

CHARGE OF VENUE

J. Thorburn Ross and Associates Will Be Tried in Marion County.

OPINION IS NOT UNANIMOUS

Judge O'Day Dissents From Three Other Jurists, Declaring That Fair Hearing Could Be Had in Multnomah.

J. Thorburn Ross and his fellow officials of the Insolvent Title Guarantee & Trust Company will not be tried in Multnomah County on the felony charges growing out of the alleged wrecking of the bank. Change of venue to Marion County was granted Ross yesterday afternoon by the State Circuit Court for Multnomah County. The order is applicable to the similar charges against T. T. Burkhardt, John E. Atchison and George H. Hill.

The change was not granted with the unanimous consent of the circuit judges of this district. Judge O'Day dissenting from the opinion concurred in by Judges Cleland, Gantenbein and Bronaugh. In a remarkable summary of the case and of his reasons for refusing to assent to a change of venue, Judge O'Day takes a subtle fling at the practice of individuals and corporations in taking advantage of loopholes afforded by the law. He is unable to find any justification of Ross' claim that an impartial and entirely fair trial could not be had in this county.

No Comment on Ruling.

The order granting a change of venue was issued by Presiding Judge Cleland without comment or the handing down of an opinion. He merely announced from the bench that the change would be allowed. Judge O'Day saying immediately afterwards that he did not concur in the decision. His attitude, however, does not directly affect the case, and the change will be made at once. District Attorney Manning insisting that there be no delay. The proceedings attendant on granting the change occupied less than five minutes. At 2 o'clock Mr. Manning appeared for the State with Attorneys McCamant and Simon, present in Ross' interest. Judge Cleland presented the decision at once.

"In the case of the State of Oregon versus Ross, in which a motion for a change of venue has been submitted and taken under advisement by the court, I reached the conclusion that the change ought to be granted," Judge Cleland said. "All the cases will be transferred to Marion County."

O'Day Files Written Opinion.

Judge O'Day at once stated his opposition to the fact that the motion on opinion has been filed," he said. "I desire to say that I dissent from this ruling and will file with the clerk a written statement giving my reasons for dissenting."

Mr. Manning then arose to say that he wanted the records made up at once so that the case can be transferred without unnecessary delay. Later he filed a paper announcing his purpose of filing a motion on Monday asking that instructions be given the clerk of the court to the effect that the motion for a change of venue and the exhibits attached thereto is not a part of the proceedings or the original papers to be transferred.

Fifteen minutes after the motion for change of venue had been allowed Judge O'Day presented a typewritten statement of his reasons for not concurring. His statement is in many respects a masterly summary of the situation, in which Judge O'Day makes allowances for changes in modern society and defends the average juror. He points the idea that the Title Guarantee & Trust officials could not receive a fair trial here and, in calling attention to the fact that the motion for change of venue is printed in the newspapers, suggests that residents of other communities possibly read newspapers, the modern medium for the dissemination of news. Judge O'Day's statement in full is as follows:

On account of the difference of opinion upon the motion for a change of venue between myself and the majority and entertaining the views I do, I regret to say that I am compelled to dissent. This motion is based upon the ground of prejudice among the people in Multnomah County to such an extent that the defendant cannot procure a fair and impartial jury to pass upon the facts in this case. The evidence submitted here to support that contention is largely based upon the attitude of certain daily papers in regard to the publication of facts or alleged facts, following the failure of the Title Guarantee & Trust Company, with which the defendant was connected. It is said that the prejudicial statements in the papers are such that the defendant is innocent, but the defendant is guilty, and that this idea has become generally accepted in the community, and the defendant cannot have a fair and impartial jury for this reason.

