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The Times-Herald.

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MURDER IN SECOND DEGREE

VERDICT OF JURY IN MILLER AND COLWELL CASE.

Sentenced to Life Imprisonment by Judge Clifford Tuesday Afternoon—Judge's Instructions to the Jury.

The jury in the case of the State vs. Geo. S. Miller and James Colwell for the murder of Warren Curtis, last Saturday evening returned a verdict of guilty of murder in the second degree.

On Tuesday afternoon the convicted men were brought before Circuit Judge Clifford and each sentenced to life imprisonment in the state penitentiary.

We are informed by C. W. Parrish, one of the attorneys for the defendants, that in all likelihood the case will be taken to the supreme court.

The verdict of the jury seems to meet with almost universal approval, the general public considering the men received what they deserved from the evidence brought out.

On account of the interest taken in the case and the inability of many to attend we give below by special request of our readers Judge Clifford's charge to the jury. It is complete with the exception of the statutory instructions.

JUDGE CLIFFORD'S CHARGE.

GENTLEMEN OF THE JURY:

The indictment in this case charges the defendants, now on trial—George S. Miller and James Colwell—with the crime of murder in the first degree, and reads as follows: "In the circuit court of the State of Oregon, for the county of Harney, the State of Oregon vs. George S. Miller, James Colwell and Bert Bailey. (Indictment.) George S. Miller, James Colwell and Bert Bailey are accused by the grand jury of the county of Harney and State of Oregon, by this indictment, of the crime of murder in the first degree committed as follows: The said George S. Miller, James Colwell and Bert Bailey on the 22d of March A. D. 1902, in the county of Harney and State of Oregon, then and there being and acting together, did wrongfully, unlawfully, feloniously, purposely and of deliberate and premeditated malice, kill one Joseph Warren Curtis by shooting him, the said Joseph Warren Curtis, in the throat, breast, arms, back, hip, leg and body of him the said Joseph Warren Curtis with a loaded shotgun, which said loaded shotgun he the said George S. Miller then and there had and held in his hands while within shooting distance of him the said Joseph Warren Curtis. Contrary to the statutes in such cases made and provided, and against the peace and dignity of the state of Oregon.

Dated at Burns, in the county aforesaid, this 23d day of April A. D. 1902."

The State, by the district attorney, has dismissed the defendant Bert Bailey from the charge in this indictment for the purpose of using him as a witness on the part of the state, and so far as he is concerned you have nothing further to do with him.

To this indictment the defendants, George S. Miller and James Colwell, have entered a plea of not guilty, which puts in issue every material allegation contained in the indictment, and the material allegations of the indictment are as follows:

1.—That the defendants in this case, who give their names as George S. Miller and James Colwell, were the persons who killed the deceased mentioned in the indictment and that they killed the deceased in the manner and form alleged in the indictment; that is, that the defendant, Geo. S. Miller, killed the deceased, Joseph Warren Curtis, by shooting him with a loaded shotgun which gun he the said George S. Miller then and there had and held in his hands, and that the defendant, James Colwell, was present aiding, assisting

and encouraging the said George S. Miller in the commission of said crime.

The indictment charges these defendants George S. Miller and James Colwell with acting together; and acting together, in the sense in which it is used in this indictment, means that the defendant James Colwell was present aiding, assisting, abetting or encouraging the said George S. Miller to commit the deed.

2.—That the said crime, if any, was committed in Harney County and State of Oregon.

3.—That the person alleged to have been killed was named Joseph Warren Curtis.

4.—That the said alleged killing was done by shooting the deceased with a loaded shotgun, and that as the result of said shooting the deceased died within one year and a day from the infliction of the mortal wound.

It is not necessary for the State to prove that the crime committed, if any was committed, was committed on the exact day alleged in the indictment, but it is sufficient if the state proves that said crime was committed by these defendants in this County and State at any time prior to the finding of the indictment in this case by the Grand Jury of this County; which indictment was found and returned by said Grand Jury into this court on the 23 day of April 1902.

