

FROM TUESDAY'S DAILY

THE TRIAL PROGRESSES

EX-COUNTY CLERK EHLEN IN THE WITNESS CHAIR.

So Was J. W. Roberts, a Former Janitor and Nightwatchman of the Court House.

(From Daily February 28th.) Another day has passed in the trial of the state against Samuel T. Richardson, who is under indictment on the charge of altering the election records of Mt. Angel precinct, and still the end is not in sight.

The principal witnesses examined yesterday were ex-County Clerk L. V. Ehlen and J. W. Roberts, the latter being the ex-nightwatchman and janitor of the court house. Timon Ford, and Mrs. Ehlen and daughter, Lenore, were also questioned on some minor matters in connection with the circumstances of the affair which took place during the time the ballot tampering was done.

Court convened promptly at 9 o'clock yesterday morning, the court room containing a large number of spectators, and many legal lights being within the bar.

Mr. Ehlen was the first witness to be questioned, and his testimony tended to verify what District Attorney Hayden said in his opening statement to the jury on Saturday last. He told about receiving the election ballots and tally-sheets in question from the officers of the precincts after the election last June; they were in his possession continuously until Sunday, June 12th, of that year (1898). He was shown the tally-sheets and identified them as the ones received from the election board. His acquaintanceship with the defendants has been from four to ten years. He related what occurred between Mr. Richardson and himself on the 10th of last June. On that day he met Mr. Richardson and the latter said: "You ought to do something for the D'Arcys; they have been good friends of you." Ehlen didn't know what Richardson meant, and on inquiry Richardson remarked: "If we can see the ballots, we can fix Pete all right." Then they arranged to meet at the county clerk's office that night. What happened from that time on until June 20th, as told by Mr. Ehlen, was in effect similar to what Mr. Hayden said in his speech to the jury.

On cross-examination Mr. Ehlen was asked further regarding his meeting Mr. Richardson at the time the latter made the proposition to get the ballots, and several other interrogations brought the witness and attorney to the date of the witness leaving the city on June 20th. Mr. Ehlen here stated that on that date he was in Portland, and at the St. Charles hotel, he wrote the affidavit (which was published in the Statesman of July 1st last, and which is fresh in the memory of the Statesman's readers) which he sent to his brother-in-law, Dr. A. J. Giesy, in that city. That afternoon he went to Vancouver, Washington, and later proceeded to Alderson, of the same state. Some days later he was called on there by District Attorney Hayden, and returned to Salem with him some days later; while with the district attorney some liquid refreshments were indulged in. Counsel for defense asked him who met him at the depot in Salem on his return.

The prosecution raised an objection to cross-examination on that point, and it was argued to considerable extent. Mr. McGinn thought the time had come for defendant to have an opportunity to show something regarding a conspiracy. The court decided that any questions on that matter should first be submitted to him in writing, and he would pass on them as to whether or not they should be allowed at this time. Mr. McGinn's action at this point in the proceedings caused the court to remark that he did not desire any grand-stand plays by his attorneys. Mr. McGinn arose to his feet quickly and urged the counsel and jury to take special notice of this remark by the court. He was again called down, and a brief recess was taken to permit the defendant's attorneys to prepare their questions in writing. When counsel for defense resumed the cross-examination, inquiry was made if the witness was not interviewed at Alderson by the district attorney. Witness replied that he was with Mr. Hayden at that town about three-quarters of an hour, and they then started for Salem, coming through Tacoma. The question as to witness and Mr. Hayden drinking frequently on the trip was next propounded, and the state raised an objection. The court ruled that any questions on that point were not permissible. Mr. Bennett, the attorney for defendant, who was doing the questioning, made strong objection to the court's ruling in that manner; he was overruled. Mr. Bennett then asked Mr. Ehlen if it was not true that he was a defaulter and absconder at the time he left Salem (June 20th). Strenuous objection was made by the state to this interrogation. Mr. McGinn was on his feet instantly and made quite a speech; he thought that upon Ehlen's testimony principally depended the result of the case. He read from State vs. Baker and Phelps, 23 Oregon. The court ruled that no such question should be asked.

Mr. Ehlen was then asked as to who he met on arriving here, and his reply was that it was Mr. Ford, who remained with him about an hour.

Court now adjourned for the noon hour to give counsel for defendant further opportunity to prepare some questions in writing, which were desired to be asked of the witness. At the beginning of the afternoon session Mr. Ford was placed on the stand for the purpose of proving the original of Mr. Ehlen's letter or affidavit, which was written on the 20th of June, and had been sent to Mr. Ford.

