

CHANGE OF VENUE BAD PRECEDENT, SAYS O'DAY

Circuit Judge Files Vigorous Opinion Dissenting From Decision Granting Ross et al Trial in Another County—Fair Treatment Here, He Says.

Judge Thomas O'Day yesterday afternoon filed in the circuit court a vigorous opinion dissenting from the views of his colleagues in granting a change of venue to J. Thorburn Ross and the other defendants in the Title Guarantee and Trust cases.

Judge O'Day holds that it is wrong to assume that jurors will be affected by the recital of facts in the newspapers, and said there was nothing to show that in some other county the persons likely to be called as jurors do not also read the newspapers. He said he could not assent to the view that jurors are predisposed to be affected by those things that do not affect lawyers or jurors.

"The courts ought not to practice a conservatism that detracts from the wise administration of the law so as to prevent that administration being an aid and a help to society," said Judge O'Day in his opinion.

"Newspapers and courts and churches are all a part of society. And in this motion a precedent is set by which any person may seek a change of venue from the place where the trial by law is required to be had, merely because the newspapers are recording the events of the day by publishing the daily transactions happening in the community."

See No Need of Change.

Judge O'Day said he thought an attempt to secure a jury should be made, at least, the concluding words of his opinion being: "Multnomah county contains a large percentage of the population of the state, and I believe the defendant could have as fair and impartial a trial in Multnomah county as he could have in any other part of the state."

Judges Cleland, Gantenbein and Bronough, who united in the view that Ross and the other accused men cannot have a fair trial in this county, and sent the cases to Marion county for trial did not give expression to the reasons for their conclusions. Judge Cleland announced the decision of the court, merely saying that the conclusion had been reached that the motion for change of venue should be granted, and that the cases would be transferred to Marion county for trial.

There being some doubt as to whether the voluminous documents and affidavits connected with the change of venue proceedings should be made a part of the record to be sent to Salem, District Attorney Manning late in the afternoon gave notice that tomorrow he will move for an order instructing the clerk that the change of venue papers shall not be considered a part of the record.

Judge O'Day did not read his decision from the bench. He remarked that he had expected an opinion to be read by the majority of the court. As none was given, he said he would merely file with the clerk the opinion he had prepared.

Judge O'Day's Opinion.

Judge O'Day's opinion in full reads as follows:

"On account of a difference of opinion upon the motion for a change of venue between myself and my associates, 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 the facts, or alleged facts, in these papers; certain facts have been alleged therein; that the defendant is innocent, but the assertions in the papers are to the effect that he is guilty, and that this idea has become generally adopted in the community, and the defendant cannot have a fair and impartial jury for this reason.

"It goes without saying that a 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 court, 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 sufficient to warrant such a conclusion. It is true there are the affidavits of certain individuals here expressing their opinion, but there has been no attempt to secure a jury in this case. There are submitted affidavits of persons equally credible that a fair trial can be had. It has not been demonstrated that persons actually called to try the defendant have shown any prejudice. The conditions are not here as they were in the Olds 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 they have become prejudiced.

May Be Same Elsewhere.

"When a change of venue is had it becomes this 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 instance there is no evidence here that in any county to which this case should be transferred, that the same conditions do not exist, viz., that the persons who are liable to be called as jurors do not read the daily newspapers. I do not think that it is reasonable to assume that they do so, and if they do the same condition of mind would exist among those persons to be called as jurors in that county. It is also said there are large numbers of depositors, but it does not appear that these depositors are persons likely to serve as jurors, and the probability is that a very large number of them are not, nor does it appear what proportional number of those depositors are within Multnomah county, though it may be assumed that most of them do reside. It is not claimed in the affidavits that the persons who have been called as jurors are prejudiced so that they could not give the defendant a fair and impartial trial. In fact, the whole theory of prejudice in the community arises from the fact that there is some kind of popular belief among lawyers and presumably also among the judges, that jurors are predisposed to be affected by those things which do not affect lawyers or jurors. To this proposition I do not give my assent.

Assuming Wrong View.

"There are certain interests and especially the representatives of those particular interests whose property interests consist in the capitalization of special privileges, in the form of franchises, etc., who constantly seek to instill in the minds of lawyers and presumably law student enter the law class until he afterward becomes a judge, that the average citizen who is eligible to sit as a juror will enter a jury box with the predisposition unjustly and wrongfully to take from those who have, and to give to those who have not. 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 he is against corporations, and as I have said, that the predisposition exists not to be fair and impartial. For that reason it is assumed that they are affected by the newspapers.

