

WAS HARNEY TOLD TO BE OF GOOD HEART

(Continued from Page One.)

done so and the court supported him. "I didn't understand it at all," replied the witness. "O'Farrell denied having sent the telegram afterwards when I heard that you had it."

"But didn't you understand what it meant?" "I knew if he meant it financially, Mr. Heinze could not do it. As a matter of fact I paid little attention to the telegram. I didn't care about it at all."

HE DID NOT DISSECT TELEGRAPHIC MESSAGE.

"What did you understand by the words 'continue good work'?"

"I didn't dissect the telegram."

"When did you next see O'Farrell?"

"I don't remember." The witness to further questions said he had no recollection of seeing O'Farrell again until more than a year had elapsed. He did not remember than the occasion of his speaking to O'Farrell.

Further the witness admitted that Mr. Heinze had first told him that O'Farrell denied having sent the telegram, but he could not remember who had opened the conversation on the occasion of this conversation with Mr. Heinze.

Judge Harney went on to say that the first time he ever spoke to Mr. Heinze on the subject was after the telegram had passed out of his possession and after he had heard it was in the possession of the counsel for the Amalgamated company.

"How did you hear that?" asked Mr. Vaile, but the witness could not remember. For several minutes the memory of the witness was very bad, but presently he said he recalled the conversation.

"I met Mr. Heinze, I think, in front of the Silver Bow block and I think I asked him in a jocular way what he was going to do to take care of me or to defend me. I knew that I could take care of myself. Mr. Heinze and Mr. Jones, the attorney, were talking together. We got to discussing the character of the evidence that you people might bring against me. It was then that the subject came up. I never asked Mr. Heinze to take care of me or do anything for me."

Judge Harney then spoke of having talked with O'Farrell of the subject of O'Farrell having denied sending the telegram and O'Farrell's expressing no surprise at the telegram.

At this point Mr. Vaile said he thought he was through with the witness, but he would like five minutes' recess for the purpose of consultation. Judge McClernan then announced that court would take a recess to 1:30 o'clock.

HARNEY BREAKS DOWN AND SHED TEARS

This afternoon for the first time in the history of the case, Judge Harney broke down and shed tears.

It was during the examination made in rebuttal by Mr. Breen. The latter was asking a line of questions to show that Judge Harney had respectable associates during the pendency of the Minnie Healy case. Mr. Breen wanted to show that the judge visited other people besides Mrs. Brackett.

Judge Harney replied with some hesitation and finally gave the names of several well known people, residents of Butte and of high social standing, as among the people he visited at the time mentioned.

After answering these questions his eyes filled with tears, he choked with emotion and for an instant he buried his face in his handkerchief. He recovered his self composure in a few minutes.

RIDE HE AND MRS. B. TOOK TOGETHER

The witness said the carriage containing himself and Mrs. Brackett drove directly and with a fair degree of rapidity to Mrs. Brackett's house, 409 West Quartz street, and made no stops on the way. The carriage was taken at the side door of the hotel.

Then Mr. Vaile presented the sheet from the register of the New Albermarle hotel at Livingston for Wednesday, August 7, on which Mrs. Brackett had registered when she, Judge Harney and Mr. Heinze had gone there.

Judge Harney read the entry, "Mrs. A. H. Brackett, New York City," with the entry "D." in a column to the right. He would not identify the handwriting positively as that of Mrs. Brackett, neither would he say it was not her handwriting.

He read next the name of "E. O. Johnson," with no address and the characters "D," signifying "dinner," and "71," the number of the room. He said he was very certain the handwriting was not that of Mr. Heinze, neither would he say that room 71 was the one occupied by himself and Mr. Heinze at Livingston. He would not say who wrote the name "Frank Wilson, D. 71" below the name of Johnson. He made another denial that Heinze had registered with his permission. He expressed his belief that neither he or Heinze had registered at all.

It came out that Judge Harney had taken a letter of introduction to the proprietor of the New Albermarle hotel with him to Livingston, from Attorney Thresher of this city, but had never presented the letter.

UNPLEASANT TIME OF CROSS-EXAMINATION

Following this came a line of cross-examination which resulted unpleasantly for the witness. He was asked to explain why he had delayed starting these disbarment proceedings from August, 1901, to November 18, 1902. His answers along this line were noticeably weak.

