

OFFICIAL Heppner



Gazette.

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STAGE LINE. Stage leaves Heppner every morning (Sunday excepted) at 6 o'clock; is due at Canyon at 3 p. m. and arrives at Fossil at 7 p. m.

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CASTORIA For Infants and Children. The Kind You Have Always Bought. Bears the Signature of J. C. H. FLETCHER. A Perfect Remedy for Constipation, Sour Stomach, Diarrhoea, Worms, Convulsions, Feverishness and Loss of Sleep.

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MIMS RECEIVES SENTENCE. Judge Lowell Gives Five Years and a Fine of \$1,000. Judge Lowell passed sentence upon Edwin L. Mims this morning, at 9:15 o'clock, having previously denied the defense's motion for a new trial.

After denying the motion for a new trial, Col. Raley, for the defendant, stated that further time would be waived, and sentence might be passed immediately.

Judge Lowell asked Mr. Mims if he had anything to say to the court why sentence should not be passed.

"Nothing, Your Honor; excepting the fact that I am not guilty."

Counsel desired to say nothing further in behalf of the defendant, and Judge Lowell then passed sentence.

C. H. Carter, of counsel for the defense, was asked by the East Oregonian if the defense was prepared at this time to say whether appeal would be taken, and replied that they were not yet determined.

PASSING SENTENCE ON EDWIN L. MIMS. Judge Lowell's language in full, as he passed sentence, was:

"The jury which returned a verdict in this case accompanied it with a recommendation couched in substance in the following language, 'We, the jury, recommend the defendant to the extreme mercy of the court.' It has always seemed to me that such a recommendation very properly be made by a jury, if they conceived that they were warranted by the evidence in so doing; and in passing sentence in the past I believe I have invariably respected the request of a jury thus expressed.

"Since the rendering of the verdict some of the jurymen who sat upon the case (not all however) have called upon me to advise what the language of their recommendation was intended to import, giving me to understand that they desired that the lowest sentence under the statute should be imposed.

"No judge can be governed by the opinions or desires of individual jurors, however much we respect the men. The law makes the verdict itself the voice of the whole jury, and upon that alone the judge can act. Were it other wise, in this case as well as most others there would be tendered as many different opinions in the jury room before the verdict was reached.

"A judge is not bound to consider any recommendation of a jury, and if he does he must construe the language of the recommendation as it appears, deeming it an expression in ordinary phrase of the sentiment of the entire twelve men with whose endorsement it is presented.

"In this case, therefore, I shall follow the recommendation, giving it the reasonable construction that the jury did not intend to debate to the court, or to trespass upon its province, but intended to ask that there be imposed the lowest penalty which the conscience and duty of the judge would, in his judgment, permit.

"With the finding of the verdict the responsibility of the jury ceases, the law having imposed upon the judge the duty of passing sentence, and upon the governor the power of pardon, if there is warrant for the exercise of that high prerogative.

"Therefore in passing sentence in this case at this time, I take into consideration fully the recommendation of mercy which the jury saw fit to attach to the verdict, but neither my duty nor my judgment will permit the individual expressions of jurymen to weigh no."

"Imposing sentence is always a painful duty, but it is one which the law imposes upon a trial judge, and in which unsharply responsibility can neither be avoided, nor shared by others.

"Honoring, then, the jury's recommendation of extreme mercy, the judgment of the court is that you be imprisoned in the state penitentiary for the period of five years, and that you pay a fine of one thousand dollars."

DEFENSE'S MOTION. In the motion for a new trial introduced by defendant in this case seven grounds are presented, upon four of which counsel in their argument apparently chiefly rely, to wit: errors in law occurring at trial; misconduct of special counsel for state in commenting upon the evidence produced by the state; newly discovered evidence; and misconduct of the jury.

The first two grounds referred to involve points of law raised upon trial, wherein defendant's rights were fully preserved by exceptions taken at the time, and both present technical legal questions, debatable it is true under the authorities, but upon which a trial court would not be warranted in granting a new trial.

The affidavits before the court eliminate from consideration the question of newly discovered evidence. The man Lee, now brought forward as possessing information important to the defense, seems to have been a frequent caller upon defendant after his incarceration; and that fact, coupled with the other facts that defendant is himself a lawyer and hence naturally presumed to be seeking evidence favorable to himself

and to know that what Lee now says, if true, would be valuable evidence, makes that ground for a new trial wholly untenable.

The fourth ground, the alleged misconduct of the jury in returning a compromise verdict, presents a somewhat common and probably unavoidable in congruity in the jury system. A strict construction of the law will not countenance a compromise in the jury room and yet every lawyer, and every man who has ever sat upon a jury, knows that the great majority of verdicts are in some degree a compromise, indeed the very spirit of the jury trial is that the verdict shall blend and merge the varying opinions of twelve men.

