

# HEPPNER HERALD

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## PHELPS UPHeld IN J. D. ELECTION CONTEST CASE

SUPREME COURT HANDS DOWN DECISION, NOVEMBER 29

Decision of Circuit Court Declaring Minor and Wheelhouse Elected Upheld

Notice has been received here by Sam E. Van Vactor and Woodson & Sweek, attorneys for respondents in the John Day election case that the decision of Judge Phelps declaring C. A. Minor and A. W. Wheelhouse legally elected directors of the district, has been affirmed by the Oregon Supreme court.

The opinion handed down by the higher court follows:

According to the statements in the defendants' brief this is a proceeding brought under section 7334 Or. L. by the plaintiff Henriksen, to contest the election of the defendants Clark and Reitman as directors of the John Day Irrigation District.

The case is entitled A. L. Henriksen, plaintiff, vs. Clay C. Clark, Edward Reitman and M. D. Clark, defendants. The notice of contest was directed to the defendants in their proper names without the addition of the official title of "directors of the John Day Irrigation District," although in the body of the notice it is particularly alleged that they are the directors of the district. That document sets out with great particularity that at the election held to choose successors to the defendants Reitman and Clay C. Clark, the voters wrote in the names of Arthur Wheelhouse for the three-year term and C. A. Minor for the one-year term, on the blank lines left on the ballots in sufficient numbers to give Minor and Wheelhouse a majority of all the votes cast for the respective directorships.

The defendants filed a demurrer against the notice of contest, asserting, "that there is a defect of parties defendant in the following respect, to-wit: Clay C. Clark, M. D. Clark and Edward Reitman are not made parties defendant as directors of the John Day Irrigation district," and second, "that the complaint does not state facts sufficient to constitute a cause of action or suit for the reason that it is not alleged in said complaint that the said C. A. Minor and Arthur Wheelhouse were nominated, as required by law, for the offices of directors of the said John Day Irrigation District."

The trial court overruled the demurrer and the defendants did not appeal further. From the consequent judgement declaring Wheelhouse to be elected director for the three-year term and Minor for the one year-term, the defendants have appealed.

Burnett, C. J. The demurrer calls for a construction of the notice of contest which in this proceeding performs the function of a complaint. In this connection we are governed by section 85, Or. L. reading thus:

"In the construction of a pleading for the purpose of determining its effect, its allegations shall be liberally construed, with a view of substantial justice between parties."

Taking the paper together it is clear that there is no attempt to assert a cause of contest against the defendants in any other capacity than as directors. To institute a contest against private parties wholly disconnected with the district would be utterly futile and ineffectual. But the notice discloses that only the conduct of the defendants as directors is called in question. The complaint is sufficient as against the objection that there is a defect of parties.

It is not necessary that a candidate be nominated for any office under the election system of this state, in order to receive the votes of the electors at the elections prescribed by our constitution. In order to get his name on the official ticket prepared by the election authorities it is required that a candidate be properly nominated by a petition or an assembly of electors. But this is only permissive. It is not mandatory in irrigation district elections. The voter has a right to vote for whom he chooses for any office.

Moreover, the sole duty of a canvassing board is to count the ballots and issue a certificate reciting what those ballots disclose. Such a board has no jurisdiction to raise issues in the nature of quo warranto and determine the eligibility of an elected can-

## McDUFFEE ADDS TO DISPLAY OF COPPER GOODS

Sheriff McDuffee added a couple more choice specimens to his already large collection last Wednesday when he returned from a two days outing in the mountains to the south of us and also brought four men who are charged with violation of the prohibition laws. The outfit is said to be among the largest yet brought to light in the county and capable of turning out a sizable stream of the mild looking liquid with the vigorous "kick."

The plant was found out in the Parkers Mill country and was in operation. Fifteen gallons of finished product was found and had the sheriff let the infant industry alone there should have been a good supply of "hooch" on hand for the coming holidays. Four men, found with the plant were brought in: Harley and Edward Matteson Ed Letrace and Enoch Cave. Mr. Cave spent last winter as a guest at the sheriff's winter resort on a similar charge. As this is written the men have not as yet had a trial, all being out on bail, except Cave, who is in jail.

## MONTHLY REPORT OF COUNTY

On November 10th, the Red Cross Public Health nurse began work in Morrow county. An office was secured and equipped in the I. O. O. F. building by the local chapter of the Red Cross. Visits were made to the different parts of the county. Schools were visited and the nurse made the acquaintance of the co-workers in the different parts of the county.