"Of course, no lawyer or judge will admit that he is so affected. That is a matter which applies usually to the citizen who happens to be eligible to sit as a juror, or to what is termed the 'rabble' or the 'mob,' and usually when one refers to the 'rabble' or the 'mob' he always includes every other person except himself in that category. 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.

Upholds Newspapers.

"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 peer of any lawyer living in his book, 'The Law and Jurisprudence of England and America,' at page 122, says: 'I have tried literally tens of thousands of cases with juries, and the instances are few where I had reason to be dissatisfied with their verdicts.' And further, he speaks of jurors, saying: 'It is shortsightedness, not inherent in judges will do their full duty, jurors will do theirs.'

"Instances might be multiplied by those most competent to judge, that this assumption that jurors are affected differently than lawyers or judges by newspapers is erroneous in conclusion and not true in fact. Courts and lawyers are conservative, and the basic idea and principle of the common law is precedent, and precedent is based upon custom so long as it is the memory of man runneth not to the contrary. Hence the disposition of courts and lawyers is continually looking in the direction of the setting sun of the past, rather than to the horizon of the future. This conservatism ought not to be such as to prevent the courts recognizing the progress of society.

Assumption Not Warranted.

"To say upon mere conjecture that jurors will be affected by the recital of the facts in the newspapers, and therefore the defendant herein could not get a fair and impartial trial, is an assumption that is not warranted by the common experience of mankind. And the courts ought not to practice a conservatism in this regard that detracts from the wise administration of the law, and that administration being an aid and a help to society.

"The courts, courts and churches are all a part of society. And in this motion a precedent is set by which any person may seek a change of venue from the place where the trial by law is required to be had, merely because the newspapers are recording the events of the day by publishing the daily transactions happening in the community. As I said, if it should be shown that in any particular case such local prejudice exists as to render a jury called by law differently than the mere opinion of certain persons as expressed in this case is not warranted by the common sense of the state, and I believe the defendant could have as fair and impartial a trial in any other part of the state.

"For the reasons herein stated, this motion for a change of venue should be denied."

DAWSON CITY FLOAT IN PARADE

Northern Spirit to Be Reflected in June Rose Fiesta.

The list of entries for cities outside of Portland that desire to participate in the great street pageant, "The Spirit of the Golden West," during the Rose Festival, will probably close within the next two or three weeks. Master Float-Buider J. W. Harper has submitted a statement to the festival management that the festival management should be able to undertake any new contracts for this particular street demonstration after the last week of this month, if the festival management is willing to pay with those which have already been entered by a number of cities and towns of Oregon.

Up to the present time it is assured, according to the records of the festival management, that the following cities have announced their intention to participate in the parade: Astoria, Salem, Hood River, Klaskanine Falls, The Dalles, McMinnville, St. Johns Vancouver, Seaside, and probably Baker City and Eugene.

The committee above mentioned have taken the matter up with their respective "boosting" organizations, and the amount of money that will be expended in each case will run from \$500 to \$600, the figures so far received varying from \$500 to \$600, with Dawson City, Alaska, ready to enter a float costing not less than \$600 and more likely up to the \$1,000 mark.

In order to put floats of the required classiness and artistic finish into this parade, which will be the most spectacular ever held in this city, it will be necessary for the entries to be made within the next two- or three weeks.

Hood's Sarsaparilla

Is Peculiar to Itself IN MERIT AND IN CURES, WHY?

The ingredients actually used in successful medicines are, in general well-known. But the exact proportions and methods of combining them, are important secrets which have been discovered only by the wisdom of experienced physicians and the fine discriminating skill of educated pharmacists.

Physicians Generally know, for instance, what the ingredients are which give Hood's Sarsaparilla the peculiar merit by which it effects so many remarkable cures, and they prescribe similar remedies in their practice, but they do not know the exact combination nor the proportions which make Hood's Sarsaparilla peculiar to itself.

In Scrofulous Cases and for other diseases of the blood, the expert physician's prescription is likely to call for one or more of the very articles that are used to give Hood's Sarsaparilla its wonderful power as a remedy for troubles of this kind.

To Restore Lost Appetite and as a strength-builder, he will prescribe some of the tonic remedies combined in Hood's Sarsaparilla.