It goes without saying that the defendant in a criminal action is entitled to a fair and impartial trial. This is a constitutional guaranty that stands at the threshold of every case, and whenever it sufficiently appears that such a trial cannot be had, it is the imperative duty of the court to grant a change of venue. But no such condition exists in this case, at least there is no evidence to warrant such a conclusion. It is true there are the affidavits of certain individuals here, expressing their opinions, but these have been no attempt to secure a jury in this case. There are submitted affidavits of persons equally creditable that a fair trial can be had. It has not been demonstrated by persons actually called to try the defendant that they have shown any prejudice. The affidavits are not here, as they were in the O'Day case, 19 Oregon 397, where two trials had been had, but, as I have stated, the substance of the allegations is that the people read the newspapers, and as a result of this had become prejudiced.

Some Conditions in Other Counties.

When a change of venue is had, it becomes an imperative duty of the court to transfer the case to the nearest county where a fair and impartial trial can be had. In the first place, there is no evidence here that in any county to which this case should be transferred the same conditions do not exist, viz., that the persons who are liable to be called as jurors in Multnomah County, it is also said there are large numbers of depositors, but it does not appear that these depositors are persons eligible to serve as jurors, and the probability is that a very large number of them are not, or does it appear what proportional number of these depositors are eligible

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Multnomah County, though it may be assumed that most of them do so reside. It is not claimed in this case that the persons who have been the judges of this court are prejudiced so that they could not give the defendant a fair and impartial trial. In fact, the whole theory of this prejudice in the community arises from the fact that there is some kind of a popular belief among lawyers, and presumably also among the judges, that jurors are predisposed to be effected by those things that do not affect lawyers or judges.

To this proposition I do not give my assent. There are certain interests, and especially to representatives of those particular interests whose property largely consists in the capitalization of special privileges in the form of franchises, etc., who constantly seek to instill in the minds of lawyers from the State, a lawyer enters the law class until he afterwards becomes a judge, that the average citizen who is called to the jury will enter a jury box with a predisposition unjustly and wrongfully to take from those who have and to give to those who have not.

Deals Jurors Disposed to Be Unjust.

It rarely enters the mind of any lawyer or judge that he would be affected by this disposition, but it is the sentiment of many lawyers, as I have said, and presumably some judges, that this is true, viz., that a juror is unjust, that they are against corporations, and, as I have said, that the predisposition exists not to be fair and impartial. For that reason it is assumed they are affected by the newspapers. Of course, no lawyer or judge will admit that he is so affected. That is a matter that applies usually to the citizens who happen to be eligible to jury duties, or to what is termed the "mob" or the "rabble" or the "mob" he always includes every other person except himself in that category.

Samuel Ackley.

Pioneer of Lewis County.
WINLOCK, Wash., April 1.—(Special.)—Samuel Ackley, an old pioneer of Lewis County, died at his home, three miles east of Winlock, Monday morning. He was born in Genesee County, N. Y., May 10, 1827. He was married to Miss Almira M. Clark at Chabawa, Mich., April 20, 1848. With his wife he moved to Hillsboro, Or., in 1871, and from there to Winlock in 1881. He was the father of 13 children, nine of whom are living. Mrs. Carrie McLeod, of Chabawa, Mrs. Clara Freeman, North Talima, Wash.; M. D. Ackley, San Quentin, Cal.; Miss Jennie and Messrs. John, George and Byron Ackley, and Mrs. Willis Champ, of Winlock; and Rodney Ackley, of Mabton, Wash.
His wife died at Hillsboro, Or., in 1876.

where I had reason to be dissatisfied with their verdict." And further, in speaking of a jury, says: "It is shortsighted and not justified. If judges will do their duty, they will do their duty. Instances might be multiplied by those most competent to judge that this assumption that jurors are affected differently by the facts arising in the direction of the setting sun of the past, rather than to the horizon of the future. The conservatism ought not to be such as to prevent the courts recognizing the progress of society. To say upon mere conjecture that jurors will be affected by the recital of the facts arising in the community in the newspapers and therefore, that the defendants herein would not get a fair and impartial trial is an assumption that is not warranted by the experience of mankind. And the courts ought to practice a conservatism

In this regard, but detract from the wise administration of the law so as to prevent that administration from being an aid and help to society.

Newspapers Part of Society.

