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TILLAMOOK COUNTY FAIR & CARNIVAL, AUG. 23, 24, 25.

HEMBREE IS GUILTY

Of Murdering His Only Daughter at Sandlake.

MANSLAUGHTER IS THE VERDICT.

Came Near Being Murder in the First Degree--A Compromise Verdict.

Guilty of murder!

That was the conclusion that eleven of the jurymen had come to Saturday night as they filed out of the court room after listening to one of the most interesting criminal cases ever tried in this county, although all the evidence was circumstantial and the prosecution was not permitted to introduce anything as to the previous character of the accused nor to the many incidents and threats that lead up to and were the real cause of the murder. Hembree has been proven guilty after a fair trial, with the best of legal talent. It was all on account of one juryman that a verdict of manslaughter, instead of murder in the first degree, was returned, which, probably, cheated the gallows out of another victim—that is if Hembree he is not tried for and convicted of murdering his wife.

We give below a continuation of the principal witnesses in the case, as we gave the particulars of the case in our last issue up to Friday noon:

Dr. Upton said he had examined the bones found in the stove, and when asked whether they were skull bone, he said, "This one is a portion of the ear bone. That bone sets in the skull in this manner at angels forward and inward. This would the a bone from the right ear." He was asked whether he had examined the other bones and he said he had. They were mixed bones. Some were very cancellous and some were not. The witness stated that it was very difficult to mash the skull of a human being. When asked to examine the skull bones and state whether or not they were broken before or afterward, he stated they were likely broken before or during the fire. He did not observe any sharp edges that would indicate the bones were broken afterwards. "There was one little piece that looks as though it was broken afterwards. With that exception I would consider they were broken before or during the fire. It would take a very hot fire to burn the bones to the extent these were burned." Could not state the degree of heat, other than to say it would take a very hot fire. When asked whether an ordinary farm house one and one half stories high and 16 x 24 feet would burn a human body to the extent that those bones were burned, said that would depend upon the position of the body occupied in the building, if the falling timbers would so fall upon the body to give it the benefit of the heat it might burn to that extent, "but it looks practically impossible."

Dr. Smith was also put on the witness stand by the prosecution as to the identification of the bones.

Coroner Reynolds was also put on the stand and related to the jury what he saw when making an investigation.

The prosecution closed its case Friday afternoon, when court adjourned until Saturday morning to give the defence time. Next morning the defence put on the stand but few witnesses, including the defendant.

Dr. Goucher for the Defence.

Dr. E. E. Goucher, of McMinnville, a physician and surgeon of 24 years practice, was defendant's first witness. Described the structure, etc., of the human skull. Stated that the oils, fats, etc., composing the contents of the skull, make it more combustible than other parts of the body; that the brain burns readily; that when burning, the substances within the skull would form a combustible gas, sufficient, if exploding, to tear the skull apart. A human skull was introduced for purpose of illustration. Stated that if a skull was filled with oats, and moistened with water, the oats would expand sufficient to separate the skull, and that same would come apart in complete form. Other human bones were introduced for purpose of illustration. Witness testified that he could not tell, without having a complete skull, whether bones were of a human skull or those of some other animal. That by subjecting the fragments of a human skull and the fragments of a skull of any other animal to chemical analysis, it would be impossible to tell one from the other; it was his opinion no doctor or surgeon could say with any degree of positiveness that the bones on exhibit were those of a human being. That there was no way of telling whether the skull bones were broken before or after being burned; that in either case the edges would be similar. That a fire hot enough to warp iron in the way the stove (on exhibit) was warped, would be very likely to wholly consume the skull and some other parts of the skeleton.

District Attorney asked if the heat that melted the top portion of the stove came from the inside of the stove, if it would consume the skull, as the doctor had stated? Dr. G. replied that he had not made that statement. That if the skull was subject to the same heat that the iron was, he thought it would consume it. Was asked if there wasn't some difference in the size and shape of skulls. Replied that there were. Was asked if he couldn't tell, then, without having the whole skull, whether it was of a human, or, for instance, of a cat. Replied that it might be of a very small child, and then one couldn't tell. But could usually tell from the thickness and shape.

Q.: Then it would be necessary for you to have a whole skull to tell whether or not it came from the skull of a man or a cat.

A.: The cat's would be similar.

Q.: And the same would be true of almost any other animal, wouldn't it, unless you got it from an ape or something near the size of a man?

A.: You can find parts of the skulls of animals similar to the skull of a human being.

Q.: Couldn't you tell whether the portion of a skull came from a human or the skull of an animal?

A.: I couldn't tell positively. Witness was not willing to swear that the skull bones were not those of a human; thought one of the pieces looked like human skull bone.