Under our law the jury are not restricted in their deliberation to determine whether or not the defendants are guilty of the crime charged in the indictment, but the duty of the jury will not be performed until they have determined whether or not the accused are guilty or not of any crime included in the crime charged;

Therefore, under this indictment it will be your duty to find one of four verdicts, to-wit:

Murder in the First Degree, murder in the Second Degree, Man Slaughter, or Not Guilty.

Under the laws of this State all the presumptions of law, independent of the evidence, are in favor of innocence, and every person is presumed innocent until he is proved guilty beyond a reasonable doubt.

Before you can find the defendants or either of them guilty of the crime with which they are charged in this indictment, or of any crime included in it, you must find that every fact and element necessary to constitute such crime has been proved by the evidence in this case beyond a doubt; and if upon any such fact or element you entertain a reasonable doubt, it will be your duty to give the prisoner at the bar the benefit of such doubt by acquittal.

I will now call your attention to the necessary elements of the different degrees of felony which I have described:

Our Statute provides that "if any person shall purposely and of deliberate and premeditated malice kill another, such person shall be deemed guilty of Murder in the First Degree."

"If any person shall purposely and maliciously, but without deliberation and premeditation, kill another, such person shall be deemed guilty of Murder in the Second Degree."

"If any person shall by any act imminently dangerous to others, and evincing a depraved mind regardless of human life, although without any design to effect the death of any particular individual, kill another, such person shall be deemed guilty of Murder in the Second Degree."

"If any person shall without malice expressed or implied, and without deliberation upon a sudden heat of passion caused by a provocation apparently sufficient to make the passion irresistible voluntarily kill another, such person shall be deemed guilty of Man Slaughter."

"If in a given case the jury are satisfied beyond a reasonable doubt that an accused person is guilty of murder in one of its degrees, but are in doubt as to which degree it should be, it will be the duty of the jury to find the accused person guilty of the lesser degree."

In stating to you the necessary elements of the crime of murder in the first and second degrees I have used several words which have a defined meaning in law, and I will now explain them to you in order that you may more fully understand their meaning:

I referred to the words "purposefully, maliciously, deliberation and premeditation" used in saying that to constitute murder in the first degree the killing must be done purposely, maliciously and with deliberation and premeditation, and that to constitute murder in the second degree the killing must have been done purposely and maliciously, but without deliberation and premeditation.

The difference between murder in the first and second degrees is the existence or non-existence of "deliberation and premeditation." By the word "purposefully," as used in these instructions, it is meant that there must be a specific intent to kill, intentionally executed.

Premeditation means, carefully considered and thought of beforehand, but no particular length of time is necessary to meditate upon such act, and the act may follow the resolve as quickly as one successive thought follows another in the human mind, provided the purpose to take life be fully settled and determined upon by the defendant before the commission of the act.

Before you can find the defendants guilty of the crime charged in this indictment there must be some other evidence of malice than the mere proof of the killing to constitute murder in the first degree, unless the killing was effected in the commission or attempt to commit a felony, and deliberation and premeditation, when necessary to constitute murder in the first degree, shall be evidenced by poisoning, lying in wait, or some other proof that the design was formed and matured in cool blood, and not hastily upon the occasion. Direct proof of deliberation and premeditation is not required, but may be inferred from proven facts.

(Continued on second page.)

Oil Assured in Malheur Basin.

