

Butte Department.

HE'S NOT DISBARRED

Judge McHatton Renders a Decision Favorable to Clancy.

LAWYER BALDWIN ROASTED

Rather Strong Language Used in the Reprimand—The Respondent Was Not Present When the Opinion Was Read.

Judge McHatton yesterday rendered a decision in the disbarment case against William Clancy, and acquitted the accused attorney of the charges against him, but reprimanded both the respondent and his counsel, John T. Baldwin, the latter especially, in rather strong language. The decision in full is as follows:

"The State of Montana ex rel. Second District Court vs. William Clancy—This proceeding was begun by the court of its own motion, based upon its knowledge, directing a rule to be entered against the respondent herein to show cause why he should not be disbarred from practicing as an attorney and counselor at law, for the reason that he had been guilty of the acts set forth by way of recital of fact in said rule to show cause. The matter having come on for hearing and determination, and the court and witnesses having established quite fully the truth of the allegations of the rule to show cause, the respondent, notwithstanding that he had entered his answer denying generally and specifically each and all of said allegations and pleaded not guilty, went upon the stand as a witness in his own behalf and admitted substantially the allegations of the rule but denied that he had attempted to deceive or mislead the court. He admitted the substantial fact that this court did not convene on the 29th day of June, 1895, until 2 o'clock p. m. of said day; that no default was entered in the case of Tamietti against Tamietti until after said hour; that W. W. Chapman was not appointed referee by the court to take the testimony in the action until thereafter; that prior to said time he had caused the witness whose testimony is reported to come before said W. W. Chapman and to give the statements contained in the report in question as their testimony in the case, well knowing that said W. W. Chapman had not been appointed referee at that time, and had not taken the oath of a referee, and that after his appointment as referee, said witnesses or any of them never came before said W. W. Chapman as referee, and never gave any testimony before him as such or verified the statements therofor made as their testimony in the case; that, knowing all of these facts, he did submit the report in question to the court and expected that the court would receive and act upon the same as the report of the referee in the action and take the statement of testimony therein contained as the testimony of witnesses before the referee, and that the court would enter a decree of divorce upon such statement of testimony in favor of the plaintiff and against the defendant. He further admits that, as attorney in said action, he was anxious that the court should act upon said report and grant a decree of divorce in said action prior to its adjournment on said day, and that, by reason of his anxiety in this respect he was influenced to attempt to hasten the matter by having the report prepared before the appointment of the referee, and in readiness to submit to the court as soon after the appointment of the referee as might be convenient or practicable.

"It thus appears conclusively from the admissions of the respondent himself that the court was entirely warranted in entering the rule and issuing the order to show cause in this matter, for the court was justified, knowing those facts to be true, to infer therefrom without an exhibit being offered, that the respondent intended to deceive and mislead the court and to do so willfully, and was guilty of malpractice. The respondent offers by way of defense to this proceeding the simple plea of ignorance of the law. He, according to his own statement, has been an attorney at law for many years, and has been a resident of this state and a member of its bar for about two years. The court, in taking this matter up, had in mind three qualities which should be possessed by an attorney—honesty, ability and industry. The charge made against the respondent implied a lack of honest motive. As I have said, the respondent denies this, but he seems to be frank in confessing a lack of ability and industry. Ignorance is not a desirable condition. The quality of intelligence always commends regard. Gross ignorance sometimes amounts to criminality. Then there is a character of ignorance which, while it cannot be excused, seems to deserve more of pity than of condemnation. But ignorance in an attorney, however much at times it may excite pity, is usually dangerous—dangerous to the individual as liable to involve him in trouble, and dangerous to the rights of others confided to him for protection and enforcement. The court regrets very deeply that ignorance should have been the occasion necessitating this investigation, but, withal, it would have more deeply regretted if its occasion had been a willfully dishonest motive. The court is not satisfied, from the statements of the respondent and the witness stand, that he feels very deeply the humiliation brought to him by reason of the acts complained of and the necessity and publicity of this trial. I do not desire to add to the weight of his burden in that respect further than may be occasioned by reference to the facts as they have been established. The respondent frankly admits that, if he had exercised the proper diligence and industry in this matter he would have been saved the trial. The court is obliged to condemn the conduct of the respondent and to reprimand him for his lack of knowledge and lack of industry with regard to this matter in the strongest terms. The respondent himself seems conscious that he is deserving of this, and while the court is obliged to speak thus plainly and disapprovingly of his conduct in these respects, it is somewhat gratifying to the court and commendable in itself in that he had the honesty and courage to admit his faults. I am satisfied that, had he been left to follow his own disposition, uninfluenced by the advice of his counsel, this matter would have been much more speedily disposed of, in a much more satisfactory way to the court, with very much less of anguish to the respondent himself and with less the