Was shown a piece of bone, which had been readily identified by Drs. Upton and Smith as part of the ear bone. Dr. Goucher testified that no one could tell what it was; but corrected, on further examination, that he could not tell. Taking up one of the pieces of bones he said that looked like a piece of human bone.

Hembree's Testimony.

The defendant was called to the witness stand in his own behalf, who seemed reasonably self-possessed upon direct examination, but the result of Attorney McNary's cross-examination speaks for itself. Defendant stated dimensions of house to be 15 x 29. Was in habit of hauling wood regularly once a week, summer and winter, kept wood shed for all purposes—workshop, store room, etc. Couldn't tell exactly what time in the night it was he discovered the smoke. Said he knew it was before three o'clock.

Q.: "Do you think it was midnight?"

A.: "It must have been."

Q.: "Do you think it was one o'clock?"

A.: "I think so."

Q.: "Do you think it was two?"

A.: "I don't think so."

Q.: "Do you think it was half past one?"

A.: "I don't think much about it."

Defendant supposed the smoke waked him that morning. He slept directly over the kitchen. The bedroom was full of smoke, and quite a lot on the stairway. The sitting room was full of smoke, and all one side of the kitchen was covered with smoke. When he first waked up, he told his wife everything was a fire. She took armful of articles and ran downstairs, she didn't dress herself. Ora had armful of things when she got down stairs. The three were on the stairway at the same time. Defendant ran to a tub and threw water on the fire. Went for second bucket. On return fire gushing out of door into kitchen, and the stairway was burning. Took out bureau drawers. His wife and Ora were standing by foot of stairs. Ora said something about getting her trunk. Defendant said, "not to go up there; it was dangerous." While defendant and wife worked, Ora was "rushing around throwing things out." Didn't see wife and daughter go upstairs. Ora said, "Oh, mamma, my trunk." The mother didn't say anything. Hembree went away and left them, after he warned them not to go up. The house was then all a fire; three blazes reaching to the ceiling, surrounding the stairs, the whole house was a fire, with the carpets, stairways and sills burning, and with streaks of flame at head of stairs. After leaving them at foot of stairs, Defendant testified he went into kitchen and threw out some thing, then went to front of house. He didn't hear the stairs fall. Didn't hear any sound of voices calling. Ran to wagon shed to look for them. Asked why he ran the 40 or 50 steps to the wagon shed, he replied that he wanted to find them as soon as he could. House still standing when he started for Hoyts'. Started little faster than a walk. He slowed up because he claimed he had a rupture and always wore a truss (no trace of such an ailment in evidence). Didn't say anything to Hoyts' about assistance; didn't tell them what his trouble was; went without truss next day. Didn't ask Hoyts' for any clothes. Asked if his wife and girl were up there. Said they were either burned or out in the night air. He fell asleep at Hoyts' (for three hours) owing to pain in head and exhaustion and the malady.

The District Attorney brought out some of the indescrepancies in Hembree's testimony. Put on shirt and drawers instead of trousers, which would have been quickest. Underclothes appeared fresh and clean. Didn't go himself for trunk, but let them. Didn't tell on cross-examination of going with wife to creek and her dropping one side of tub, as he told on direct. Said the brush scratched him going to Hoyts'. No person would enter into a blaze to rescue a trunk. Arriving at Hoyts', wanted them to look for wife and daughter. He slept late, ate breakfast. Asked for tobacco. Asked for pipe. Smoked on return to ruins and conduct undisturbed. Smoked while the rest investigated. Didn't attend interment, saying he had no good clothes.

Some little surprise was created when the defence placed Lawson and Roy Hembree, sons of defendant, aged 16 and 14 years respectively. They testified to being at the ruins after the fire and to finding bones. When asked what they did with them, they both said they threw them in the direction of the stove. Evidently both boys had been schooled as to what they should say on the witness stand, but the spectators placed but little credence in the story that the boys had thrown in the direction of the stove the bones of their mother and sister to be carried away by them later. This did not help Hembree's case, in fact it was a mistake that it was ever introduced if it was intended to infer that the bones came to be in the stove that way.

The defence's witnesses helped the prosecution. Dr. Goucher, when he took up a piece of bone, and that found in the stove, and said that looked like human bone, he played right into the hands of prosecution. Hembree himself hurt his case when he described how the fire was raging and leaping up the stairs when he said he left his wife and daughter, for no woman would rush into such a flame as that, unless no other way of escape presented itself. And as to his sons' evidence, that was another sign of a weak defence

The Arguments.

Deputy District Attorney Cooper was the first to open the argument for the prosecution, and in reviewing the evidence made a number of good points by linking together the chain of circumstantial evidence, and when he came to the old iron stove he said if that could speak it would tell of a most horrible crime committed by the defendant.