Mr. Ehlen was called to the witness stand again and testified that the letter was the one he sent to Dr. Giesy, as afore-mentioned. Further cross-examination did not develop anything of much consequence and, on Mr. Ehlen being excused J. W. Roberts was called to the stand. This witness was a regular "pudding" for the defendant's counsel, as his story of his connection with the affair of last June did not correspond in many particulars to that told by him at the preliminary examination. It is very evident that he will be the subject of considerable ridicule by the defense when the case is argued before the jury.

Mr. Roberts was dismissed about 3:20 o'clock and ex-Policeman J. C. Johnson required to appear. He was asked as to his relationship with Mr. Richardson and answered that they were first cousins. On being asked by Mr. Hayden if he saw Mr. Ehlen on the night of June 10th, last, he objected to answering the question, and asked to be excused on that point and any other that might incriminate him in the matter, along with the other defendants. He said that it had come to his ears that the grand jury had considered the matter of finding an indictment against him, but so far none had been returned.

Counsel for state desired to refer to some legal authorities on the point, and asked for a stay of proceedings to permit them to procure the necessary books, which were in Mr. Hayden's office.

Mr. Hayden's colleague, Mr. Holmes, went after the document, and while he was absent from the court room Mr. Johnson was excused for a time, and Mr. Hayden called Mrs. Ehlen and her daughter, Lenore, to testify as to certain of the defendants calling at their home on June 11th and 12th last. This evidence being secured, the court awaited the return of Mr. Holmes. That gentleman soon appeared and, after a brief argument of the question concerning Mr. Johnson's case, Judge Burnett adjourned court until 7 p. m. for the purpose of affording him some time to consult some authorities which he had in mind.

This was shortly after 4 o'clock. Upon reassembling in the evening, the right of ex-Policeman J. C. Johnson to refuse to testify was discussed, pro and con, and points of law involving the question under discussion were freely quoted.

The court sustained the position taken by the witness, and Mr. Johnson was dismissed without giving any testimony at all. Mr. Johnson is alleged to have served as a messenger in transporting the original tally-sheets from Mr. Ehlen to the office of D'Arcy & Richardson.

Oswald West was next called, but could not swear positively as to what night in June he saw W. J. D'Arcy on State street in the vicinity of D'Arcy & Richardson's law office, in company with Justice Hayes, of Woodburn.

Henry Wiprut, clerk in Strong's restaurant, was the next witness. He testified that Mr. Carson came to the restaurant one night in June with a man, whom he did not know, and had some oysters. He further testified that Mr. Carson frequently called at the restaurant.

At 8 o'clock court adjourned until 9 o'clock this morning.

THE RUNAWAY TRUSTEES.

Smith and King Reported to Have Passed Stayton, and Going Toward Mehama—The Pursuit.

Smith and King, the two trustees who ran away from the state penitentiary on Saturday evening had not been recaptured up to a late hour last night, but news had been received as to the direction they had taken, and it is believed to be but a matter of a few days until both will again occupy cells in the big prison.

Early Sunday morning, at 2 o'clock, the two men called at the farm home of John Lewis, near Ale, and asked for clothing, as they were still clad in stripes. They did not receive the desired change of raiment, and were urged to return to the prison, but did not heed the advice, going, instead, in the opposite direction. On Sunday they were seen crossing the bridge at Stayton, and headed for the country about Mehama. The home of Smith,

whose real name is said to be Lewis, is on the Linn county side of the river, near Mehama, and it is believed that the men are heading for that point. The bridge at Mehama is being guarded, and should the runaways attempt to cross there they will be promptly apprehended, according to letters received by private parties from Mehama yesterday.

John Porter, farmer at the prison, has gone on the track of the escapes, and will follow and arrest them if possible. Should they be brought back it is not likely that they will again be made trustees, and all the credit marks gained by the men thus far will be lost to them.

King, who was sent down from Pendleton, convicted of rape, recently had a visit from several leading people of that city, who informed him that efforts would be made soon toward securing his liberation, by means of a pardon, and his escape at this time is inexplicable.

IN PROBATE COURT.

Several Estates Administered Upon and Administrators Discharged.

I. W. Hubbard, C. W. Stump and C. Baker, appraisers of the estate of Charles L. Jones, deceased, yesterday filed their inventory and appraisement. The estate consists of five acres of land and is appraised at \$500.