Newspapers, courts and churches are all a part of society. And in allowing this motion a precedent is set by which any person may seek a change of venue from the place where trial by law is required to be had, merely because the newspapers are recording the events of the day by publishing the daily transcript of the proceedings in the court. The fact is, however, that this is an age of wireless telegraphy, telephones and newspapers, and the average citizen wants to know today the principal events that happened in the world yesterday. The newspapers are the medium for the dissemination of this news.

In my opinion, this idea that jurors are predisposed to be unjust is wrong in theory and untrue in fact. Judge Dillon, who is the lawyer living in his book, "The Law and Jurisprudence of England and America," page 12, says: "I have tried literally thousands of cases with juries, and the instances are few actions happening in the community. As I said, if it should be shown in any particular case such local prejudice exists, that a fair jury cannot be obtained, there is no doubt that a change of venue should be granted; but the attempt to get a jury ought at least to be made, or at least it ought to be attempted, and the mere opinion of certain persons as expressed in this particular case, Multnomah County contains a large percentage of the population of the state, and I believe that the defendant could have as fair and impartial a jury in Multnomah County as he can have in any other part of the state. For the reasons heretofore stated, this motion for a change of venue should be denied."

Manning Sorry of Change.

District Attorney Manning last night was asked what he thought of the action of the court in granting the change of venue, and said:

"I am sorry that the court granted the change of venue in this case, but any man who is a lawyer or a judge, and who is not a fair and impartial trial, no matter what the defendant may be accused of, and it would be a sad commentary on our citizenship if such were not the case. I am glad, however, that the court did not send the case to some isolated county in this state where there would be no term of court for from six to eight months, as I am sure we can try the case in Marion County some time during the present month. I talked with District Attorney McNary, of Salem, by telephone this afternoon, and he tells me there will be no trouble in getting the case set for trial."

"I sincerely hope that the defendants will not be permitted to file any motions which would only delay the trial of the case. I will have the transcript prepared immediately and filed with the Circuit Court of Marion County within the next two or three days and will then immediately ask to have the case set down for trial and my witnesses subpoenaed."

When asked what would be the expense of trying the case in Marion County, Mr. Manning said:

"There are three or four cases to be tried and the probability is that it will cost the county \$10,000 or \$15,000, which is, in my judgment, an unnecessary expenditure, as the case could be tried in Portland without being one dollar out for witness fees, because in criminal cases a witness is not entitled to fees unless he will have traveled more than two miles. But by trying the case in Marion County, the taxpayers of Multnomah County will be asked to pay the expense of mileage for witnesses, together with a per diem for their services while detained by the trial. It will be my intention, however, to shorten the case as much as possible and try it out this month."

Plead Without Appearing.

Robert Baker and Belle Davis Deny Felony Charge.

Robert Baker and Belle Davis, charged with felony, pleaded not guilty in the State Circuit Court yesterday afternoon, without appearing in court or undergoing the formality of arrest. Having learned that they had been indicted by District Attorney Manning, the two sent their lawyers, Alex Sweek and A. Walter Wolfe, into court to plead for them. Efforts to locate and arrest them, previous to this time, had not been successful. Their means of submitting to arrest through their attorneys and answering to arraignment without being in court was rather an unusual one. Their plea of not guilty was duly received and the case will be set for trial on Monday, so Judge Cleland announced.

Clerk's Mistake is Costly.

Miss A. L. Carroll Awarded Damages for Confiscated Ticket.

The Oregon Railway & Navigation Company will have to pay Miss A. L. Carroll the sum of \$200 because one of its ticket agents made a mistake. The agent in

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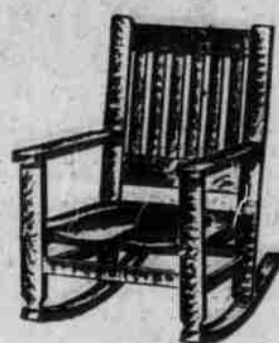
China Cabinet in quarter-sawn oak, bent-glass ends, finished golden; price, \$21.50

