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Headlight.

Vol. VIII, No. 41.

TILLAMOOK, OREGON, THURSDAY, MARCH 5, 1896.

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Kopp's Beer on Draught

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Fine Liquors and Cigars

Tillamook, Oregon.

SCHERMERHORN

AND TILLAMOOK DAIRY
ASSOCIATION.

The following is gleaned from a brief
filed in the supreme court in the case of
the Tillamook Dairy Association vs.
Schermerhorn & Co. It is its complaint
the Association alleges that it is engaged
in the manufacture of butter, per-
formed through the creamery process;
that it operates a creamery at the place
aforesaid, and manufactures butter from
milk supplied by the dairymen living in
the vicinity thereof in pursuance of an
arrangement made between plaintiff and
said dairymen to the effect that plaintiff
if to manufacture the butter therefrom,
ship it to market for sale, and engage
parties to sell it for a compensation of
three cents per pound, to be paid to it
therefor by such dairymen, the butter
to remain the property of the dairymen,
and the proceeds of the sale thereof to
be paid over to them when realized.

The plaintiff further alleges that the
said defendants are partners, doing busi-
ness as commission merchants at the
city of Portland under the firm name of
Schermerhorn & Co.; that heretofore
and between the 10th day of May and
the 4th day of June, 1895, said plaintiff
shipped from said creamery to said de-
fendants at Portland aforesaid, in four
several shipments, 196 boxes of good
merchantable butter, manufactured by
plaintiff for such dairymen under the
arrangement aforesaid; that said ship-
ments were made to defendants as such
commission merchants under an agree-
ment between them and plaintiff that
the said defendants should receive said
butter, promptly sell the same at the
highest market price, and immediately
account to said plaintiff for the proceeds
of such sales after deducting therefrom
5 per cent for commissions and all ad-
vances made by them for the freight
thereon; that the said agreement be-
tween plaintiff and defendants was
made in the name of the plaintiff, but
for the benefit of the said dairymen who
furnished the milk from which the said
butter was made under the said ar-
rangement between plaintiff and said
dairymen aforesaid, which fact was well
known to the said defendants at the
time of entering into said agreement.

The said plaintiff further alleges that
said 196 boxes of butter so shipped to
the said defendants, as aforesaid, were
duly received by them, and contained
5,052 rolls of butter; that said de-
fendants, after receiving the butter, sold
the same, from time to time, as suited
their own convenience, but at what par-
ticular time said sales were made, or at
what price they sold the same for, plain-
tiff is unable to state. Said plaintiff al-
leges, however, that said defendants
sold said butter at prices which enabled
them to realize therefrom an average
price thereof of thirty cents per roll,
amounting, in the aggregate, to seven-
teen hundred eighty-five and Sixty
Hundredths (\$1,785.60) Dollars, which
amount of money said defendants now
have in their possession belonging to
the said plaintiff and its said beneficiar-
ies, subject to the sum of forty and
thirty one hundredths (\$40.30) dollars,
advanced by said defendants for freight
and cartage on said butter and to their
commissions for selling the same at the
rate aforesaid.

Wherefore, by reason of the several
premises, the said plaintiff demands
judgment herein against the said de-
fendants for the sum of one thousand six
hundred and fifty-six and two hun-
dredths (\$1,656.02) dollars and the costs
and disbursements of this action.

Barnet S. Schermerhorn filed a de-
murrer to the complaint, of which the
following is a copy in substance:

1.—That the plaintiff has not legal
capacity to sue, for the reason that the
action is not prosecuted in the name of
the real party in interest; (b) for the
further reason that the "arrangement"
alleged, and upon which this action is
based, is averred to have been made
with and for the benefit of certain third
persons, to-wit, dairymen living in the
vicinity of plaintiff's place of business;
and (c) for the further reason that it is
averred that the property, the proceeds
of which are sued for, together with the
proceeds thereof, is that of such dairy-
men.