"On going East in August, 1901, I was very sick, so I remained in Illinois as long as I could. I returned to Montana September 27, and remained a day in Billings visiting friends, going over to Butte September 28. A week later, October 6, I wrote to the attorney general stating generally what had occurred and asking him if he wanted to see me about it. He replied, and I went to Helena and we had an interview. Following that he came here many times about the matter. He informed me that he had seen Mr. Roote, and that Mr. Roote would not tell him anything. Although the attorney general came sev-

eral times nothing was done. After this I replied to the county attorney. The attorney general had recommended that nothing be done in the case so long as the application for a new trial in the Minnie Healy case was pending. After I reported the matter to the county attorney there was so little time remaining before election that I did not desire to do anything then. I did not want it to appear that I was using the matter for campaign purposes. Immediately after election I started these proceedings."

"When was the motion for a new trial finally disposed of?" was asked.

"I have no recollection independent of the record," was the response.

HUNTING TRIP DELAYED PROCEEDINGS AWHILE

"Didn't you delay the final disposition of the matter in your court and hold it there as long as possible?"

"Not purposely. I was away a week on a hunting trip in October or November." Judge Harney admitted that the admissions that application had been made to the supreme court for an alternative writ of mandate to compel him to decide on the matter of the application for a new trial. The witness told of rendering his decision on the application March 22, 1902. The Barthelemy striking from the files the affidavits that had been presented in support of the application for a new trial and making no order regarding the responsive affidavits which also were on file. He said he did not think an order as to the responsive affidavits was necessary.

Judge Harney admitted that the whole matter of the Minnie Healy case passed out of his hands in May, 1902. He denied, however, that he then was aware that the attorney general proposed to take no action in the matter.

FACE GREW REDDER AND REDDER EVERY MINUTE

A series of questions that made Judge Harney's face grow redder every minute followed in this point. Admitting the delay, he kept putting the blame for it on the attorney general, saying that when he reported the matter to that official he thought his duty had ended. He could not, however, fix the time when he became aware that the attorney general was not to take action, and he denied that he had received from the attorney general any final notification in the matter.

"So," said Mr. Vaile, "on May 1, 1902, the Minnie Healy case passed out of your jurisdiction entirely, but still no steps were taken in this disbarment matter until November 18, 1902?"

"Yes, but I didn't consider myself the prosecutor in the matter," said Judge Harney, after a short delay and hesitation. The witness then admitted that he could have proceeded against Mr. Shores at any time without waiting for action on the part of the attorney general or even of the county attorney.

Mr. Vaile now took up the matter of Judge Harney's having committed Attorneys Forbis and Evans to jail for 24 hours and fining them \$500 each for contempt on April 26, 1902, when they presented the bill of exceptions to the ruling denying the application for a new trial. This bill, it will be remembered, contained the affidavits regarding Judge Harney's conduct which the judge had previously stricken from the files alleging that they were scandalous matter to the supreme court on an application of the sort made so that the supreme court might pass on the question of its being scandalous. He also admitted that the only way in which the record could be prepared to be submitted to the supreme court was to embrace the stricken affidavits in the bill of exceptions exactly as Attorneys Forbis and Evans had done. The whole line of the cross-examination here, of course, was to show that Judge Harney was biased and prejudiced against the attorneys representing the Amalgamated company.

DID NOT RECOLLECT LOOKING UP LAW

Judge Harney at first evaded the question as to his knowledge of the law on this subject, saying that he did not recollect looking up the law at the time.

"On April 26, the date of the order committing these gentlemen, did you not, before any attorney had presented these ex-

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Thornton hotel I may have talked it over with Mr. MacGinniss. I think I gave him a brief statement of what occurred.

"Of course you talked it over with Mr. Kennedy?"

"I talked it over with either Mr. Kennedy or Mr. MacGinniss."

"Long before you filed this complaint in disbarment didn't you talk to both of them a good deal on this matter?"

"It is possible. I have no recollection of a particular conversation."

Mr. Vaile then presented a copy of the Reveille of October 7, 1902, containing an article signed by F. A. O'Farrell and headed, "The True Story of the Minnie Healy Case."

"Is not this article based on information given by you to Mr. O'Farrell?" he asked.

