

# THE BUTTE INTER MOUNTAIN.

VOL. XXI, NO 233

BUTTE, MONTANA, MONDAY EVENING, DECEMBER 23, 1901.

PRICE FIVE CENTS

## HISTORIAN MACLAY

REASONABLE TIME WILL BE GIVEN FOR RESIGNATION.

MUST QUIT THE NAVAL SERVICE

Department Will Take No Notice of Recent Public Interviews of Admirals—Want Further Discussion Stopped.

(By Associated Press.)  
Washington, Dec. 23.—Nothing has been heard at the navy department from Historian MacLAY in response to the department's request for his resignation. Under the rules an employe is allowed three days' grace in which to file cause why he should not be dismissed, and although this rule having been made by the executive authority, may be disregarded at its pleasure, it is believed that MacLAY will be given a reasonable time to quit the naval service, for it is certain that he must go.  
In the event the determination already reached to stop the further discussion of the Schley case, so far as the executive branch of the government is concerned, the navy department has decided that it will ignore the reported recent utterances of Rear Admirals Brown and Belknap, somewhat on the line of General Miles' interview.

MOVE FOR NEW TRIAL.

Milton Howell's Attorney Making Further Effort for Him.

(Special to Inter Mountain.)  
Helena, Dec. 23.—The action of the state board of pardons in retifying Governor Toole's action in commuting the death sentence imposed by the district court of Fergus county upon Milton O. Howell for the murder of Thomas Rosling, will doubtless result in an effort being made by Howell's attorney, W. E. Cort, to have the case reopened and another trial given his client.  
Mr. Cort believes that his client did not have a fair trial and believes that his punishment should be even much lighter than life imprisonment.  
Had it not been for Governor Toole's intervention Howell would have hung December 13, as that was the date fixed for his execution.  
Late in November Howell was given a commutation of sentence upon the showing made by his attorney, Mr. Cort, who labored unceasingly to have the death sentence of the court removed.  
Mr. Cort brought the skull of Rosling, the murdered man, to Helena and submitted it to the examination of several well-known physicians who made affidavits to the effect that the bullet entered Rosling's skull from the front. During the trial one physician, who was examined, testified that to the best of his knowledge the bullet entered from the back of the head.  
Armed with these affidavits Mr. Cort presented the matter to the governor and asked for a commutation of sentence on the grounds that Howell's claim of self-defense was a good one. The claims of the four physicians, Mr. Cort contended, should weigh more than the one who testified at Lewistown at the time of the trial, when public excitement was strong against Howell.  
Howell has been taken to the state penitentiary at Deer Lodge where he will remain for his natural life unless he is given a new trial or there is a further exercise of executive clemency.

FESTIVITIES AT HELENA.

Helena People Make Glad the Heart of the Needy.

(Special to Inter Mountain.)  
Helena, Dec. 23.—Yesterday in all the churches special song services were given and special attention was paid to the musical program. The near approach of Christmas and the sentiment of the day in a measure predominated at all the churches and sermons appropriate to the occasion were delivered.  
During the week Sunday-schools of the city will hold their annual Christmas tree and Santa Claus will make his usual visit.  
At the Auditorium Wednesday afternoon the Helena lodge of Elks will give a Christmas tree to which all the poor children of the city are invited. Each will be given a present and sent home happy.  
Officers of the Associated Charities are planning to give a Christmas dinner to the less fortunate ones and Christmas will be observed in Helena this year in the traditional way.

RECORD GETS VERDICT.

Newspaper Wins in Libel Suit Against Mary Fister.

(Special to Inter Mountain.)  
Helena, Dec. 23.—After being out but a few minutes the jury in the libel suit brought against the Record Publishing company of this city by Mary Fister for \$10,000 damages brought in a verdict for the defendant Saturday afternoon.  
Miss Fister sued to recover \$10,000 for alleged libel by the Montana Daily Record. She had some trouble in Goodman's cafe a year ago with the waiter over the payment for her meal. During the struggle which followed a mirror fell from her clothing and the paper publishing a news article said that "Mary Foster or whatever her name might be" was a shoplifter. She instituted suit eight months ago.  
The case was tried in Judge Henry C. Smith's department of the district court.