2.—That said complaint does not
state facts sufficient to constitute a cause
of action, for the reason that: (a) The
fact is not shown or alleged that de-
fendant has not paid over the proceeds

of the merchandise sued for; (b) for
the further reason that it is not shown
or alleged that the sales stated to be
made, of the merchandise alleged to
have been shipped, were or were to be
made either on cash or on time; (c) for
the further reason that no demand is
shown or alleged to have been made, or
was ever made, on this defendant for
the proceeds or any of them or at all al-
leged to have been realized from such
sales; (d) and for the further reason that
plaintiff does not show a right to appear
in court and demand relief in its own
name, though having an interest in the
subject of the action and the relief de-
manded arising only, if at all, from
plaintiff's avowed power to sell only.

The complaint was amended to omit
the name of Chas. F. Schermerhorn as
one of the defendants.

Following is the decision of the court:
It is ordered and adjudged that the
complaint of plaintiff filed herein be
stricken from the files, and the action
thereby sought to be sustained against
the defendant, Barnet S. Schermerhorn,
be and the same is hereby dismissed;
that the defendant, Barnet S. Schermer-
horn have and recover of and from the
plaintiff, Tillamook Dairy Association,
the sum of \$16.50, taxed as costs and
disbursements herein, and that execu-
tion issue therefor.

(Signed) E. D. SHATTUCK, Judge.
The appellant specifies as the grounds
of error upon which it intend to rely up-
on the said appeal as follows:

First.—That the said court erred in
ordering and adjudging that the com-
plaint of the appellant be stricken from
the files, and that the action thereby
sought to be sustained against the said
Barnet S. Schermerhorn be dismissed;
Second.—That the court erred in or-
dering and adjudging that the respon-
dent Barnet S. Schermerhorn have and
recover from the appellant \$16.50, costs
and disbursements.

Third.—That the said court erred in
entering the said order set out in the
above notice.
Fourth.—That the said court erred in
entertaining a motion for the said order.

THAYER & MCCOY,
Attorneys for Appellant.

School Meeting.

There was a large attendance at the
school meeting Monday, and G. A. Ed-
munds was elected director to succeed
Claude Thayer. A. G. Reynolds was
elected clerk to succeed Tom Conates.

The committee appointed at the pre-
vious meeting to examine the clerk's
books and report upon the school, handed
in the following which was adopted:

"We the undersigned persons who were
appointed to examine the school clerk's
books and to report on the same and also
the conduct of the school, reports that
upon the conduct of the school, we find
the school conducted as well as could be
expected under the circumstances. The
teachers are competent, conscientious
and devoted corps of educators and do-
ing good work in their several depart-
ments."

We find for the benefit of discipline
that a gentleman principal should be
employed.

The school clerk's books have not been
ready for inspection by us, hence we
are unable to report on the same.

We find the out-building in a horrid
condition and recommend that larger
and better buildings be constructed at
once.

We recommend that a reduction in
teacher's wages be made and the money
thus saved be used in employing an-
other teacher when necessary.

We further recommend that an addi-
tional recitation room be made in the
hall on the second floor, and if the hall
is not large enough, use a part of the
other rooms. Said room to be used in
which to hear classes from the other
rooms on the second floor.

Respectfully Submitted,
E. E. SELPH, G. A. EDMUNDS,
L. H. BROWN.

NESTUCCA NEWS.

[From the Ocean Wave.]

Messrs. Reynolds and Barker came
over from Tillamook Wednesday for the
purpose of organizing an A. P. A. coun-
cil at Woods.

Elbert Bixby has rented his farm to
the Big Nestucca to Mr. E. G. Messen-
ger of Portland. Mr. Bixby and wife
are residing in Portland this winter.

The mail service between Sheridan
and Woods is in bad condition this win-
ter. We have heard a good deal of
complaint about packages of merchan-
dise being badly used, and some lost en-
tirely. The wrappers get so badly dam-
aged that the names cannot be read, and
it is a difficult matter to find the owners.

Capt. Crim took a load of goods to Sal-
mon river where he intends putting up a
store.

Attention!

The date opposite your name printed
on the margin of your paper or on the wrapper
indicates the time your subscription expires,
and you are invited to renew at that time. All
papers sent to parties outside the county are
promptly discontinued when their time expires
and six months' arrearage is the limit within
the county. In stopping your subscription, it
is necessary first to pay all arrearages.