Attorney McCain followed for the defence, and in going over the evidence he tried to convince the jury that no crime had been committed and, tried to explain away on the evidence which was of a damaging character. When he came to the finding of the tooth in the stove, he taunted the prosecution as to what became of the other 27 teeth. He pulled a number of the witnesses to pieces and laid great stress upon the time between the fire and the finding of the bones in the stove, which were not found until a week or more after, and to the finding of a tooth in March. Before he was through he had explained away all the prosection's evidence, and on that showing asked the jury to acquit the defendant.

Attorney Pipes commenced by talking smooth and nice to the jury, telling them what intelligent and honorable men they were, and then launched off into an eloquent address, taking up the principal points in the case and tore them to pieces one after another in quick succession and in doing so made a strong plea in behalf of the defendant. Mr. Pipes also laid great stress upon the failure of the prosecution as to where the other 27 teeth were and challenged them to pronounce them. Before closing he appealed to the jury not to convict the old man upon circumstantial evidence.

District Attorney McNary closed the argument, which the large crowd in the court room had been anxiously waiting to hear. He commenced by saying he was not there to persecute anyone, but to do his duty as the prosecuting attorney. His address was pointed and wove around Hembree a chain of circumstantial evidence which made beads of prespiration appear on the face of the defendant. After controverting the arguments of the attorneys for the defence he grew sarcastic when he came to the challenge to produce the 27 teeth. Turning to Mr. Pipes he said, "Take your client into the next room and ask him what had become of the 27 teeth. He (Hembree) was the only man who could tell what had become of them." The prosecuting attorney told the jury that he would like to know what had become of the teeth, but he had no power to wrench that from the defendant, as long as Hembree's mouth was closed and sealed. In answer to the attorneys on the other side, who had given the jury a great speal because the prosecution did not produce evidence to show the motive of the crime, Mr. McNary answered this by saying that the prosecution could not bring in that class of evidence in this state. If any of the jurymen had any doubts as to the innocence or guilt of the defendant, Mr. McNary's argument went a long way to unravel the mystery.

Judge Mr. Bride charged the jury, and it was about eleven o'clock when the jury retired to consider the verdict.

The Verdict.

When the jury left the court room, this is how the jury stood:

For murder in the first degree—Foster, Jenkins, Miller, Curl, Rhoades, Maxwell, Alley, Thompson, Quick—9.

Undecided as to murder in the first or second degree—Elliott—1.

For murder in the second degree—Tubbesing—1.

For acquittal—Hadley—1.

Later Elliott decided for murder in the first degree, making 10 jurymen in favor of hanging Hembree, with Tubbesing for murder in the second degree and Hadley for acquittal. It was thought if Hadley had not been so obdurant Tubbesing would not have stood out against murder in the first, as eleven of the jurymen before they left the court room were satisfied that Hembree committed the terrible crime, while Hanley wanted to turn him loose. This state of affairs continued for a long time, but so as to return a verdict, those who were in favor of hanging Hembree changed from murder in the first degree to second degree, which is a life sentence. Still Hadley remained obdurate and held up the jury in favor of acquittal. A little before noon on Sunday the jury sent for Judge McBride and the attorneys. Once more in their seats in the temple of justice, some of the jurymen had the appearance of having put in a tough night, looking tired and irritated. Foreman Quick addressed the court by saying that it seemed that the jury could not agree upon a verdict in the first degree, but had almost agreed upon a verdict in the second degree. But what the jury wanted to know was whether they could fix the penalty. Judge McBride replied that was for the discretion of the court and they should bring in a verdict regardless of that. Juror Thompson brought the switch of hair into court and wanted some light thrown upon it, as the jury was undecided whether the hair had been cut or burned. The court could not give any further light other than that given in the evidence. Juror Maxwell wanted some of Hembree's evidence read, which Judge McBride ordered the court reporter to read, but as he did not have it in court, the juror withdrew the request. The jury then retired to its room, and it looked again as if the jury would hang. The jurymen who had changed from murder in the first degree thought they had conceded enough, but after talking over the cost of another trial, with the probability that it would be taken to another county, they agreed to a verdict of manslaughter rather than no verdict. Then the end was reached. A. J. Hembree was found guilty of murding his only daughter, Ore Hembree, as charged in the indictment. The judge and the attorneys were again sent for.

Only eight ballots were taken in the jury room, as follows:

1st—First degree, 9; not guilty, 2.

2nd—First degree, 10; second degree, 1; not guilty, 1.

3rd—First degree, 8; second degree, 3; not guilty, 1.

4th—Second degree, 11; not guilty, 1.

5th—Second degree, 6; manslaughter, 6.

6th—Second degree, 4; manslaughter, 8.

7th—Second degree, 2; manslaughter, 10.