Nancy A. Perkins, executrix of the estate of Hiram Geren, deceased, yesterday filed with the probate court her final account.

The final account of W. J. Culver, administrator of the estate of Catherine B. Livermore, deceased, was yesterday approved and the administrator was discharged. There is a cash balance on hand of \$37.20 and the same will be distributed among the several heirs.

J. P. Cole was yesterday discharged as administrator of the estate of A. B. Cole, deceased. His final account having been confirmed and approved by the probate court.

ATHLETIC NOTES.

I. A. A. O. Preparing for Field Day—Good Game of Basketball.

The annual meeting of the executive committee of the Intercollegiate Amateur Athletic Association of Oregon, was held at Willamette University on Saturday afternoon. Those in attendance were: Smith (O. S. N. S.), Garland (W. U.), Crawford (C. A. C.), Kenworthy and Parker (P. C.), Brownell (P. U.), Whittlesey and Scott (U. of O.).

Pacific University, of Forest Grove, was permitted to enter the association, and will send a team to the field meet in June.

Officers were elected as follows: President, Smith (O. S. N. S.); vice-president, Frank Crawford (C. A. C.); secretary, Whittlesey (U. of O.); treasurer, Kenworthy (P. C.).

It was decided that the manager should be selected from Willamette University, that officer to be named by the executive committee. L. S. Scott, of Eugene, was elected assistant manager.

The annual field meet will be held Saturday, June 24.

A good audience witnessed the game of basketball at the University gymnasium Saturday at 4 p. m. A fair game was played between the local university and the Monmouth State Normal school, resulting in a score of 12 to 5 in favor of the Normals. The home team was disorganized, Russell and Marquand both being sick.

The visitors played a fine game and the Willamette boys feel sorry they could not give them as good as they sent.

The line-up was: Monmouth—Forwards: Murphy and Haley; guards, Stringer and Perry; center, Gill. Willamette: Forwards, Kinady and Aschenbrenner; guards, Starr and Shram; center, Wilkins. Umpire, Prof. L. Tretyag and F. E. Brown. Prof. Noon refereed the game.

MACHINES RUNNING—The Albany cigar dealers are all playing their nickle-in-the-slot machines. The dealers in Portland and surrounding towns are operating their machines and it seems to be the disposition of all to await the action of the courts on the law. The local men say if the law is constitutional they will discard their machines and abide by the law, but if it is held void they do not care to dispose of their machines. About twenty-five machines are in operation in Albany and they represent several hundred dollars.—Herald.

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APPOINTED DEPUTY.—C. F. Cathcart has been appointed deputy 6th commissioner by Hollister D. McGuire.

Mr. Cathcart was formerly sheriff of Douglas county, but is now a resident of Astoria.

BORN.

RICHARDSON.—At the family home, No. 236 Summer street, Salem, Oregon, Sunday, February 26, 1899, at 9 a. m., to Mr. and Mrs. S. T. Richardson, a daughter.

WILLIAMS.—At the family home, No. 406 Winter street, Salem, Oregon, on Sunday, February 26, 1899, at 5 p. m., to Mr. and Mrs. Charles Williams, a daughter.

DIED.

MILLER.—At the home of her mother, Mrs. L. S. Miller, No. 424 Winter street, at 4:40 p. m., Monday, February 27, 1899, of consumption of the bowels, Itae S. Miller, aged 15 years, 9 months and 15 days.

The deceased has resided in this city with her parents for about eight years and was quite well known. Her father, L. S. Miller, died January 20, 1898.

CASE OF CLAUDE BRANTON

MURDERER OF JOHN LINN MUST PAY THE PENALTY.

Supreme Court Affirms the Sentence of the Circuit Judge—Other Decisions Made.

(From Daily February 28th.)

In the supreme court yesterday five decisions were handed down, in cases heretofore heard. The cases cases decided are as follows:

State of Oregon, respondent, vs. Claude Branton, appellant; appeal from Lane county, Hon. J. W. Hamilton, judge; affirmed. Opinion by Associate Justice F. A. Moore.

The defendant, Claude Branton, was indicted, tried and convicted of murder in the first degree, alleged to have been committed in Lane county June 15, 1898, by killing one John A. Linn, and having been sentenced to be hanged, he appealed, assigning as error the action of the trial court in denying him leave to withdraw his plea of not guilty, to enable him to demur to the indictment; in refusing to direct the jury to acquit him, and in giving certain instructions.

