Lake County Examiner

VOL. XXIV. LAKEVIEW, LAKE COUNTY, OREGON, THURSDAY, JUNE 18, 1903. NO. 24.

A VERDICT FOR $22,500.

McCarty-Heryford Suit in Favor of Plaintiff--Judge Condemns The Verdict as Excessive.

The sensational breach-of-promise suit of Miss Birdie N. McCarty, of Michigan, against James D. Heryford, of Lakeview, was called at Portlond on Monday, June 8th and lasted three days. The trial caused quite a sensation in Portland, and the papers made much-a-do about it, and they seemed to throw public sympathy in favor of the plaintiff. After the trial was ended the jury deliberated but a short time when they brought in a verdict for the plaintiff of $22,500 and costs. The result was a big surprise to most people in Lakeview, and was also to Judge Bellinger before whom the trial was held. He said:

"I am disappointed with this verdict." "I consider it excessive and feel that it should be set aside. The jury will be discharged until tomorrow morning." The Judge gave the defense 30 days in which to file a motion for a new trial, which, no doubt will be done.

The case of Birdie N. McCarty vs. James D. Heryford was begun in the United States Circuit Court on September 8 last and came up for trial June 8 for the first time. Miss McCarthy was represented by Judge Thomas O'Day and Louis H. Tarpley, while Judge Rufus Mallory and John M. Gearin appeared for Heryford.

During the first day of the trial there were practically no spectators, but the second day and to the end, the court room was crowded by curious people. The report of the case as given by The Oregonian was sensationally and startling in its nature, as the confession of the plaintiff and letters of the defendant were published from day to day. It would be impossible for The Examiner to reprint it all, but will give enough to show the trend of things during the trial.

The Oregonian said:

The courtroom was hot, and Judge Bellinger, the lawyers and jury seemed to take but a perfunctory interest in the affair until the testimony of Miss McCarty woke them up with a start, after which there was no drowsing.

The startling and remarkable phrase of the case is, however, the fact that a woman and her champions confess to and insist upon her own dishonor, while her opponents maintain that she is not weak and erring, that she is neither sinned against nor sinning. This is remarkable in that the final decision of the jury does not seem to hang on the question raised.

The history of the case as recited by the lawyers and mutually agreed upon except in a few details is that "Jim" Heryford is a ranchman in the vicinity of Lakeview, who owns a bank in that village as a mere incident. That at the time his acquaintance with Miss McCarthy began he was a young man of [illegible] and in his own right the owner of his property is worth only a paltry $70,000.

In September, 1899, Miss McCarthy, a school teacher, 29 years of age, came out from Michigan and secured a place as teacher of a school in the Lakeview neighborhood. She boarded at the Heryford ranch and met and was much in the society of its owner. "Jim" frequently drove her to and from the schoolhouse, and being a willing worker, it was his custom to build the school fire and do the sweeping. He was plainly looking for a wife, and his attentions to the teacher became marked. He was her escort to dances, debating vaudevilles and other rural functions which the country affords. On Christmas eve, 1900, while driving her home from an evening gathering, Jim Heryford kissed the teacher by the light of the stars, and on the following night offered her his heart and hand. Miss McCarthy asked for time, but after four days she consented to become his wife, with the proviso that she be allowed to spend half her time after the marriage in Michigan. During the weeks which followed the engagement, Miss McCarty alleges that Heryford compromised her and that their relations continued until the summer of 1901, at which time she returned to Wayne, Mich., her home, to prepare for the wedding.

During that summer and Autumn a correspondence was maintained between the two. In October, however, the plaintiff received a letter from Heryford stating that he had ceased to love her, and asking to be released from the contract. In answer to this, she wrote him begging him to make her his wife, of which letter she thoughtfully preserved a copy, sending the original to Heryford by registered mail. She received no response, and, after waiting until last September, she, on the advise of her lawyers, brought the present suit.

When notice was served on Heryford, he wrote, according to his story, a letter to the plaintiff offering to fulfill his broken promise and marry her, provided she would come to Reno, Nev., for the ceremony. The offer, if made, was not accepted, and, after nine months, the case is up for trial.