Splendid co-operation has been received from the people wherever the nurse has started to work. The school children especially are very enthusiastic and anxious to carry the different health messages to their homes.

Following is the monthly report made by the nurse: Consultation with people in the office, 2; LaGrippe, 4; Reported to state board of health, 3; Schools visited and revisited, 9; Pupils inspected, 174; Home visits, 13; Miscellaneous visits, 15; Talks to pupils, 24; Inspection of school buildings and premises, 3.

Defects found: defective vision, 8; nasal obstruction, 7; enlarged tonsils, 16; cervical adenitis, 6; deformities, 2; Malnutrition, 14; mentally defective, 1.

Skin: scabies, 2; eczema, 1. COUNTY NURSE Emma Bunge.

## CARD OF THANKS

We wish to express our thanks and appreciation to our friends and neighbors for assistance and sympathy extended during our recent bereavement.

MRS. W. L. BARLOW and Family.

The Guild of All Saints Church will meet December 8, 1921, in the Vestry room of the church. All members of the guild and all those interested are requested to be present. Time 2:00 p. m. ADA M. AYERS, Secretary.

didate to hold office to which he has been elected.

These considerations dispose of all the issues of law which were raised by the demurrer. They were correctly decided by the circuit court. The judgement is affirmed.

## Many Interesting News Notes From Heppner High School

Edited by Marie Curran and Violet Merritt

The Freshman class gave their semester party Friday, Dec. 2, at the school house. The evening was delightfully spent playing various games. As the hour grew late and the "Freshies" showed signs of sleepiness, the refreshments were served, after which the little ones departed for their homes. We are sure the "Freshies" enjoyed themselves, but it is a good thing they can have only one party a semester as everyone of them looked drowsy and forlorn Monday morning.

There was a slight mistake in "High Life" concerning the date of the next Lyceum number. Instead of Friday, December 9, the next number is Thursday, December 8. The DeMarco-Astrup entertainers are artists in their entertainment. They give a program of irresistible charm. A splendid program is assured to everyone who attends.

Owing to the bad weather and play practice the orchestra has been unable to practice for the past two weeks, but it is hoped that they may be able to practice in the near future.

There will be play practice every night this week. The cast and Miss Palmateer are working strenuously to make this play a success. Ailene

Sprouls, who is Aunt Mary, is surely a "scream." The high school students are looking forward to December 16, the night on which the play will be given.

Last Thursday evening a splendid banquet was enjoyed by the domestic science class at the school house. The girls were getting tired of cooking for the teachers and they thought it would not be a bad idea to give themselves a banquet. The teachers are now assured excellent meals for the rest of the semester. Miss Norris and her mother were guests.

The following games to be played by the girls in basketball are: Tuesday, 3:50 p. m., U Tell Ums vs. Loud Socks. 4:20 p. m., Go Get Ums vs. Hot Dog Girls. Thursday at 3:50 p. m., Night Gown Brigade vs. Petticoat Pirates.

Games to be played this week by boys doughnut basketball league are: Senior division, Monday, Bears vs. Turtles; Tuesday, Heart Breakers vs. Five Fire Flies; Wednesday, Supero Omnes vs. Bears; Thursday, Turtles vs. Heart Breakers; Friday, Five Fire Flies vs. Supero Omnes. Junior Division, Monday Bear Cats vs. Bees; Tuesday, Graybacks vs. Boneheads; Wednesday, open; Thursday, Graybacks vs. Bees; Friday, Bear Cats vs. Boneheads.

## ATTENTION! SHEEPMEN

R. A. Ward, manager of the Co-operative Wool Marketing association of the West, has arranged to be present at the Farm Bureau meeting which will be held Saturday, December 10th, of this week in the I. O. O. F. hall.

The Wool Growers association has made splendid mark for itself getting from two to eight cents better than the market price all along and are gaining in numbers rapidly. We previously arranged for a meeting of the Wool growers when Mr. Ward could be present, but owing to conflicting dates this had to be called off. We are exceptionally fortunate to be able to get Mr. Ward at this time, who will address the assembly briefly here at Heppner, and again at Pine City on Saturday night, December 10th.

Inasmuch as this touches upon the sheepmen's most vital problem, every man ought to be out.