"Well," said the witness, slowly, "if it is inaccurate, I was trying to keep out of the campaign, as I have told you, and I have no recollection of furnishing the information for the newspaper except the one statement I have identified. If anything I said was used in this article I do not know it. It is possible that Mr. O'Farrell may have used some conversation I had had with him."

WHO PREPARED THE PETITION IN CASE

Taking another tack Mr. Vaile asked the witness who had prepared the petition in this disbarment case? The witness replied that it had been prepared by Judge McClernan, who is well-known as one of Mr. Heinze's attorneys," said the witness.

"Was it done at his request or at yours?"

"I think I made the first suggestion."

"Did Mr. Heinze suggest it to you?"

"No, sir."

"Or Mr. MacGinniss?"

"No, sir; I have no recollection of his doing so."

"Or Mr. O'Farrell?"

"Oh, he kept pounding away at it all through the campaign in the Reveille."

Then Mr. Vaile asked another pointed question towards which he had been drifting for some time: "Is it not a fact, Judge Harney," said he, "that ever since the summer of 1901 you have had a feeling of strong antagonism against the persons representing the Amalgamated company?" The objection to this question was overruled and the witness replied in a hesitating manner:

"Well, ever since August 6, 1901, there have been some of the counsel for the Amalgamated I don't like."

"Oh, he kept pounding away at it all through the campaign in the Reveille."

"I have no feeling of antagonism to Mr. Heinze. I respect and admire him, but we have never been close associates." To further questions the witness replied that he had been in Mr. Heinze's room in 1901, but he said he had been there only a few times in his life. He was asked then about a banquet at the Thornton hotel in the early part of 1902 given by Senator Kennedy at which Former Senator Mantle, Henry Rickards, clerk of the supreme court, and others were present. He was asked if at that banquet he had not in the course of a speech said:

"There is Mr. Heinze. He has got many law suits and he usually gets what he wants. I decide I will go to the office now and believe a case for him."

MAY HAVE SAID SOMETHING OF THAT SORT

"I don't remember the exact words," said the witness smiling. "I might have said something like that in a jocular way. I remember that I spoke of his invariable good luck and said that he could run a tunnel out on a trestle or send a shaft straight up and strike rich ore." The witness also admitted that after the banquet the entire party went to Mr. Heinze's room.

"The witness during the sensational cross-examination regarding the O'Farrell telegram and the recess, at 11:30 o'clock until 1:30 o'clock.

ness, not having arrived. He arrived six minutes late and took the stand. The defense at once signified that it had concluded its cross-examination, and Mr. Breen took the witness for testimony in rebuttal.

ONE OF HIS DOGS HAD WANDERED AWAY OFF

A question was asked by Mr. Breen to give the witness an opportunity to tell why he had not paid any attention to the report he had heard August 5 that Jesse B. Roote was looking for him. The witness said that he had to go to his own house, as one of his dogs had wandered away. He said further that it was customary for lawyers to be after him almost constantly.

Asked by Mr. Breen as to the cause of Mrs. Brackett's fear of being left alone on the night of August 5, he said she had told him that the house was being watched and that she had seen men come into the back yard. The witness said also that he had been followed nightly and that the reason he carried a revolver was that his friends had advised him to do so.

Asked regarding the affidavit made at Judge McClernan's office August 6, he said he had met Mrs. Brackett there but not by appointment. He explained that Judge McClernan had sent for him.

The witness said he personally was opposed to making any case, but he thought the presumption should be that the court—himself—had acted honestly in the Minnie Healy case.

Judge McClernan had believed that an affidavit was not entirely material, but it would be well to be armed with one. The witness also explained, as he did on cross-examination, that he did not dictate the form of the affidavit, as he was not Mr. Heinze's attorney. He said also that the affidavit did not set forth all the matters that had taken place at the Thornton hotel meeting.

DID NOT GO BACK TO THE EAST SECRETLY

Judge Harney, in reply to Mr. Breen's questions denied that there was any concealment or secrecy about his departure for the East August 6.

"Why," said he, "Mr. Shores was there at the hotel when I stood the hotel off for my bill until I got back."

The witness further declared there was no concealment of his identity at Livingston.