They are expected to discuss the evidence and reach, under the law, a common sentiment which is voiced to the world by their verdict. Compromise must exist as long as the human will is stubborn and a jury composed of more than one man. The court recognizes this, have come to a practically uniform acceptance of the salutary and was rule in motions for a new trial, that "Such is never to be granted if the court conceives that the substantial legal justice of the case has been reached, notwithstanding that irregularities may have occurred."

In the case at bar I am unable to see where there has been any miscarriage of justice; indeed there has been an accorded this defendant a full, fair and impartial trial in every sense of those terms. The case has been tried with marked ability on both sides. Nothing has been omitted which could illumine the circumstances of the unfortunate tragedy, or assist the jury in arriving at a proper verdict. With untiring zeal, watchful care and unusual skill defendant's rights have been guarded and his cause presented. His counsel need have no regrets. No man accused of crime has ever been more ably defended, or tried before a better jury.

BRITISH DEFEATED. The Boers Capture Two Regiments and a Battery, Including 2000 Men. By the Associated Press.

LONDON, Oct. 31.—A dispatch from General White commanding the British forces at Ladysmith reports that the royal Irish fusiliers, a mounted battery and the Gloucester regiment were surrounded in the hills by the Boers and after losing heavily were obliged to capitulate. Casualties not ascertained.

While minor reverses were not wholly unexpected nothing like the staggering blow General Joubert delivered to General White's forces yesterday was anticipated. The full extent of the disaster is not yet acknowledged, if known at the war office. The loss in effect must be appalling to General White, who is practically surrounded. Two of the finest British regiments and a mule battery detached from the Ladysmith garrison were lost about one-fifth its total strength and alters the whole situation materially in favor of the Boers, who have again shown themselves strong fighters and military strategists of no mean order.

The disaster cost the British from 1500 to 2000 men and six seven pound screw guns, and as the Boer artillery was already stronger than imagined the capture of these guns will be a great help to the Boers. Never was the old saying, "Bad news travels quickly" better exemplified than today. By noon sorrow prevailed throughout the British metropolis. At the government office no effort was made to conceal the feeling of dismay prevailing. One official said to the representative of the Associated Press: "It is unexplainable and I am sorry to say the moral of the effect is inestimable, we have lost heavily in many ways and had regiments almost wiped out, but to have our regiments captured and by the Boers is terrible." As the day wore on crowds around the war office swelled to enormous proportions and at Gloucester, the home of many of those engaged, the wildest excitement prevailed.

A dispatch from Ladysmith says the Boers suffered severely during the engagement, some persons estimating their loss at 700 to 1000 killed and wounded.

CAUSE OF THE ROUTE. LONDON, Nov. 1.—The war office today made public a dispatch from General White, describing the operations of Monday. It is as follows:

We took out from Ladysmith a brigade of mounted troops, two brigade divisions of the royal artillery, the Natal field battery and a brigade of infantry to reconnoiter in force the enemy's main position. In connection with this an advance column consisting of the Tenth mountain artillery, four half companies of the Gloucester and six companies of the Royal Irish fusiliers, under Lieutenant Colonel Carlton and Major Ayde, was dispatched to march by night up the Bell spruit, thus turning the enemy's right flank.

Circumstances which attended the movement of Carlton's column are not yet fully known. But from reports received the column appears to have carried out the night march unmolested, until within two miles of Nicholson's Nek. At this point two boulders rolled from the hill and a few rifle shots stam peded the infantry ammunition mules. The stampede spread to the battery mules, which ran away with practically the whole of the gun equipment and the greater portion of the small arm ammunition. The reserve was similarly lost. The infantry battalion fixed bayonets, and accompanied by the personnel of the artillery, seized a hill two miles from the Nek, with but little opposition.

At dawn the skirmish attack on our position was commenced by the enemy. Their fire became very scorching and two companies of Gloucesters were ordered to fall back. The enemy then pressed to short range, the losses on our side became very numerous. At 3 p. m. our ammunition was practically exhausted. The position was captured and the survivors of the column fell into the enemy's hands. The want of success was due to the stampede of the mules, and the consequent loss of guns and the small arm ammunition reserve. The security of Ladysmith is in no way affected.

A DEFAULTING OFFICIAL. Henry Day Leaves Eugene Suddenly Being Over \$2000 Short in His Accounts. State Journal.

On Friday, Oct. 20, Henry J. Day, well known throughout this county in his connection with official positions and more especially as first deputy under Sheriff Withers, left Eugene for Portland, ostensibly on official business but has developed since, for the more clear purpose of quitting Eugene and community with a balance of over \$2000 against him on the Sheriff's books.