FOR A LABOR TEMPLE.

Helena Unions Will Organize Trade Council Next Week.

(Special to Inter Mountain.)  
Helena, Dec. 23.—The plan to build a labor temple in Helena is again being agitated by the labor organizations and there is a strong likelihood that a suitable building will be constructed in the spring. A building and trades council will be organized in Helena within 10 days. The project to build a labor temple will then be taken up.

## AFTER A BURGLAR

OR THE TALE OF TWO BRAND NEW SLEUTHS.

TOUCHING STORY OF POLICE

Officers in Plain Clothes Try to Catch a Supposed Invader, and Are Now Feeling Sorry for Themselves.

BEN HILL DEAD.

Dropsy Carries Off This Somewhat Noted Man.

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He was the star witness at Washington before the senate committee on privileges and elections when Senator Clark's claim to a seat in the senate was under investigation.  
Hill was about 50 years of age. He was a native of Texas, but had been in the West since early manhood. He leaves a wife and six children.  
He was a man of many good qualities combined with qualities that were not so good and which made men fear him. Some time previous to his death he was at Seattle. The immediate cause of his death was dropsy.

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Comments upon the verdict are many and varied. The general opinion is that if the young men used the language attributed to them they deserved the beating they got, and if they did not use such language they were unjustly assaulted.

FROZEN TO DEATH.

Veteran of the Civil War Falls to Reach Soldiers' Home.

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Columbia Falls, Dec. 23.—A veteran of the civil war, now an inmate of the soldiers' home, but formerly a resident of Helena, was found late this morning lying in the snow a short distance from the city.  
He was so badly frozen that there is but little chance of his recovering.  
He is said to have been seen around town last night. It is thought that he started to return to the home, located about two miles from the city, and was overcome by weakness.

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Buried at Winston.

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Winston, Dec. 23.—The funeral of Samuel Pauley, a pioneer resident of this section and for many years a ranchman, was held here yesterday afternoon. Mr. Pauley had been suffering with cancer of the stomach for a long time. His condition became dangerous Wednesday and he was taken to St. John's hospital in Helena the same day. He passed away Thursday night.

Austrian School Scandals.

(By Associated Press.)  
Vienna, Dec. 23.—The radicals in the Galician diet intend to provoke a debate on the Wreschen school scandals. The governor and prefect have been making efforts to induce the radicals to abandon their proposed action, but unsuccessfully. The Austrian government is doing everything in its power to stop the agitation, but it cannot control the feeling of the Polish people. The whole affair is embarrassing and annoying to the government at Vienna.

Well Known Author Dead.

(By Associated Press.)  
London, Dec. 23.—Dr. Samuel Smiley, author of the "Self-Help" series, and well known to American readers, will celebrate his 90th birthday today (Monday). His recently published book, "A Publisher and His Friends," netted him \$10,000, which he gave as a Christmas gift to his four surviving sons and daughter.

Russia Built Boat.

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London, Dec. 23.—The Russian navy has to record a success in the far East, for the first torpedo boat built in the new shipbuilding yard at Port Arthur has just been turned out, cables the St. Petersburg correspondent of the Standard.  
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## COMANCHE MINE OWNERSHIP

Highest Tribunal of Justice Awards the Upton Interest to the Boston & Montana After Exhaustive Hearing.

FULL HISTORY OF A REMARKABLE CASE

The Upton Deed to Largey and What Followed—Many Transfers and Much Litigation—Judge Clancy's Decision Held to Be Erroneous—The Case Remanded to His Court.

(Special to Inter Mountain.)

Helena, Dec. 23.—The supreme court in a decision written by Chief Justice Brantly this morning reversed Judge Clancy's findings in the case of Adolph Wetzstein against the Boston & Montana in which the plaintiff sought to recover a one-fourth interest in the Comanche mine. Judge Clancy sometime ago granted a preliminary injunction which resulted in the closing down of the mine pending the final adjudication of the case.  
Wetzstein claimed ownership upon a deed received from H. L. Frank for a one-fourth interest in the mine.  
Mr. Frank received his deed from D. N. Upton, one of the original locators of the Comanche claim. The case has been in the courts continuously for three years and the supreme court in its decision states that Judge Clancy erred in refusing to consider the past record of the case when the points involved had previously been passed upon by two lower courts and once by the supreme court.