But, the Proprietors of Hood's Sarsaparilla claim, and they think very properly, that this medicine, originating in the prescription of an eminent physician, and being tested and perfected during its long use by physicians and druggists, embodies a peculiar combination of vegetable remedies, which, together with the peculiar process by which it is prepared, gives it far greater merit than can possibly be found in the occasional prescription.

That It Does Possess this peculiar merit is shown by the extraordinary cures it has effected,—40,366 testimonials received in two years, by actual count—while no other prescription or formula has ever achieved anything like similar success.

Under the Pure Food and Drugs Law, no change was necessary in Hood's Sarsaparilla to conform to the law or to public sentiment. It is perfectly safe, pure, genuine and reliable.

Another point which appeals to many in these troublous times, when every penny of expense must be carefully watched, is the fact that dose for dose it is the most economical medicine—the only one of which can truly be said "100 Doses One Dollar."

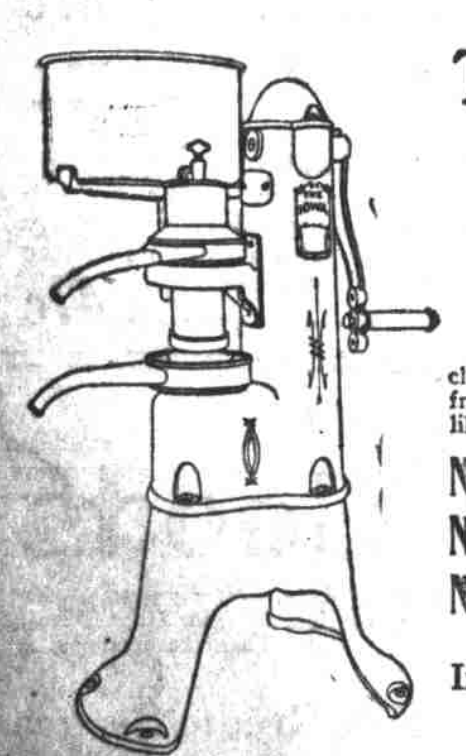
In the usual liquid form or in the new form of chocolate-coated tablets called Sarsatabs. Sold by druggists, or mailed on receipt of price by C. I. HOOD CO., Lowell, Mass.

AND THE COW JUMPED OVER THE MOON



Why? BECAUSE She was so delighted with the idea that her owner had bought a

New Iowa Dairy Separator



The one that was awarded The Gold Medal at the Jamestown Exposition

The Separator that's guaranteed the lightest running, the closest skimming, the most durable, with low supply can, heavy frame, shafting and gears and large, long bearings—and it's built like a watch. Prices:

- No. 2—350 to 400 Lbs. Capacity . . . \$65.00
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Installment terms or discount for all cash.

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1st AND TAYLOR,
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Send for Separator Catalogue FREE

VENIRE DRAWN FOR APRIL FEDERAL JURY

Seventy Will Report for Duty One Week From Tomorrow.

Seventy names, comprising the venire from which the jury for the April term of the United States circuit court is to be called, were drawn before Judge Wolvertson yesterday. The veniremen are to report for duty at 3 o'clock on the afternoon of April 12.

The veniremen are as follows: Hance S. Tutthill, Multnomah; James B. NeSmith, Polk; Harry S. Butz, Polk; H. H. Kirk, Linn; Harry E. Johnson, Multnomah; W. T. Cochran, Linn; Jay H. Upton, Multnomah; John Templeton, Washington; L. Grice, Polk; William Jolly, Benton; Robert Ungerman, Yamhill; H. D. Manning, Marion; William Sargent, Polk; Herbert M. Poppleton, Multnomah; George F. Peterson, Multnomah; Charles F. Wilson, Multnomah; E. E. Elmer, Polk; Charles Hubbard, Washington; Charles Albright, Clackamas; Elmer G. Peterson, Multnomah; Rylvester C. Pier, Multnomah; H. E. Johnson, Washington; Thomas Rodel Matteson, Washington; Thomas Spillman, Multnomah; Alfred Huston, Polk; John B. Pilkington, Multnomah; George A. E. Johnson, Washington; Robert E. Titton, Multnomah; Alex M. Wright, Multnomah; Henry Wingert, Multnomah; C. H. Cable, Linn; Andrew M. Westrom, Multnomah; L. W. Linn, Linn; W. E. Baker, Linn; Lawrence C. Patton, Multnomah; James D. Smith, Polk; Horace S. Butterfield, Multnomah; Fred A. Ekedee, Multnomah; Robert McFarland, Benton; William H. Turnbull, Multnomah; August Dippel, Multnomah; W. O. Johnson, Washington; Leonard N. Sillien, Polk; W. E. Elmer, Linn; Thomas W. Younger, Multnomah; James A. Gibson, Polk; Arthur O. Thomas, Multnomah; August Zehner, Multnomah; Charles E. Bradford, Washington; Robert I. Birch, Polk; Hugh Herron, Benton; William T. Turner, Multnomah; A. D. Hall, Marion; Richard C. Grant, Polk; Albert Welch, Multnomah; Charles Graham, Columbia; James F. Rasmussen, Multnomah; J. Raymond Rogers, Multnomah; H. W. Linn, Linn; W. E. Linn, Linn; Frank E. Watkins, Multnomah; Rudolph M. Schmeer, Multnomah; E. Mallory Bafferty, Multnomah; A. M. Gray, Benton; T. M. Gray, Benton; John Henry Fletcher, Yamhill; Conrad Rindlaub, Multnomah; B. Lee Paest, Multnomah; Charles Olson, Multnomah; Charles W. Falsett, Multnomah.