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Oak Morris Chair, in weathered or golden finish, loose cushions, made in corduroy or pretty figured velours; priced \$11.00

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Mission Rocker in saddle seat, weathered or golden finish; price, \$9.00

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- 5 patterns 8 ft. 3 in. by 10 ft. 6 in. Wool Velvet Rugs—sp, \$18.75
- 10 patterns 8 ft. 3 in. by 10 ft. 6 in. Tapestry Brussels Rugs—special, \$13.25
- 5 patterns 9x12 feet Smith's Velvet Rugs—special, \$29.50
- 7 patterns 9x12 feet Fiber Rugs, special, \$11.65
- Royal Axminster Carpet, per yard, \$1.44
- Hartford Brussels Carpet, per yard, \$1.22
- Amber Velvet Carpet, per yard, \$1.15
- Lakeside Brussels Carpet, per yard, 80c
- Nonpareil Half-Wool Ingrain, per yard, 67c
- Park Mills All-Wool Extra Super Ingrain, per yard, 90c



"Heywood" Go-Cart, reed body—upholstered seat and back; heavy rubber tire \$11.50

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question, whose name does not appear, was approached by Miss Carroll, who asked him to have her return ticket to Fort Dodge, Ia., validated. He suspected her of being other than the original holder of the ticket, confiscated her transportation and appropriated for his company the sum of 50 cents, which she had tendered for validation of the ticket.

Miss Carroll took her case into court and it was decided yesterday afternoon by Circuit Judge O'Day. The court directed that the company pay the young woman \$20 as compensation for heretofore feelings in having her ticket taken away from her and in addition to reimburse her transportation to Fort Dodge.

The incident forming the basis of the action occurred two years ago, when Miss Carroll was here as a delegate to the Christian Endeavor Convention.

COLD RECEPTION FOR HUSBAND

Shanz Declares Wife Struck Him With Beer Bottle.

Arthur A. Shanz says he found his wife, Evelyn Shanz, out with another man when she should have been home tending the baby. According to his story, he entered a room where they were enjoying beer tete-a-tete. His reception was not enthusiastic. She cursed him and to add emphasis to her views of his intrusion on her entertainment in honor of another gentleman, struck him in the eye with a beer bottle, which chance to be convenient so he says. Shanz embodies this story of domestic suffering in a divorce complaint filed with

GROCCERS OFF TO BOSTON

Portland Men Will Attend National Convention in May.

A special car will probably be chartered by the delegates of the Oregon Retail Grocers' and Merchants' Association to attend the National convention of the Retail Grocers' Association, which will be held in Boston, May 11 to 14. The Oregon organization expects to send 18 delegates. Stops will be made at Salt Lake City, Denver, Kansas City, St. Louis or Omaha, Chicago, Detroit and Buffalo.

Aside from the principal purpose of the trip, which is to capture next year's National convention for Portland, much good work will be accomplished for this city and state. Tom Richardson, manager of the Commercial Club, will accompany the party and will make the speech of invitation to the grocers to lead their next convention in Portland.

In addition to that, arrangements will be made with the various commercial organizations of the cities through which the party will pass to entertain the Oregon delegation and considerable publicity for Portland and Oregon is expected to result.

Upon the return trip delegates will be given their choice of routes and arrangements will be made to have them interviewed in cities where they

stop. This will all result in Portland becoming better known through the East, and as Mr. Richardson will be along, there is said to be little danger that the resources of Oregon will not be exploited fully on this trip.

In some Wisconsin schools a phonograph which repeats speeches as recited by eminent actors has been introduced to teach the public declamation.

No woman's happiness can be complete without children; it is her nature to love and want them as much as you as it is to love the beautiful and pure. The critical ordeal through which the expectant mother must pass, however, is so fraught with dread, pain, suffering and danger, that the very thought of it fills her with apprehension and horror. There is no necessity for the reproduction of life to be either painful or dangerous. The use of Mother's Friend so prepares the system for the coming event that it is safely passed without any danger. This great and wonderful remedy is always applied externally and has carried thousands of women through the trying crisis without suffering.

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