John Smith \$2.00

The foregoing shows the style of the ad-
dresses. The large figure six at the right in-
dicates the year, that is 1896. A large seven at
the right would indicate 1897, or a five would in-
dicate 1895. The other figures denote the day of
the month, and the month is indicated in small
type. A cross mark in blue pencil indicates
that you are away behind and should pay up.

SHORT LOCALS

NEWS OF THE WEEK IN
PARAGRAPHS.

Onion sets at Cohu's.

County court this week.

Soda water, 5 cents, at the Bakery.

The steamer Elmore arrived Monday.

Fresh fruits have just been received
at the Bakery.

Born, to Howard Cary and wife Feb-
ruary 27, a son.

Miss Mann has begun another term of
school at Glenora.

A new line of school tablets and sta-
tionery at Sturgeon's.

No place like home—no cigars like the
General Arthur, at Lamb's.

G. B. Johnson, editor of the Nehalem
Times, was in town last week.

The Woodmen social tonight (Thurs-
day) promises to be a grand success.

An interesting communication from
F. M. Lamb will appear in next week's
issue.

Prof. Hewett, the theatrical man failed
to get here last boat. He is expect-
ed next trip.

Cohn & Co. made a shipment of 1300
dozen eggs and 2100 pounds of Swiss
cheese this boat.

T. B. Handley has called the republic-
an county central committee to meet
next Saturday at his house.

The dance in C. E. Reynolds' new
hardware store was a great success, not-
withstanding the bad weather.

Garden and flower seeds of all kinds
at Sturgeon's. They are of E. J. Bow-
en's, the best on the coast, and adopted
to this climate.

Baggage to the value of \$100,000 will
be checked on any route, providing your
clothes are in a General Arthur cigar
box, at Lamb's.

The steamer Albion left Nehalem
Monday, towing out the sailing schooner
Merriam. Both were laden with hun-
der and Nehalem is happy.

Local Market—Eggs 10 cents, dairy
butter 35 to 40 cents per roll, potatoes
30 cents per bushel, timothy seed selling
at 7 cents per lb, red clover, 12 1/2 cents.

Notice is hereby given that taxes are
due and all are requested to settle as
soon as possible. J. H. JACKSON, Sher-
iff and Tax Collector for Tillamook
County.

Mrs. T. F. Williams died Monday and
was buried Wednesday at the I. O. O.
F. cemetery. The relatives of the de-
ceased have the sympathy of many
friends.

Among the latest candidates sprung
up are Harry Grose for sheriff and Miles
Warren of Bay City, for J. P. It is un-
derstood Mr. Warren is willing to move
to this town if he is elected.

When General Arthur was alive he
ordered a special brand of cigars for
himself. They gave such satisfaction
to him and his friends that they are
still manufactured and have the large
sale of any cigar.

Governor Bowers has suggested that
it is not best for a man who is an under-
taker to be coroner. He says it encour-
ages death. Therefore the HEADLIGHT
and Mr. Bowers will fight Mr. Reynolds
to a finish if he dares come up for re-
election.

Several boys were arrested Monday
for disturbing the peace. It is alleged
they were out sleigh riding Saturday
night and made too much noise. The
boys allege that they made no distur-
bance. Their trial is set for next Mon-
day before Recorder Alderman.

A birthday party was given last Sat-
urday the 29th of February, at the resi-
dence of Mr. and Mrs. E. E. Jenkins,
on Wilson river, by relatives, it being
the 72nd birthday of Mrs. Jenkins, and
quite a number were present, as this is
the last birthday the old lady will have
for eight years, even if she lives until
she is 80 years old, there being no more
leap years until 1904 according to the
rules of the calendar. Most of the relatives
and descendants of Mr. and Mrs.
Jenkins were present, as most of them
live in this vicinity. They have done
their share to populate this county, and
have living 8 children, 51 grand children
and 19 great grand children, in all 78
persons, besides 16 sons-in-law and
daughters-in-law that are married into
the family. They have been married
since 1843, and are pioneers in this
county.