Examined as to the events of the night when he played pool with Mr. Evans, the attorney, at the Silver Bow club, the witness said that he had been followed on his return home that night. He said that inasmuch as he had been with Mr. Evans, an Amalgamated attorney, that evening, he did not think it was an Amalgamated employee who had followed him, and so he had spoken to Mr. Heinze about it. The implication was that the "shadow" was a Heinze employee.

The witness denied that he ever received the letter from Mrs. Brackett asking him to come and play poker with her and some friends one night and "put your feet in our lap," and "win our money."

Asked as to the identity of Mr. Galloway, Mr. Dygert and Mr. Whitehead, Judge Harney explained what he knew of them—Mr. Galloway an official of the Parrott company; Mr. Dygert an attorney and Mr. Whitehead now absent from Butte.

Mr. Breen then examined as to the "long, gushing letter." Judge Harney said he had received it and burned it up. He said he was unable to say how it got into the record here in court. He declared the whole letter, signature included, was in typewriter. He said that four or five days after the receipt of this letter, Mrs. Brackett explained to him that she never wrote such a letter in her life and told him that all her letters to him would be in her own hand writing and signed by herself.

AS TO THE INTERVIEW IN CHICAGO RECORD-HERALD
Recurring to the interview given to a

Chicago Record-Herald reporter near Rock Island, Mr. Breen asked if it covered everything in connection with the Minnie Healy case.

"Oh, no," said the witness. "It was merely a synopsis. I haven't told all the circumstances yet; that is, I haven't told of the matters in relation to my family that took place in that interview. I have told, however, all of what I consider the material matters."

The witness was given another opportunity by Mr. Breen to declare, as he had done on cross-examination, that his letter to Mrs. Brackett, saying he reciprocated her feelings, was not written in reply to the "long, gushing letter," but to one in which Mrs. Brackett had warned him against A. J. Campbell, a letter by the way, which, if it exists, has not appeared.

Regarding Mrs. Brackett, the witness said she was a stenographer and typewriter who had done work for him. He said that up to the time their names had been associated he had never heard a word against her character or reputation. He said that after that association they had become more friendly than ever.

Then came a series of questions regarding the various hotels which have figured in the case. The witness said he had not regarded the Montana hotel in Anaconda or the Thornton hotel in Butte as being very friendly to him.

Asked as to W. P. Miller, whose name has figured in the case, the witness said Miller was an attorney who was in Butte for a time looking for a location and was not employed by anyone. Subsequent to the times mentioned in the case, Miller went away and the witness said he understood that Miller entered the employ of Senator Clark, to go to the Southwest.

ADMITTED HE WAS "PRETTY FULL" ONCE

Judge Harney admitted in rebuttal that he was "pretty full" on the night he went to the street fair, as he drank wine, "and wine always has that effect on me," but after that he refrained from drinking with Mr. or Miss Waters, and after July 27, 1901, he did not drink at all for some days, as he was then under the care of Dr. O'Connor. The witness said the reason for his visits to the apartments of the Walters was that they would send word to him saying that Waters was ill. He said that all told he had spent no more than six hours in the company of Mr. and Miss Waters. The witness said the last time he saw them was on the night of August 3.

Explaining the street fair excursion and trip to Anaconda and Gregson, the witness declared there was no attempt at concealment in any of these cases. He said the same was true regarding the trip to Boulder Springs, a trip which was not mentioned in the direct examination or in the cross-examination. Judge Harney explained more fully than on cross-examination the matter of deposits made in the Silver Bow National bank for him by Mrs. Brackett.

He said that Mrs. Brackett had frequently transacted business of this character for him.

Some questions were asked to show that during the pendency of the Minnie Healy case the witness had not confined his visits and dinings out to the Waters', Mrs. Brackett and the others mentioned in the case. The witness, with a show of emotion and with expressed reluctance, said he had visited Jack Noyes almost nightly during that time and had also associated with Jack Noyes' mother, Mr. and Mrs. Mac C. White, Jim Forbis and others. He declared also that he had ridden out on the flat with others than Mr. Brackett.

POLITICAL UPRISING THAT DID NOT RISE

After answering these questions he began to weep for an instant, but presently he recovered.

Then came more detailed statements regarding the famous interview in the

(Continued on Page Eleven.)

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