appearance of wrongdoing. A person is always to be presumed to intend the natural and ordinary consequences of his willful and deliberate acts. The facts in this case, uncontradicted and without explanation, would justify the court in finding the fact therefrom that the respondent did intend to deceive and mislead the court and was guilty of willful malpractice. This deduction would result in consequences of the most serious character to the respondent and this being so is the strongest reason why the court should weigh carefully the facts in the case and consider thoroughly the respondent's defense. From such consideration the court finds that there is no such intent as would justify the entering of an order of disbarment.

"This trial has not been attended with any pleasure, and it is disagreeable to the court to be obliged to utter forceful language of criticism; but the conduct of respondent's counsel in this case cannot be passed unnoticed. The court took occasion to interrogate the respondent as to the reason why he had not come into court after the citation was issued, and, by way of answer, made the same frank, full statement of his claim of defense which he made on the witness stand. He replied that it was an old saying that the lawyer who conducted his own case had a fool for a client, and being fearful of the truth of the saying he had employed counsel, to whom he had confided the conduct of his defense. His belief in the adage is his excuse in that regard.

"Counsel for respondent has offered no excuse for his conduct, and I am persuaded that, had he seen fit to do so, it would not have been that he had assumed his positions in the case through ignorance of either law or fact. Respondent's counsel must have been aware of the truth of all that I have thus far stated, and yet he has come into court and on his own responsibility objected to the jurisdiction of the court to inquire into this matter, charged the court with having exceeded its jurisdiction in entering the rule and issuing the citation herein and asserted that said order and rule did not state facts sufficient to justify disbarment of the respondent, even though they were true, at the same time well knowing, as I can not help but believe, that these objections were absolutely without merit; and when the court took occasion to peremptorily overrule and deny them, this attorney, after having had days in which to prepare any answer which would be proper, arose in court and unblushingly requested that the court should grant 10 days additional time within which to prepare an answer to the rule, which answer the court well knew, whatever its form, could have been easily prepared theretofore and in a very brief time. Then, upon the case being called for trial, with an assumption of honest intention which was destroyed by the very manner of the requests and their innate absurdity, requested the court to become a witness, that the trial be postponed, and that it be had before another judge. Upon the court consenting to become a witness and refusing to continue the date of the trial or to have it occur before another judge, he then reached the climax of his absurdities and disclosed the true quality of his intentions by demanding a jury trial. The gentleman may be able in his view of propriety to justify himself for his indulgence in this conduct, but I must say that, in the view of the court, it has been most reprehensible.

"The court sought only the truth in this matter and that it should be established in the fullest and broadest manner. I cannot think that counsel for respondent had any other notion than this of the court's disposition, and believing this, I unhesitatingly say that his conduct was most highly unbecoming an attorney. The respondent and his counsel occupied close relations in this case. It very often happens that the client must be held responsible for the conduct of his attorney; in this case I have not added such responsibility to the burden of the respondent. Had I done so, the result of this action would have been disastrous to him.

"If this trial and the opinion and judgment of the court in this matter shall have the effect of preventing gross mistakes and irregularities in the practice of law before this court, and shall incite a deeper regard in the minds of some attorneys for the duties and responsibilities of their profession, the court will be less regret its occurrence.

