although the decision today was rendered by the Chief Justice alone, the argument was heard by the three judges en banc, and it is altogether probable, though not certain, that if the case be heard next Wednesday the decision will be in accordance with the order made today.

Deputy Clerk Benson telegraphed Armstrong's attorney this afternoon that he can try the case if he wishes next Wednesday. This gives Armstrong an opportunity to exhaust every possible remedy in the State Courts, and secure a complete record here before going into the Federal Courts. The order made today is not a final judgment in the case, but merely decides a stay of execution.

In order to get a final judgment the case must be heard on appeal, and the opportunity to get a final judgment is what was offered Armstrong when the court informed his attorney that the case will be heard Wednesday if he wishes.

Attorneys view the hearing Wednesday as a matter of form, for the purpose of enabling Armstrong to take advantage of every legal right he may have, or may think he has. It has been announced by Armstrong's attorneys that they will take the case into the Federal Courts. They may wish this immediately, or they may prefer to wait until the case is heard on its merits first, thinking thereby to have a better chance of winning in the higher tribunal. The order made by Chief Justice Moore was as follows:

It appearing that the undersigned that Pleasant Armstrong, was convicted in the Circuit Court of the State of Oregon for the County of Baker of the crime of murder in the first degree, alleged to have been committed therein December 23, 1902, by then and there unlawfully, feloniously, purposely, and of deliberate and premeditated malice, killing one Minnie Ensminger, and having been sentenced to be hanged in that county by the neck until he was dead, the Sheriff thereof was ordered to execute said sentence; that the defendant appealed from the judgment so rendered, and at the trial thereof the judgment of the lower court was affirmed; that the case was then removed to the court below, that court appointed Friday, January 23, 1904, as the day for executing the original judgment, at that place, by the officer, and in the manner hereby stated; that the defendant appealed from the latter judgment, and his attorney, George J. Bentley, on January 15, 1904, applied for a certificate of probable cause for appeal, which the District Attorney for Baker County, appearing in person pursuant to a subpoena of the parties; and it further appearing, from an inspection of the bill of exceptions on this appeal, which was submitted at the time of making this application, from the argument of counsel, in and from the authorities then and hereafter submitted by defendant's counsel, that in the appointment of the day for executing the original judgment, and in rendering the judgment herein appealed from, no error was committed by the trial court. I, therefore, certify that, in my opinion, there is not probable cause for the appeal.

Given under my hand this 16th day of January, A. D., 1904.

F. A. MOORE,  
"Chief Justice."

**TWELVE THOUSAND FOR A LEG**  
Grant's Pass Man Wins Suit Against Southern Pacific.

GRANT'S PASS, Or., Jan. 16.—(Special.)—The case of O. A. Dunham vs. the Southern Pacific Company was concluded tonight and the jury brought in a verdict of \$12,000. Dunham sued for \$30,000 for the loss of a leg in the Grant's Pass yards. The accident was caused by a defective engine. He was represented by A. S. Bennett, of The Dalles, while the railroad company was represented by Attorneys Fenton and Lighter.

**PLENTY TO EAT AT TANANA.**  
Provisions Have Been Shipped from Eagle and Other Towns.

SEATTLE, Jan. 16.—When the steamer A-B-I left Shagway 30 days ago, R. P. People not only brought the news directly from Dawson that those in the Tanana diggings are far from starvation, but also

## FATAL FALL DOWN SHAFT

### Wheeler Heavy Truck into Space in Shaft of Hotel Elevator and Goes With It.

#### Wheeler Heavy Truck into Space in Shaft of Hotel Elevator and Goes With It.

VANCOUVER, B. C., Jan. 16.—(Special.)—William C. Munger, a well-known young man of Vancouver, fell from the first floor into the elevator shaft of the Columbia Hotel last evening at about 8 o'clock. Death resulted today at about 8 A. M.

