

Lake County Examiner

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NO. 47.

TIM AHERN IS KILLED.

Phillip Barry Jr. Wields Revolver With Fatal Result at Plush-- Funeral Here Yesterday.

Phillip Barry Jr., in a drunken fit, shot and fatally wounded Timothy Ahern at Plush, this county, last Saturday evening between 5 and 6 o'clock. The shooting occurred in the street near the store and saloon conducted by Willis Scammon, between dusk and dark. The particulars of the fatal affray are hard to get and many different stories are told. By the information given The Examiner, it appears that after drinking and carousing in the saloon where guns were much in evidence, four men, Phillip Barry, Nick Barry, Wm. Lane and Tim Ahern emerged and went down to a hitching rack, where their horses stood. Phillip Barry mounted his horse and rode up to within 20 or 30 feet of Nick Barry and Tim Ahern and fired his pistol, the bullet taking effect in Tim Ahern's neck near the jugular vein, and ranging downward, lodged in the vertebrae and crushed the spinal cord. Both Nick Barry and Wm. Lane ran. Willis Scammon hearing the shot, ran out of a corral near by and grabbed the gun as Barry started to ride away, and in the scuffle it was discharged, the bullet passing under Scammon's arm. Scammon told Barry to consider himself under arrest, but he rode away and disappeared in the darkness. As he did so, Scammon discharged the gun in the air in an endeavor to stop him.

Ahern was carried to the Scammon home and everything done for him that could be done, but he only lived until 11 o'clock that night. He asked Mrs. Scammon if he was badly hurt and she told him she thought not fatally. He was asked what physician he wished and he replied that he wanted Dr. Steiner. Harry Riggs was dispatched at once, arriving at Lakeview at 2 a. m., over 40 miles in a rain storm and bad roads. Dr. Steiner, accompanied by Dan Maloy started without delay, but when nearly there met a messenger coming for the coroner. Coroner Harris accompanied by Rev. J. B. Stark started early Monday morning for Plush. The verdict of the jury is as follows:

CORONER'S JURY VERDICT.

We, the jurors called by Coroner, F. E. Harris, to enquire into the cause of the death of Timothy Ahern, find that the said Timothy Ahern met his death from a pistol shot fired by the hand of Phillip Barry Jr. at Plush, on Nov. 21, 1903.

J. B. Stark, Foreman.

David A. Cleland

Frank Roggers

M. H. Caldwell

W. P. Overton

Wm. Alford

Phillip Barry rode to Lakeview Monday and was taken in charge by Sheriff Dunlap and lodged in the county jail to await a preliminary hearing.

The coroner returned Tuesday evening with the corpse which was placed in charge of the Forresters Lodge, of which the deceased was a member. The funeral took place yesterday at two o'clock under the auspices of this Lodge from the Masonic hall, and a large number of friends and acquaintances followed the remains to the cemetery.

Timothy Ahern is a native of Ireland, and was born February 14th

SPECIAL SESSION-- SPECIAL ELECTION.

Governor Chamberlain Has Issued a Call Convening the Oregon Legislature in Special Session-- Two Senators Must be Elected First.

SALEM, Or., Nov. 21.—Governor Chamberlain this morning issued a call to the members of the Legislative Assembly of the State of Oregon, commanding them to meet at the Capitol building in this city on Monday, December 21, 1903, for the purpose of convening an extraordinary session of the Legislature to enact a law to provide for the levy of taxes on the assessment rolls for the year 1903.

The Governor also issued writs of election to the Sheriffs of Klamath, Lake, Crook and Grant Counties for holding a special election to choose a Senator to fill the vacancy caused by the resignation of J. N. Williamson, and to the Sheriff of Clatsop County to hold a special election to fill the vacancy in the Senate caused by the resignation of C. W. Fulton.

The elections will be held on Wednesday, Dec. 16th. Not very much time is allowed for making nominations, and considerable less time is allowed to get to Salem after election. Before the call was issued there were many surmises as to what the Governor would do. The following may be of interest:

Democrats and Republicans expect that Governor Chamberlain will call an extra session of the Legislature in a few days; perhaps next Monday if he wishes the law makers to meet before Christmas, says the Oregonian. Several of his close Democratic followers are impatient lest he may be delaying too long. One of them promised yesterday to urge upon him the need of immediate action.