## PARENT TEACHERS MEETING TUESDAY, DECEMBER 13

The regular meeting of the Patron Teacher association will be held in the school auditorium Tuesday, December 13, when the following program will be rendered:

A Dramatization by pupils of the second grade. A paper by Miss Norris. A piano solo by Miss Reliance Moore. A talk by Miss Bunge, public health nurse.

All members and friends are urged to attend.

MRS. MARY HUTCHINSON, Secretary

## FEDERATED AID SOCIETY WILL HOLD BAZAAR

The Ladies Aid Society of the Federated church will hold a bazaar in the parlors of the church Wednesday, December 7th beginning at 2:30 P. M. Needle work and cooked and uncooked foods will be on sale.—Adv.

## HERO OF MANY BATTLES HERE

L. B. Pyle, who is employed with the engineering branch of the state highway department, came in from Portland Friday night and is visiting for a few days with his mother at Hotel Patrick.

Mr. Pyle was only 19 when the U. S. entered the world war but that did not prevent him from going to France with the first contingent of American troops and while there he saw plenty of action. He recently received his battle medal from the government, the five bars of which showing that he took part in five major battles including Montdidier-Noyon, Aisne-Marne, St. Mihiel, Sector. Mr. Pyle came through all these battles without a scratch or a day's sickness and, perhaps because he stood up so well he was sent with the army of occupation into Germany after the armistice where he remained for almost a year.

## W. L. BARLOW PASSES

William L. Barlow, well known and respected resident of this county, passed away at his home at Eightmile, Thursday, December 1, 1921, aged 58 years, 11 months and 25 days.

He was born at Rockport, Atholston county, Missouri in 1863 and in 1885 he removed to Kansas where he later married Miss Mary S. Cooper, who with five children survive him. The family came to Morrow county in 1903 and have since resided here.

The surviving children are: Ora, Floyd and Carl Barlow and Mrs. Grant Oiden, and Mrs. Lee Howell, all residents of this county. He is also survived by his aged parents who live at Oregon City and by the following sisters and brothers: D. S. and J. F. Barlow and Mrs. E. L. Young, of this county; O. B. Barlow, of Portland, Minnie Barlow and Joseph Barlow, of Oregon City; May Barlow and Mrs. Ellen Herren and Mannie Barlow, of Seattle and Mrs. George Love, of Colby, Kansas.

The funeral was held from the Christian church Sunday afternoon being conducted by Rev. W. O. Livingstone.

## LEXINGTON C. E. NOTES

Friday evening, December 2, the monthly business meeting of the C. E. of the Christian church, of Lexington was held at the home of Mr. and Mrs. Nichols. After the business meeting was over the remainder of the evening was spent in a most enjoyable manner. A good time was reported by all those present.

## REMEMBER YOUR COMMUNITY MEETING

A Form Bureau meeting will be held in every community this week, which merits the attendance of all the farmers.

Lest we forget, look over the dates below and then plan to be present.

Boardman, Monday Dec. 5, 7:30 p. m. Irrigon, Tuesday, Dec. 6, 7:30 p. m. Ione, Wednesday, Dec. 7, 2 p. m. Ceil, Wednesday, Dec. 7, 7:30 p. m. Lexington, Thursday, Dec. 8, 2 p. m. Alpine, Thursday, Dec. 8, 7:30 p. m. Hardman, Friday, December 9, 2 p. m. Eightmile, Friday, Dec. 9, 7:30 p. m. Heppner, Saturday, Dec. 10, 2 p. m. Pine City, Saturday, Dec. 10, 7:30 p. m. Morgan, Monday, December 12, 1:30 p. m.

## C. C. CALKINS

The Crescent Dry Goods Co., of Pendleton, have placed a stock of women's wear with me. Beautiful dresses, waists, Coats furs etc.

This stock will be replaced from day to day and I will always be able to show you something worth while. MRS. L. G. HERREN

## "THE OLD NEST" Star Theatre, Sunday and Monday



Children 30c Adults 40c. Reserved Seats 55c

## Christmas Clothes For Men

Most men want new clothes for Christmas but they have a hard time deciding just what to get—and for that very reason many men have come to depend upon this shop to make their choice for them.

If you have never enjoyed that service, come here now and find out for yourself how convenient it is.

We would like to show you the new Togs today. Will you spare a short time to see them? There will be no insistence that you buy just because you come to look.

## Lloyd Hutchinson

Where They Clean Clothes Clean