The defendant plead not guilty, and thereafter, before he was tried, Courtland Green was separately indicted for the same crime, and to which he plead guilty, whereupon Branton moved the court for leave to withdraw the plea of not guilty, that he might demur to the indictment, but the motion was overruled. Defendant contends that Green's plea of guilty was a complete vindication of the law for the commission of the crime, with which Green and Branton were charged separately, and that Green's plea of guilty operated as an acquittal of Branton, urging that the court erred in refusing to permit the withdrawal of defendant's plea. The court holds that where more than one join in the commission of an offense, which is not necessarily several, all or any number of them may be jointly or separately indicted therefor. The court concludes that a demurrer upon the ground stated would be without merit, and could not rightfully be sustained, and, this being so, the defendant was not deprived of any substantial right by the court's refusal to permit him to withdraw his plea. The defense maintains that the court erred in refusing to instruct the jury to acquit the defendant because the proof failed to show that the crime was committed in Lane county. The testimony showed that Linn was killed at Isham's corral, on the road leading from Sisters, in Crook county, to McKenzie river, in Lane county, about four miles west of the summit of the Cascade mountains. The defense urges that the boundary between Lane and Crook counties has not been designated by the legislature. The court holds that the eastern boundary of Lane county, as understood by the legislature, ran to the summit of the Cascade mountains, and the acts of the legislature, establishing the various counties, are quoted in support of this contention, and while the description of the boundary is vague, there being some doubt as to the eastern boundary, it being either the summit of the Cascade mountains or the foothills along the east side of the same mountains, it is held that Isham's corral, being four miles west of the summit, is clearly in Lane county.

The defense further contended that Green committed the crime, and that the defendant became an accessory only after the fact, by the part he took in attempting to shield the principal from the consequences of the act. The defendant, appearing as a witness, however, testified that he and Green had discussed the matter of killing Linn some time before starting across the mountains with him. He recited a conversation had with Green before the killing, and his admissions in this regard are considered as making him an accomplice, and the court's action in refusing to instruct the jury for an acquittal is sustained. Other instructions given to the jury were objected to without avail.

The court holds that no error was committed by the trial court and the judgment is affirmed.

Henry H. Sievers, appellant, vs. Samuel B. Brown, respondent; appeal from Marion county, Hon. Geo. H. Burnett, judge; affirmed. Opinion by Associate Justice F. A. Moore.

This was an action to recover the value of certain crops, grown by plaintiff upon defendant's land, but appropriated by the latter to his own use. The plaintiff had purchased from defendant a tract of land for \$3,200, paying on September 1, 1892, \$600, the balance to be paid in eight annual installments of \$325 each, the note specifying that when default of any payment should be made the whole should become due, a bond for a deed being given by the purchaser. When the first payment became due plaintiff refused to pay, claiming that the bond did not describe the land correctly. The title being perfected by defendant, and payment being still refused, the defendant foreclosed plaintiff's equitable right. When the sheriff, on July 1, 1894, evicted plaintiff from the land, and put defendant in possession thereof, the latter having become the sole owner by law, plaintiff, who had a quantity of wheat and oats growing on the land, brought this action against defendant for the recovery of the value of the crops, which defendant had appropriated. The court adjudged plaintiff to be entitled to only \$37, the value of a certain crop of hay, the defendant being adjudged the owner of the other crops, and from this judgment plaintiff appeals.

The appellate court holds that when defendant tendered a good deed, and demanded payment, and same was refused, plaintiff forfeited his rights as a tenant, and the question is considered as being simply on the time when the crops were planted, before or after the date, and the evidence in the bill of exceptions now shows when the seed was planted or sowed, it is presumed, in view of the judgment, that the crops

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and R. J. Hendricks for the appellant.

The court yesterday announced its appointment of stenographers, to assist in the preparation of opinions. W. P. Williams is appointed, to serve at a salary of \$75 per month, beginning with February 18th, and Mrs. Ida Vaughn and Miss E. Dalton, of Portland, at \$60 per month each, beginning March 1st.

The following minor orders were also made by the court:

State ex rel Reimers, plaintiff, vs. J. E. Miller, defendant; motion to transfer to Pendleton disallowed.

The Western & Hawaiian Investment Co., respondent, vs. The Farmers & Traders' National Bank, appellant; ordered that the case be re-transferred to Pendleton, and that the motion to set aside the decree be reversed for further consideration there.

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