Munger, who was an employee at the hotel, was engaged in taking some trunks to the upper floors in the freight elevator. It is supposed that when he stepped at the first floor he did not lock the elevator, which went on to the top when the weight was removed.

Thinking that the elevator was as he left it, he attempted to place one of the trunks on it. As the heavy trunk swung out into the open shaft it fell to the bottom, carrying the unfortunate victim with it. At the time of the accident there appeared to be no indications of serious injury. There was no apparent evidence of internal injuries and no bones were broken.

During the night the patient showed signs of injury to the brain. This condition prevailed until 9 this morning, when death came. The young man was the very popular son of Mr. and Mrs. Albert Munger. The funeral will take place Monday, January 18, from the family residence. The interment will be in the Lone Fir Cemetery, Portland.

**ON SIDE OF FAIR.**  
(Continued from First Page.)

for the packers. This would amount to a gross value of \$2,574,715 for an estimated total of \$4,414,715 for the entire state. This is a conservative estimate, for a great quantity of one kind or another of the storage product, which brings a higher price than the product put up in cans.

Truth be told, this will answer your purpose, and will reach you in time, so that you may make use of it. I remain yours very respectfully, H. G. VAN DYKE, Master Fish Warden for the State of Oregon.

Hon. Jefferson Myers, Portland, Or.—Dear Sir: In compliance with your request for statement of the production of the mines in the State of Oregon for 1903, I have the honor to state that I am not familiar with the output of the said mines in Baker County, but am familiar with the output of the mines in the State of Oregon for 1903. In view of the fact that this only represents about 12 per cent of the mines producing in the State of Oregon, it gives you an idea of the comparison of the whole amount of money being spent for developments in this state.

Trusting that the above information may be of use, I am, yours very truly, FRED R. MELLIS, Superintendent for St. Louis Fair, Oregon.

I herewith submit a report from the Manufacturers' Association and the Chamber of Commerce from the City of Portland, in the State of Oregon.

The estimate of the natural resources of the State of Oregon for 1903 is as follows:

Wheat, corn, hay, potatoes, hops, barley, vegetables, etc., etc., \$75,000,000  
Wood and timber, etc., etc., 3,000,000  
Sales of stock, etc., etc., 12,300,000  
Manufactures, etc., etc., 2,500,000  
Fruits, etc., etc., 4,200,000  
Total, \$97,000,000

Oregon Coast streams and bays, fish and shell fish consumed locally and shipped abroad, 3,500,000  
Timber and forest product, poles, ties, cordwood, hardwood, etc., etc., 12,000,000  
Manufactures, etc., etc., 2,500,000  
Gold, silver, borax, coal, etc., etc., 6,000,000

Total output of Oregon farms, orchards, ranges and factories, \$208,387,000. The above statement will indicate something of the growth of the Oregon country for the past 50 years.

I believe the immensity of the trans-Pacific world and the opportunity it presents to us to make a deep impression upon us American people, and to make a deep impression upon the people of the world, is one of the greatest of the age. The population of the world is now over one-third of the total area of the earth. The population of the United States is now over one-half of that of the world. China and its dependencies, Japan, Asiatic Russia and Corea have over 425,000,000 inhabitants, or five times the total population of the United States and its possessions. Asia, and the islands of the Pacific, annually buy and sell goods valued at \$2,500,000,000; a larger amount by \$400,000,000 than the total of the imports and exports at San Francisco in the 47 years between July 1, 1856, and June 30, 1903. If the United States should buy from Asia and Oceania all its imports, and sell to Asia and Oceania all its exports, it would exhaust the whole of its foreign commerce—and Asia and Oceania, to meet their requirements, would have to go into the other markets of the world with over \$500,000,000 worth of commodities a year. In other words, Asia and Oceania can "buy and sell" the United States, as the saying is, without seriously disturbing the equilibrium of their commerce. It is of relation to this vast trade field, the United States is now practically an insignificant factor. Of its total imports, a little over 14 per cent comes from Asia and 1 1/2 per cent from

brought word that the fact is so well known in Dawson and the reports from the diggings are so substantial that a small stampede has been going on from the northern metropolis.