"The court finds as a fact that the respondent was not guilty of any willful or corrupt attempt to deceive or mislead the court, and that the matter complained of occurred through his ignorance of the law. It is therefore ordered that the rule heretofore entered be discharged and the respondent stand acquitted."

BENHAM ARRESTED.

Some One Made Away With 22 Head of Fat Cattle.

W. R. Benham of the Union Meat company, was arrested last evening on a charge of cattle stealing. About a month ago 22 head of fat cattle belonging to R. A. Hughes, a Meadville milkman, disappeared from the pasture in Elk park and the matter was placed in the hands of Stock Inspector Collins a couple of weeks ago, after all efforts to locate them had failed. Although the trail was a cold one Collins went at it energetically and his detective work resulted in Mr. Benham's arrest. Mr. Hughes' cattle were all branded with a horseshoe on the right hip, and Mr. Collins claims to have evidence that at about the time they disappeared Mr. Benham drove a band of cattle answering their description and marked with the same brand, to Louis Kipp's slaughter house, where he was then doing his killing. Mr. Benham furnished a \$1,500 bond for his appearance before Judge Holland at 2 o'clock Tuesday afternoon.

The Butte Tax Roll.

For several weeks some of the deputies in the office of the county clerk, have been putting in a lot of extra time for the city on the Butte tax roll and completed the work yesterday. The recapitulation shows the following amounts to be due for various taxes, based on an assessed valuation in the city of \$14,428,698: City tax, \$158,694.69; street grade, \$158,124; sprinkling, \$9,690.64; sewer, \$4,518.24; improvement district No. 1, \$5,992.69; sidewalks, \$684.40; total, \$178,748.79.

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He Gets the Same Sentence That His Pals Got.

CHANGES IN THE CODES

The Civil Calendar in Both Departments Called—Writ of Review—Transfer of Explosion Cases.

George Howard, the third man convicted on the charge of robbing James Brady, was yesterday sentenced to the penitentiary for 12 years, the same punishment fixed in the case of his two partners in crime. In response to the usual question of the had anything to say, Howard said, "Nothing at all, and Judge Spicer simply remarked that he certainly deserved severe punishment and gave him the 12 years. The defendant's attorney was granted 30 days in which to prepare for a motion for a new trial.

County Attorney Wines filed an information against A. E. King and Alfred Ford, the two colored men who held up George Duprey last Sunday night, charging them with robbery. They were assigned and given until Monday morning to post bail.

Bonds of Administrators.

Judge McHatton yesterday called the attention of the administrators to the changes made by the code regarding bonds of executors and administrators of estates. Section 2,476 of the Code of Civil Procedure says: "In all cases where bonds or undertakings are required to be given the sureties must justify thereon in the same manner and in like amounts as required by section 1,890, and the certificate thereof must be attached to and filed and recorded with the bond or undertaking." Section 1,890, above referred to, says: "In all cases where an undertaking with sureties is required by the provisions of this code the officer taking the same must require the sureties to accompany it with an affidavit that they are residents and householders or freeholders within the state, and are each worth the sum specified in the undertaking over and above all their just debts and liabilities, exclusive of property exempt from execution, but the amount specified in the undertaking exceeds \$3,000 and there are more than two sureties thereon they may state in their affidavits that they are severally worth amounts less than that expressed in the undertaking if the whole amount be equivalent to that of two sufficient sureties."

Civil Cases for Trial.

The civil calendars in both departments of the district court were called yesterday and the following cases set for trial: Leslie A. Porter vs. Henry Armstrong, debt, Nov. 4; Miner Publishing Company vs. Chauvin-Fant Furniture Company, debt, Nov. 4; Wilson Brothers vs. J. J. Green, debt, Nov. 4; John O'Rourke vs. Northwestern Brick and Supply Company, debt, Nov. 5; Edward Ryan vs. Philip Tucker, debt, Nov. 5; Butte Mining and Milling Company vs. W. R. Kenyon et al., debt, Nov. 6; Adolph Pincus vs. M. Mayer, debt, Nov. 6; H. H. Horst vs. W. H. Orr et al., Nov. 7; City of Butte vs. W. L. Hill et al., agreed case, Nov. 7; P. S. Hughes vs. A. J. DeBoson & Co., damages, Nov. 8; John O'Rourke vs. Mary Matuzewicz, debt, Nov. 8; Fannie Matuzewicz vs. Citizens' District Messenger Co. et al., for specific performance, Nov. 8.