It was late in the afternoon when Miss McCarty was sworn, she testifying practically along the lines of the foregoing statement.

There was one tense moment during the examination. She had told her story in a clear, convincing manner up to the time just following her engagement, when Judge O'Day asked her to make the most awful confession which the law, society or her Creator can ask of a woman. She shrunk, hesitated and then, with downcast eyes, did as she was bidden in a voice hardly above a whisper. During the recital the man of whom she spoke was absent from the court room, and she was at bay, alone, with her counselors, who were yet her accusers, and her judges.

The second day of the McCarty-Heryford breach-of-promise trial saw the testimony completed and arguments of counsel commenced. The examination of Miss McCarty was continued at the morning session. In connection with which it was written by Hayford on the stand upon undergoing a [illegible] the letters written by the alleged breach of promise. These letters are definitely essential as to orthography and syntax, and for the greater part

(continued on fourth page.)

WARNER CASE UP IN SALEM

Settlers Before State Land Board and Ask Refusal of Patents So They Can Obtain Title

SALEM, Or., June 12.—The settlers on land in Warner Valley which is claimed by the Warner Valley Stock Company, made their last struggle today for the continued possession of their homes. Thirty-two settlers presented a petition to the State Land Board, asking that the state do not take a patent to the land, as it has a right to do under a recent decision of the Departmet of the Interior. The settlers ask that the state give up its claim, and ask the Government to issue patents to them.

The settlers claim as homesteads on Government land, while the Warner Valley Stock Company claims as the successors of purchasers from the state under the swamp land law. The state has parted with its interests, and is now interested, if at all, only to the extent of aiding in the proper adjustment of the controversy between the settlers and the stock company.

The whole question has hinged upon the determination of the fact whether the land was swamp and overflowed in 1860. It is admitted that the land has since that time become dry, and is not now swamp land. Decisions have been rendered holding first on one side of the question and then on the other. Commissioner Binger Hermann of the General Land Office, held that the land was not swamp, and that the state had, therefore, no title. This decision was overruled by the Secretary of the Interior a short time ago. All that remains to be done to give the stock company complete right to possession is for the State Land Board to apply for and receive a patent from the Government conveying title to the state. Whether this will be done is a question of greatest interest to the settlers.

In the argument before the State Land Board today, Mr. Hall offered to present any testimony or evidence the board might desire regarding the character of the land, and said he could prove not merely by a preponderance of the evidence, but beyond a reasonable doubt, that the land is not swampy. The settlers, he said, are willing to reimburse the state for any sums it may be compelled to pay the Warner Valley Stock Company because of the cancellation of the deeds the state has given.

He claimed that the decision as to the character of the land, was secured by misrepresentation, and that the state is not bound to observe it, but rather avoid it.

The Oregonian says editorially:

Public sympathy and common justice are on the side of the settlers in Warner Valley, whom the Warner Valley Stock Company is trying to dispossess of lands long occupied as homesteads and improved and lived upon as such. These people evidently acted in good faith, and to dispossess them [illegible] is not merely to visit upon them the penalties of a technical error of judgment, but to subject them to the [illegible] of a corporation and liable not infrequently to acts of violence. It may be hoped that equitable adjustment of this case will be reached, since neither party to the contention can afford to urge or accept a settlement upon any other basis. Land feuds are exceedingly bitter, and are proverbially slow in dying out. A company, in a case of this kind, even if it has a law upon its side, can much better afford, even as a financial proposition, to buy settlers out than arbitrarily to dispossess them while there can be no doubt as to the ethics of such a proceeding as judged by the standard of the golden rule.

About The Reserve.