Food has been shipped into Tanana from Eagle and other surrounding towns, and although the quality was not equal to that in Dawson, it was nourishing and plentiful.

## FIRE THREATENED THE TOWN

Lewiston, Mont., Loses a Business Block and a Hotel.

HELENA, Mont., Jan. 17.—(Special.)—Shortly after midnight this (Sunday) morning fire started in the Lewiston Hotel, at Lewiston, Fergus County, and before it was got under control consumed an entire block of business structures. The loss cannot be estimated at this hour.

Only for the fact that a mere breeze was blowing was the entire business section saved, as the water plant had suspended operations for repairs. An old engine was used to pump water from the creek, which, with the efforts of the entire population, the fire was finally conquered.

It was at first reported that seven lives had been lost, but it is now believed that all the guests escaped from the burned structure. Among the firms to suffer were several grocery stores, restaurants, sa-

loons, dry goods stores and the Bank of Fergus County.

**Failure of Pig Iron Merchant.**  
SAN FRANCISCO, Jan. 16.—The Examiner announces today the failure of Seymour R. Church, a California pig iron merchant, the liabilities being placed at \$235,000. The three principal creditors mentioned in connection with the failure are Balfour, Guthrie & Co., Gilvin & Eyre and Meyer, Wilson & Co., the leading importers of pig iron at this port.

The failure is said to be due to the effect that the capacity of the Coast to consume pig iron was overestimated, and it is also said that the three principal creditors had likewise overestimated the market, which has in consequence become glutted. To complicate matters, there has been a general fall in prices all over the country, the decline in the East of late being in the neighborhood of 25 per cent. It is understood that Church has contracted for a number of shipments of pig iron for this port which have not yet been cleared.

It appears that the merchant, defendant Armstrong, was convicted in the Circuit Court of the State of Oregon for the County of Baker of the crime of murder in the first degree, alleged to have been committed therein December 23, 1902, by then and there unlawfully, feloniously, purposely, and of deliberate and premeditated malice, killing one Minnie Ensminger, and having been sentenced to be hanged in that county by the neck until he was dead, the Sheriff thereof was ordered to execute said sentence; that the defendant appealed from the judgment so rendered, and at the trial thereof the judgment of the lower court was affirmed; that the case was then removed to the court below, that court appointed Friday, January 23, 1904, as the day for executing the original judgment, at that place, by the officer, and in the manner hereby stated; that the defendant appealed from the latter judgment, and his attorney, George J. Bentley, on January 15, 1904, applied for a certificate of probable cause for appeal, which the District Attorney for Baker County, appearing in person pursuant to a subpoena of the parties; and it further appearing, from an inspection of the bill of exceptions on this appeal, which was submitted at the time of making this application, from the argument of counsel, in and from the authorities then and hereafter submitted by defendant's counsel, that in the appointment of the day for executing the original judgment, and in rendering the judgment herein appealed from, no error was committed by the trial court. I, therefore, certify that, in my opinion, there is not probable cause for the appeal.

Given under my hand this 16th day of January, A. D., 1904.

F. A. MOORE,  
"Chief Justice."

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Provisions Have Been Shipped from Eagle and Other Towns.

SEATTLE, Jan. 16.—When the steamer A-B-I left Shagway 30 days ago, R. P. People not only brought the news directly from Dawson that those in the Tanana diggings are far from starvation, but also

brought word that the fact is so well known in Dawson and the reports from the diggings are so substantial that a small stampede has been going on from the northern metropolis.

Food has been shipped into Tanana from Eagle and other surrounding towns, and although the quality was not equal to that in Dawson, it was nourishing and plentiful.

It appears that the merchant, defendant Armstrong, was convicted in the Circuit Court of the State of Oregon for the County of Baker