It is generally believed that His Excellency will interpret a majority of the lawmakers as meaning that they will oppose any legislation other than that relating to tax matters, even though they decline to bind themselves to that effect. The Governor has said that he does not wish to get a "pledge" from them; only an assurance.

GOVERNOR MUST HURRY.

The Governor must hurry if he would have the extra session before Christmas. The Legislature could convene within 20 and 30 days after he issued the call. If he should make his proclamation next Monday, November 23, he would have barely time to get the Legislature together before the holidays.

Governor Chamberlain would prefer to convoke the Legislature just before Christmas in order to hasten adjournment of the body. Furthermore, the usual January tax levy, which the Legislature will be summoned to authorize, would not then be delayed. An emergency would exist which would doubtless permit the Legislature to put the levy into effect immediately, even though the initiative and referendum should be sustained by the Supreme Court, as limiting the power of the Legislature in the most restrictive sense.

SPECIAL ELECTIONS TO BE HELD.

Special elections will be held in Clatsop for a successor to United States Senator Fulton, and in Crook,

Wasco, Klamath and Lake for a successor to Representative in Congress J. N. Williamson. Both vacancies are in the State Senate.

The Governor will probably not order a special election in Benton for a successor to State Senator John B. Daly, who since the regular session, has become Surveyor-General of Oregon. Mr. Daly has not resigned from the Senate, though some lawyers aver that his acceptance of the Federal office was in itself virtual resignation of the other office. Mr. Daly insists that he is still a member of the Legislature, his reason being that he desires to save his county the expense of a special election.

Whether Mr. Daly can hold his seat in the Senate is not properly a question for the Governor to decide, but for the Senate itself, since the constitution provides: "Each house shall judge of the election, qualifications and returns of its own members."

The seats of Senator Fulton and Mr. Williamson in the State Senate are, however, vacant, and must be filled by special election.

PROCEDURE TO BE FOLLOWED.

The Governor will at first issue a proclamation giving notice of the extra session. Neither constitution nor statute prescribes the length of time of the notice. Next the Governor will issue a writ of election, directed to the Sheriffs of Clatsop, Crook, Wasco, Lake and Klamath. County Clerks are required to give at least ten days' notice of the election. Certificates of nomination "in all special elections may be filed at any time between the date of the writ authorizing the election and ten days previous to the time of holding the election." Consequently, the two special elections could probably be held 15 or 20 days after the Governor issued his writ, and the Legislature could convene a week later.

Twenty-five days is therefore short notice for the Governor to give. That number of days after next Monday, November 23, will be Friday, December 18. If the session is to be held before Christmas the most likely period is between Monday, December 14, and Saturday, December 19.

LAW REQUIRES ELECTIONS.

The law requiring election of successors to Senator Fulton and Mr. Williamson reads as follows:

"When any vacancy shall happen in the office of a member of the Senate or House of Representatives, by death, resignation or otherwise, and a session of the Legislature is to take place before the next biennial election, the Governor shall issue a writ of election, directed to the Sheriff of the county or Sheriffs of the counties composing the district in which such vacancy shall occur, commanding him or them to notify the several judges of election in his county or their district to hold a special election to fill such vacancy or vacancies at a time appointed by the Governor."

1879. He has relatives in the old country and a brother William in San Francisco. Mr. Ahern was usually known as a quiet, good natured fellow, and apparently well liked by all who knew him.

The sad event is much deplored by

the victims' friends and the family of the accused, as well as all law-abiding citizens.

The preliminary examination will take place as soon as District Attorney L. F. Conn returns, which may be today.

BOND CASE REVERSED.

Supreme Court Reverses Lower Court in Neilson Bond Case-- Remanded for New Trial.

The Oregon Supreme Court on the 17th reversed the decision of the lower court in the Neilson bond case and remanded it back for a new trial.

According to law the case could not be tried in Lake county for the reason that every taxpayer was a plaintiff and a jury could not be found. A change of venue was therefore granted to Jackson county and the trial came up before Judge Hanna at Jacksonville last winter. The bondsmen lost the case, and an appeal was taken to the supreme court. It is claimed the law requiring similar cases to be tried in another county was repealed at the last legislature, and it is expected that the new trial will take place in Lakeview.