Filibert Roth, government inspector of Forest Reserves, who for the past month has been inspecting the timber land recently withdrawn in Modoc county, arrived here last week, and will look over the 43 townships withdrawn in Lake county. Mr. Roth will probably find that the best timber land has already been taken, and what is left will be of little use to the government. The reserve as it now stands completely bottles Lakeview up, and if made permanent will eventually drive every sheep man out of business; will kill Lakeview and cause the farmers of Goose Lake valley to starve to death for the want of a market. This is no idle dream, but it is the candid opinion of every business man of Lakeview. The sheep industry is the solid prop that every business house in Lakeview leans upon, and without it they must fall. It is understood that Mr. Roth acknowledges that the sheepmen will have to go out of business if the reserve is made permanent. No more injustice could be done a community than to withdraw these lands from settlement. To hold these lands open for settlement brings business to the country, taxes to the county, and is an incentive to railroad building and the settling up of the county. There are no streams in Lake county that one or two townships would not cover to protect their sources from the hot rays of the sun. There is no necessity for anything more. These wholesale reserves are being fought everywhere in Oregon as being against the best interests of the people and the country at large. We hope Mr. Roth will recommend that the Lake county temporary reserve will be thrown open without delay, and we are only voicing the sentiment of over three-fourths of the people of Lake county.

BUNTING-MAHAN.

C. A. Bunting, formerly of Lakeview, and Mrs. Veneta Mahan, both of Merrill, were married at Reno, Nevada, on June 3d, at the residence of Mrs. S. A. Abbe, aunt of the groom. The newly married couple spent several days in San Francisco, on their return home.

Mr. Bunting is a well-to-do cattleman of Merrill, having made his start and grew up in the business in Lake county. The bride is a highly respected and well known lady of Klamath county.

The Examiner extends congratulations.

[illegible] Tuesday for Gunnison, Ill., to be in attendance at a [illegible] Times. Hugh will take a partial post graduate course at the Polytechnic Institute of Boston.—Grants Pass Observer.

THE DAY WE CELEBRATE.

The Line of March and Order of Exercises--Fireworks and Big Time Generally For All.

The Fourth of July committee have finally accomplished the difficult task of arranging a program for the national holiday, which is subject to changes before the final adjustment of affairs. The amount subscribed is very much short of what the committe planned; in fact $150 or $200 more will have to be raised to meet expenses. A platform 100x40, with an evergreen roof, where the excercises will be held, will afterwards be used for dancing, beginning in the afternoon following the ball game, when it will be free to everybody. In the evening a small charge will be made to help to pay the expenses. Following is the program as arranged:

National salute at sunrise. At 9:30 the procession will form in front of the court house for parade. The march will be north on Water street to the opera house and west to Main street. Then south and around the court yard to the place of beginning. In the grove the program will be carried out as follows:

Music by the Band.

Song by Glee Club.

J. L. Smith, president of the day, will then make a few remarks.

Prayer by chaplain L. A. Myers.

Song by Glee Club.

Reading of the Declaration of Independence.

Drill by little girls.

Recitation by Master Geo. Ross.

Oration by C. M. Smythe.

Song by Glee Club.

Immediately after the exercise will be climbing of a greased pole, free for all boys under 15 years of age. 1st prize, $2.50; 2d prize, $1.50.

Recess for dinner and to give the small boy a chance with his firecrackers.

After the baseball game in the afternoon, there will be games, as follows:

Race for boys under ten years of age, 1st prize $1.50; 2d prize, $1.00.

Race for boys under 15 years of age 1st prize, $2.00; 2d prize, $1.00.

Race for boys under 18 years of age, 1st prize, $2.50; 2d prize, $1.50.

Race for girls under 10 years of age, 1st prize, $1.50; 2d prize, $1.00.

Race for girls under 15 years of age, 1st prize, $2.00, 2d prize, $1.00.

Slow bicycle race, free for all, 1st prize, $2.50; 2d prize, $1.50.

Potato race for boys under 15 years of age, 1st prize, $2.00; 2d prize, $1.50.

Egg race for girls under 15 years of age, first prize, $2.00; 2d prize, $1.50.

Sack race for boys under 15 years of age, 1st prize, $2.00; 2d prize, $1.00.

Sack race for men, 1st prize, $3.00; 2d prize, $2.00.

Three legged race for men, 1st prize, $3.00; 2d prize, $2.00.

The grandest display of fireworks ever seen in this northern country will be given in the evening. A balcony concert on the veranda of Hotel Lakeview will be a feature during the fireworks.

[illegible] A. Emmitt leaves in a few days on a summer take whereby will make the survey of a township of unsurveyed land. He was unable to finish the work which he started late last fall, owing to the setting in of winter storms.—Express.