Another for the Navy.

Bliers Piano House has just received another order for a costly Pianos from Uncle Sam's fighting men.

The latest one was selected by the officers of the new battleship USS Oregon, stationed at Bremerton, Washington. The case is of beautifully figured mahogany and is the latest model, possessing the Moseley's and other devices, exclusive features with the genuine Pianos, Pianos, for which the House is the sole representative in the west.

Mining Incorporation.

(Special Dispatch to The Journal.)
Pendleton, Ore., April 4.—With its capital of \$100,000, the new King Solomon Gold Mining company has been incorporated. The incorporators are most prominent men here, among them being O. O. White of Seattle, Fred H. Smith

SCHOOLMASTER SUES UMATILLA SHEEPMAN

(Special Dispatch to The Journal.)
Pendleton, Ore., April 4.—A. Hawka has brought suit against W. A. Slusher, a prominent sheep man of Umatilla county, for \$125 damages, as the aftermath of a fight that occurred at Noll, a short time ago, when Hawka was at-

BONDS FOR PAVING AT THE CROSSINGS

(Special Dispatch to The Journal.)
Grants Pass, Or., April 4.—The Grants Pass council has called a special election for April 27 on the issuing of \$40,000 bonds to pave the intersections of streets and alleys in the business section. The paving ordinance has passed and work will begin as soon as

TACOMA SALESMAN DIES AT LEBANON

(Special Dispatch to The Journal.)
Lebanon, Or., April 4.—J. M. Taylor, a traveling salesman for the Spaulding Manufacturing company, died in this city last night. He was taken sick while at supper in a hotel and died about four hours later. His body will be shipped to Tacoma, his home, for burial. He leaves a wife and one child.

Corner Third and Yamhill Streets **Karo-Klapper Co.** Mail Orders Carefully Filled

Sensational Values in Lingerie Waists

250 Ladies' Lingerie Waists, made of sheer lawns and Jap silks, trimmed in pin tucks, laces and Swiss embroideries. Round or pointed yoke, the latest styles. Positively the best value ever offered by any house. Worth up to \$4.50. Special for one day only—Monday, your choice **\$2.29**

See Third Street Window Display **1/2**

Spider and Pongee Silks

Extra special sale of Spider and Pongee Silks, in plain colors, plaids and flowered effects. Values up to 85c. Monday and Tuesday, the **48c**

50c Fancy Hose

23c

5,000 pairs Ladies' Fancy Embroidery and Lace Hose, black, tan and white; seamless and double toe. The best 50c hose ever offered. Special for Monday and Tuesday, the pair **23c**

500 Sample Hand Bags at 1/2 Prices

Positively the best buy we have ever made—500 Ladies' Stylish, High-Grade Handbags bought by us at nearly one half the regular prices. Included in the lot are the alligator leathers, seal grain, morocco and lizard, in all shapes and sizes. A drummer's sample lot—no two alike. Values 25c up to \$10.00. Your choice for Monday and Tuesday if they last so long—prices one half.

ONE-HALF

REMNANTS! REMNANTS!

We have accumulated about 200 pieces of Remnants in Cotton, Wool and Fancy Dress Goods; also in Table Linens and other similar dry goods. We want to clean these up in one day. The Monday and Tuesday prices marked down to **1/2**

IT WON'T HURT YOU TO LOOK AT IT AND IT MAY HELP YOU