Nothing was thought of his absence until Sunday when Mrs. Day received word that he would not be home until later. The first part of the week Sheriff Withers and Deputy Fisk reviewed the books when the default was discovered. The action of Mr. Day comes as a surprise to everybody and more especially Mr. Withers and others who have placed in him the most explicit confidence. As this paper goes to press no new developments come to hand and the whereabouts of Henry Day still remains a mystery.

TIM TOWNSEND GOES FREE. Verdict of "Not Guilty" in the Homeleide Case Against Him.

The jury in the case against Tim Townsend for the alleged murder of William Hale at Dale, Umatilla county, Oregon, on September 29, returned a verdict of "not guilty" Sunday, after having been out since Saturday afternoon. Mr. Townsend was, therefore, ordered released by Judge Lowell, and Sheriff Blackley opened the door of the jail and Townsend went forth a free man.

In the instructions given to the jury by Judge Lowell was one upon which, apparently, the jury based the verdict. The instruction in question was to the effect that Townsend was justified in killing Hale, in case the evidence showed that Hale was about to commit a felony on Tom Tuttle, Townsen's friend, at the time being in a dwelling house. It appears from the testimony that Anderson, the man who kept the tent saloon, had his bed in the tent, and that he also cooked his meals there, in short, that Anderson lived in the tent as his dwelling house, as well as ran a saloon there.

Consequently, the apparent intention of Hale to kill Tuttle by cutting him with a knife, thus committing a felony on Tuttle in a dwelling house, was legal justification for Townsend shooting Hale with a Winchester, as he did admittedly.

The element of self-defense appeared not to figure as principal in the case, although it was shown by the defense's witnesses that Hale threatened to cut out Townsend's heart, and remarked that he would cut large numbers of above strings out of the hides of the other two men.

The fact that there was a bed and stove in the tent used by Anderson in living, appears to have been the saving element for Townsend, and in all probability caused the jury to return the verdict of not guilty.

Of course, this verdict ends the case, because the State of Oregon never appeals, and Townsend is permanently free from the allegations of the prosecution, going free from the charge carried in the indictment.

Never has a homicide case tried in the courts here attracted so little attention, at times not more than half a dozen people being in the room as spectators.

JEFFRIES' TERRIBLE CHAMPION. Hat He Failed to Knock Out Sharkey, Who Gave Him a Terrible Fight.

NEW YORK, Nov. 4.—Although Tom Sharkey failed to secure a decision in his fight with James J. Jeffries, the champion, last night at Coney Island, N. Y., he can lay claim to credit for putting up one of the most terrific contests ever witnessed in the pugilist ring. Jeffries himself very frankly admits that it was by far his hardest battle, and the big champion today carries a split nose, eye and ear as evidences of what he was up against. Sharkey has two broken ribs and a broken hand.

In five rounds Jeffries had the better of the fight—in the first two and the last three. During the other 20 Sharkey forced the issue, and, like a bull terrier, was at his man with both hands unceasingly. In those 20 rounds Jeffries' great weight and brawn helped him to hold off the sailor, and in the 23d round he swung in a couple of vicious uppercuts that made Sharkey angry. Tom came back again in the 24th and 25th, but he was weakened greatly by Jeffries' vicious blows.

One minute before the gong sounded to end the fight, Jeffries' left glove came and practically the contest was over. The referee motioned to Jeffries' corner, an American flag was hung over the champion's shoulder, and the crowd on that side and end of the arena cheered wildly. The crowd on the opposite side and end, in Sharkey's corner, yelled for Sharkey, and the men were led back to their dressing-rooms.

Killed 51 Battlesnakes. BENDLETON, Nov. 5.—The sons of R. C. Dunnington, a rancher living in the Yansyco country, went to Battlesnake Springs, near there, the other day. One of them saw a battlesnake and killed it. Another appeared and resented the attack on their resort and, likewise, was also killed. The boys kept on killing battlesnakes until 51 had been destroyed. The peculiar feature of it is no one has seen any battlesnakes in that vicinity for many years, although originally the springs were named because of the large number of battlesnakes found there.

Output of the Klondike. No one will ever know exactly how much gold was taken from the Klondike fields the past season, since the English government imposed a royalty, the miners have adopted all sorts of ruses to evade the law. It is rather difficult to dodge taxes, but it is more difficult to dodge a bad cold and the grip at this time of year. When the system is weakened by such attacks, and the blood becomes thin and impoverished, the best medicine to take is Hostetter's Stomach Bitters. This remedy builds up the system. Besides regulating digestion, it overcomes constipation. It is good for the kidneys and liver, too, stimulating these organs into the proper performance of their functions. Nothing is so good for malaria.