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Such as we are going to offer is the greatest event on the autumn list. This month is a bad time to stay away from our store. You can't miss so much at any other time or place.

IT'S NO TIME TO WAIT.

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all along the line on \$40,000 worth of new Carpets and Housefurnishings. We have the greatest exhibit ever shown in the city in Royal Wilton, Moquette, Velvets, Body Brussels, Axminster Tapestries, and Ingrains, Oil Cloths, Linoleums, Rugs, Art Square Upholstery, Pillows, Comforts, Quilts, Blankets and Mattresses. You must see our stock to know really what the new styles are.

For Writ of Review.

S. V. Brobst filed in the district court a petition for a writ of review of Justice Holland's record in the case of Alonzo Smith against Brobst. The writ is an action for \$9000 on a promissory note and the defendant was required to appear and answer by 10 o'clock Oct. 26. He was on hand with his answer, but the justice of the peace would not receive it without an accompanying fee of \$2.50, and there-by preventing the petitioner from making an appearance.

Explosion Cases Transferred.

All the explosion cases pending in Judge Spicer's court were yesterday ordered transferred to Judge McHatton's court. In the case of William Orr against the Butte Hardware Company the defendant's attorney objected to the transfer, saying "We would rather take our justice here than on the other side," and an exception was taken so the order transferring it.

Gambling Cases Dismissed.

On motion of the county attorney the six gambling cases that have been pending in Judge Spicer's court for several months were yesterday dismissed in view of the fact that the supreme court has declared the anti-gambling law to be unconstitutional.

Other Court Matters.

A motion to correct judgment in the case of Clark vs. Quinn was argued before Judge Spicer and taken under advisement; also a motion for judgment in the case of Russell against Cutler. A default judgment was entered in the case of A. A. Read against S. E. Bronson et al. In the case of M. C. Harris against the Sweeney Coal company a motion for an order to inspect certain books was argued and sustained by Judge Spicer. In the case of P. D. McKinnis against E. A. Black a judgment for \$522.50 and a \$75 attorney fee was awarded the plaintiff. A default judgment for \$1,211.11 was awarded the plaintiff in the case of Carson, Scott & Co. against J. R. Boyce, and for \$209.50 in the case of Wilson Brothers against the same defendant. On motion of attorney Callahan, who represents some of the minor heirs of

Ada Frutser, deceased, the administrator, George Frutser, was ordered to file a new bond in the sum of \$14,000 within 10 days.

Judge McHatton yesterday granted a decree of divorce in the case of Riskey against Riskey.

In the case of the Fine Brothers' Clothing company against J. R. Boyce a default judgment for \$2,132.21 and costs was entered, and in the case of M. Beeber against the same defendant for \$1,615.92. A default was also entered in the case of H. W. Outler against Boyce.

H. B. Claffin yesterday commenced an action against J. R. Boyce for \$378.06, claimed to be due on account.

The suit of Samuel Welles et al. against the Bell Silver and Copper Mining company was dismissed as settled.

Special Excursion Rates.

Effective Oct. 5, special steamship excursion rates to Scandinavian, English, German and French points have been authorized; also an additional reduction in the through rates to Cape Town and Johannesburg, effective Oct. 10, via the Great Northern railway. J. E. Dawson, general agent, 41 N. Main street, Butte.

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Presents from \$1.25 to \$500

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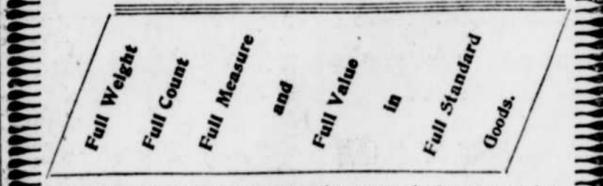
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