8th—Manslaughter, 12.

It was a bright, beautiful Sunday afternoon, with Judge McBride on the bench, the attorneys in their places, a wearied looking lot of men on the jury stand, a few spectators and a representative of the Press sat in the new court room, and with A. J. Hembree at the bar of justice charged with murder, and that of his own daughter. It was the most solemn occasion of the whole trial, as Judge McBride asked the jury: "Gentlemen, have you arrived at a verdict?" In reply to this Foreman Quick replied, "Yes, sir." He handed the verdict to the judge, who handed it to County Clerk Lamb with instructions to read it. Hembree was told by the judge to stand up. He did so. Then the clerk read the verdict which declared that Hembree was a murderer, the slayer of his own daughter. Hembree, who has maintained a bold front, although visibly nervous, was evidently surprised, for he expected a disagreement yet for all that he appeared to be relieved and not very talkative as he was taken back to his cell.

The verdict will long be remembered in Tillamook for several reasons. It was the first trial in the new court house, the worse crime ever committed in the county, and the most illogical verdict that could be brought in for so serious a crime, for if Hembree committed the foul deed, and the jury says he did after a fair trial, a verdict of manslaughter is a travesty on justice.

Motion for a New Trial.

It being Sunday when the verdict was rendered, no legal business could be transacted, but it was stipulated that Hembree's attorneys should move for a new trial next day, so on Monday the regular procedure was gone through and Judge McBride allowed thirty days to file exceptions and for a new trial, which will be argued at Oregon City on Aug. 29th. Should the judge decline to allow Hembree a new trial he will return to Tillamook and pass sentence.

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WHERE IS THE COUNTY AT?

Attorneys for the County Commenced Action Wrong Side Up.

An important decision was rendered by Judge McBride on Tuesday, in the Alderman cases. Mrs. Alderman and the sureties had filed a plea in abatement in the cases brought by the county on the ground that before the administratrix could be sued the law required that a claim should be presented to her for allowance, and that what had been attempted to be done in this way was not a legal presentation of the claim, and had been so held by Judge Burnett, this being the matter with which our readers are familiar when Handley & Thayer presented what purported to be a claim against the estate of H. H. Aldermen for seven thousand dollars, and which on appeal to the county court was allowed by Judge Conder. This was appealed to the circuit court and change of venue taken to Yamhill County, where Judge Burnett dismissed the proceeding holding that the claim was not properly presented.

The county has filed demurrers to the pleas in abatement in the several cases, and in his decision Judge McBride overruled the demurrers, holding that each of the suits was prematurely brought. The Judge expressed himself as being quite clear as to the matter of suit against the estate, and took the same view as to the sureties, holding that it would be unjust to proceed against the sureties when the principal in the bonds could not be held responsible, particularly in view of the law which prescribes the rule that in suing upon an official bond the official and the sureties must be sued together.

Judge McBride took occasion in rendering the decision to comment upon the fact that a suit of a similar nature had been brought against the sheriff of Washington County, based upon a report made by the same experts who exported the books of the county officials in this county. The experts had reported a shortage of five thousand dollars, but it turned out, on the trial of the case, that the county was owing the sheriff about $150, and he recovered judgment for that amount.

The Judge also gave some expression of his views as to the matter of sureties for officials in a general way. It is his opinion that bonds should not be required from elective officers; that each voter of the county when voting for a person for office, should thereby become surety for the acts of the official, and that it is unjust that a few men in any community should be required to make good losses arising on account of the acts of an official elected by all the people.

A determined effort was made on behalf of the county by Attorneys Thayer & Johnson to obtain a different decision, Mr. Johnson remarking that if the county is required to present a claim now against the estate and begin new suits, it would result that a large part of the amount claimed could not be recovered, because the claim would be outlawed, having run more than six years. In addition to this, the fact that from the years 1900 to 1902 no tax-collector's bond was given, and it being during this period that the greatest part of the shortage is alleged to have occurred, it would appear that the county has very little to gain by a continuation of the prosecution of these suits. The claimed shortage, which is now protected by the tax-collector's bond, being a very small amount.

This is the latest addition to the large number of instances in which the county has met with a decided set-back in the prosecution of these claims. It had been thought that when Judge Galloway over ruled the defendant's motions which were filed last spring, that the county had at last reached a point where some results favorable to it might be expected, but this decision of Judge McBride would appear to wipe out a great deal of the hopes that were raised by Judge Galloway's decision.

It remains to be seen what course of action will be taken by Thayer & Johnson, the attorneys for the county, or whether the county itself will feel justified in proceeding any further with the prospects for success so slight as they now appear to be.

Thayer & Johnson appeared as attorneys for the county in the cases, and Ralph R. Duniway and H. T. Botts represent the defence.