Neilson was Sheriff of Lake County and defendants J. Frankl, George Jammertal, A. McCallen and J. E. Bernard were his sureties. Neilson defaulted, and this suit was brought to recover on his official undertaking, which was executed May 6, 1899. At the trial the jury was instructed that the sureties would be liable for money collected by Neilson before the undertaking was given, and still in his hands, and that it would be presumed that he still had in his hands all money collected and not turned over to the county. This presumption, the jury was told, could be overcome only by direct and positive evidence. The Supreme Court holds that the presumption may be overcome by either direct or indirect evidence, and for this error the case is reversed and remanded for new trial.

Moore's Comedians Disband.

[Klamath Express.]

With the old but popular play, "Rip Van Winkle," the Moore company of comedians closed their week's engagement in Klamath Falls and disbanded for the season. Most of the members of the company have gone their several ways. Walter Jahngian and wife left Sunday for Oakland, Cal., where they will spend the winter, Mr. and Mrs. Burns left Monday for Seattle where, we understand, Mr. Burns has a waiting position on the stage. Eisen and Wheeler left the same day for Portland. Mr. and Mrs. Moore will leave in a few days for San Francisco and may later go to Seattle. Horace Ether left yesterday morning for San Francisco. The season was a very successful one for the company, and they will probably be with us again when the springtime comes.

Oregon Loses Swamp Lands.

The State of Oregon lost its contest over swamp lands on the Klamath Indian reservation that has been allotted to Indians, the Acting Commissioner of the Land Office, in a decision rendered on the 19th, having held that the title of the Indians is prior and superior to that of the state.

The effect of the Commissioner's decision is to invalidate the state's title to about 55,000 acres of swamp lands within the reservation that have heretofore been allotted.

OLD RELIC RECOVERED

Wagon That Has Lain in Bottom of Abert Lake Since Before Knowledge of Residents.

Everyone in Lake county is familiar with the finding of a wagon bedded in the mud out in the water in Abert Lake many years ago. The wagon has been seen by many people as they passed along on the east side of the lake, but all previous attempts to recover it met with failure. For the past few years the water in the lake has gone down to such an extent that it had receded from the shore until the wagon was only about fifty feet out.

The other day Roy Paxton came along on the east side of the lake below the high rim rock, and found the wagon in plain view, resting in the mud and only a few inches below the surface of the water. Being horseback he rode in and hitched a rope to it. After repeated trials it consented to be lifted from its bed in the lake. Contrary to expectations there was only two wheels and the hind axle of the wagon, instead of the complete wagon as was always supposed. It was an old fashioned thimble skein, with nuts to hold the wheels on, and not a lynch-pin as was supposed.

The action of the alkali-water from years standing submerged, nearly ate into the center of the wood parts, and the tires were rusted in two.

The history of this old wagon is unknown, and how it came there is a mystery. It is beyond the knowledge of Lake county residents of where it came from. But as many old pieces of wagons were found on the shore near by, years ago, and also the tar bucket which was found a few years ago, an account of which was published in The Examiner May last, would indicate that this spot was the scene of a tragedy.

The East side of Abert Lake is too rough for wagons to go clear around, and many suppose that immigrants attempted to go that way, but finding it impossible they abandoned their wagons, while others think that immigrants were massacred by the Indians and their wagons broken up and thrown into the lake.

Mr. Paxton will bring the old wagon to Lakeview when convenient and place it on exhibition along side of the old tar bucket at Bernards' store, and people can speculate to their hearts' content upon their history.

Bill to End Overgrazing.

Secretary Hitchcock sent to Congress the draft of a bill to control grazing in forest reserves, on the 19th. The bill imposes a fine of not to exceed \$1000, or imprisonment for not longer than one year, or both, upon persons who knowingly pasture any livestock on public lands within forest reserves, without first obtaining permission from the Secretary of the Interior.

Secretary Hitchcock, in his letter of transmittal, says the proper control of grazing within reserves demands that there shall be no overgrazing, and expresses the opinion that legislation he recommends should be promptly enacted to check an abuse that is becoming general in some states.