Remanded to Lower Court.

The case is remanded to the district court with instructions to regard the previous record of the case.  
The suit brought by Wetzstein was originally before a jury in Silver Bow county and he was defeated. Wetzstein then asked Judge Lindsay for an injunction to enforce his claim of a quarter ownership and it was refused him. He appealed to the supreme court and Judge Lindsay's refusal to grant the injunction was affirmed.  
Wetzstein then applied to Judge Clancy for an injunction.  
The Boston & Montana company set up in its answer that the court had previously adjudicated the points involved but Judge Clancy took no cognizance of this contention and the case was appealed with the result named.

Opinion by Judge Brantly.

In its opinion, which is written by Chief Justice Brantly, the court says the principal question presented to it for examination arise from Judge Clancy's rulings excluding from the evidence and record the previous disposition of the case, both in another branch of the district court in Silver Bow county and in the supreme court.  
The Comanche lode claim was located in 1879 by D. H. Upton and N. L. Turner, who each owned a one-half interest in the property. Upton conveyed his interest to George M. Tong and H. L. Frank who each received a quarter interest. The latter sold his interest to Wetzstein, but previous to this Upton made a re-location of the Comanche claim which was in litigation and conveyed a half interest in the Grand Prize claim to Patrick Largey, who is also one of the defendants in the action.  
Clancy's Refusal Erroneous.  
Upton's intention was to convey but a quarter interest to Largey but through a mistake he gave Largey a half interest. Largey, however, represented to Upton that the conveyance would in no manner affect his title to the Comanche claim.  
Largey, it is alleged, promised to convey back to Upton the quarter interest but failed to do so. The location of the Grand Prize claim over the Comanche location was, it is alleged, made for the purpose of protecting the Upton and Turner interests should the Comanche location be set aside. It was held good, however.  
After Upton had conveyed his share in the Grand Prize claim which was over the Comanche location, Messrs. Tong, Largey, Turner and Belsberg applied to the land office and received a title to the land, and it was later conveyed to the Comanche Mining company and then to the Boston & Montana company.  
The court characterizes the refusal of Judge Clancy to admit the records of the previous trials involving the same questions as erroneous.

PRIZE ESSAY CONTEST

HUMANE SOCIETY WILL GIVE MEDALS TO WINNERS.

MANY PAPERS HANDED IN

Names of the Victors Will Be Announced Tomorrow Afternoon and the Honors Given Out.

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Following are the officers of the society as at present constituted:  
President—H. ROSENZWEIG.  
Vice-President—LOUIS BERNHEIM.  
Treasurer—REV. F. TONGE.  
Secretary—WILLIAM HORR.  
The board of directors consists of H. R. Bartlett, Rev. G. H. Whitman, Mrs. A. S. Christie, Mrs. A. H. Jones, Mrs. Mary Farnham, G. W. Whitmore, J. H. Dickinson, Adolph Wetzstein and Clinton H. Moore.  
The merits of the numerous essays which have been presented will be passed upon by a committee consisting of the following:  
Mrs. W. O. Speer, Mrs. C. Clinton H. Moore, Mrs. H. Rosenzweig, W. W. Walsworth, Lawrence Dobell and Rev. G. H. Whitman.  
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JAP ENGINEER.

He Is Looking Into Submarine Navigation.

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He is on his way home to Japan by way of San Francisco. "I have been on a tour of the countries of Europe on a matter of state," he said. "Yes, part of my mission has been to look into the latest development of submarine navigation for the Japanese navy."  
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Plan for Miss Stone's Relief.

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Will Use Force.

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Berlin, Dec. 23.—The German government is preparing to resort to forcible measures in regard to the German claims in Venezuela, having arrived at an agreement with President Roosevelt as to their scope.  
The sections of the answer of the Boston & Montana company which Judge Clancy stated he would move to strike out, were those parts relating to the previous orders issued by Judge Clancy in other cases, where the same question was involved and where Mr. Heinze was on the other side of the question.