D. Wilson, of Spokane, and one of the largest property owners in Ontario, passed through Baker City recently on his return home after having spent most of the winter in Ontario. When seen by a Democrat representative, Mr. Wilson stated that he had completed several brick blocks in Ontario and sold considerable property there. It was Mr. Wilson who, in boring for water in Ontario, opened a gas well. He says the well is still flowing gas, and that they consider it an index of oil in the Malheur belt. Mr. Wilson says that as soon as the operations of the Malheur Oil company on the Oregon side proceed far enough that oil will be found in paying quantities. He also states that most investors are looking to the development work soon to commence by the Baker City companies through the Denver syndicate represented by Mr. Thayer. There is high grade oil in Malheur as has been demonstrated by the small Newell well, but the quantities and the exact location of the belt have not yet been determined. Mr. Wilson, it will be remembered, is the owner and builder of the new hotel in Sumpter. He is an up-to-date capitalist, who believes in expanding and upbuilding a new country. He will return from Spokane in two weeks' time and continue his operations in Ontario and Sumpter. He believes in Eastern Oregon, and says its values have just begun to be realized by capital.—Baker City Democrat.

Dissolution Notice.

Notice is hereby given that the partnership heretofore existing between Samuel Bailey and C. W. Johnson, under the firm name of Bailey & Johnson, was dissolved by mutual consent on January 1st, 1902. C. W. Johnson retiring from the business. All accounts due the said firm are payable to C. W. Johnson.
SAM BAILEY,
C. W. JOHNSON.

ANOTHER BOLD MOVEMENT

TO ABSORB THE PUBLIC DOMAIN BY LEASING RANGES.

The Nebraska Section First Aimed at—Opinion of the Land Commissioner Asked on the Measure.

A recent dispatch from Washington says that a tremendous pressure is being brought to bear on congress to pass some law for leasing the vacant public domain for grazing purposes. Cattle interests now represented here have abandoned the hope of getting through either the Millard or Bowersock bills, and are endeavoring to secure the enactment of special leasing legislation for Nebraska only. The president has asked the General Land Office if such a bill would be advisable, and Commissioner Hermann has replied that it would not, as it would be a discrimination against other Western states, and, furthermore, would not pass in that shape.

Chairman Lacey, of the House public lands committee, has carefully drawn and introduced a bill providing for leasing the vacant public range lands of the West, and has submitted his measure to the House committee. The bill is believed to meet the conditions of the interior department. Hereafter the house committee will concentrate its efforts on this measure, and may report it before adjournment.

This bill is drawn primarily to give homestead settlers and small stock owners an opportunity in the arid regions to improve and protect the grass upon the public domain in the vicinity of their holdings, so as to prevent further deterioration and the monopolization of the range by owners of large herds of livestock. Under this bill, so much of the arid and semi-arid region as is not capable of irrigation, may be leased for stock-grazing purposes, subject to right of homestead, mineral and other entry under existing laws. Leases are to run not over five years, and shall be limited to areas not exceeding 3200 acres to any one person. Leases shall only be made to actual homestead settlers or freeholders whose lands are tributary to the lands to be leased by them, and the holder of a homestead prior to patent may obtain a lease to not exceeding ten times the area of land included in said homestead, while freeholders may acquire leaseholds in similar ratio upon the heretofore specified limit. Lessees may fence leased land and protect the same from trespass. No corporation shall be entitled to a lease under the bill. Where two or more persons are eligible to acquire leases upon the same land, and there is not enough public lands in such locality, the available lands will be equitably apportioned.

Lands to be leased are to be classified in six grades, and shall rent for 1 to 6 cents an acre, according to classification. Such of the public domain as is not leased shall remain open for grazing privileges. The proposed law will not alter the status of grazing lands in forest reserves, but the secretary of the interior is authorized to collect a per capita charge on horses, cattle and sheep which are permitted to graze in the reserves. When mineral or other entry is made upon leased land, the lease shall be cancelled. Watering places on leaseable lands are to be reserved so as to be accessible from all leased lands in the vicinity. Leases may be renewed, provided the lands do not fall into the hands of corporations.

Under the bill, where two or more persons are eligible to acquire leases upon the same land, and there is not enough public lands in such locality, the available lands will be equitably apportioned.

UNDER NEW MANAGEMENT

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E. H. TEST, Cashier.

Burns, Ore., April 3, 1902.

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E. H. TEST, Cashier.
Burns, Ore., April 3, 1902.