BUTTE NEWS.

FRANEY CASE GOES OVER

Baldwin Talked to the Jury the Entire Day.

MADE AN ABLE ARGUMENT

But the Court and the Jury Got Very Tired and Made No Attempt to Conceal the Fact—Case Goes to the Jury Monday.

The Franey murder case will not be given to the jury until Monday morning, because John T. Baldwin consumed the entire day with the closing argument to the jury. The three other attorneys in the case took up less than half a day with their arguments. Mr. Baldwin started in at 15 minutes past 9 o'clock yesterday morning and talked until 12 o'clock. He resumed at 2:30 o'clock and talked until 5:30 o'clock. He made an able argument, but it was evident early in the afternoon that the jury was getting very tired. So was Judge Clancy, and neither made an attempt to disguise it. Everybody had hoped the jury would get the case early in the day. The jury had doubtless hoped so and their chargin was evident when, at the close of Mr. Baldwin's talk, the judge said it was then too late to read the instructions and continued the matter until Monday morning. The jurors, of course, were ordered locked up and will have to remain confined for two days longer than they would have been had Mr. Baldwin talked less. What the effect will be may be indicated by the verdict, if one is reached.

John T. Baldwin, special prosecutor in the case, made the closing argument yesterday morning. He said the case was in some respects remarkable and would doubtless become celebrated in the state. It is important also, not only to the defendant, but to the jurors themselves and to the community and the safety of the people. Thomas Franey is not alone on trial, but there is on trial a question whether the people of the community can look to the courts and jurors for protection to their lives and property against bands of organized criminals. The proof is ample and sufficient to show that the robbery which resulted in murder was planned and mapped out in advance, and the scene located. There was a premeditated arrangement and conspiracy and it is evident, from the fact of Moody's presence at the scene of the murder at 8:20 o'clock in the evening, that every arrangement for the robbery had been made. Disguises had been prepared in advance, and if they were not brought to the scene of the murder by the defendants themselves, they were brought there by their accomplice or accomplices.

"Before I conclude my summing up of the evidence," said Mr. Baldwin, "I will show you beyond doubt that this defendant Franey was not only one of the participants, but that his co-defendant, Frank Moody, was an active agent in the attempted robbery and the murder most foul."

Mr. Baldwin read the information against Franey and expounded some law applicable to the case. He said the commission of a murder in an attempt to commit a robbery was murder in the first degree. A man who attempts robbery starts out with murder in his heart and will not hesitate to take life in an attempt to carry out his purpose. This crime, for which the defendant is on trial, can, under the evidence, be nothing less than murder in the first degree. Mr. Baldwin devoted considerable time to that portion of the testimony showing that there was an attempted robbery and that Paul F. W. Kroeger is dead. He said the testimony on these questions was uncontradicted. The only other essential question to be considered is the identity of the defendant and the presence of himself and co-defendant at the scene of the crime, and whether the defendant was aiding and abetting in the commission of the murder. When Mr. Baldwin finally came to a review of the testimony he related the facts of Paul F. W. Kroeger and his brother, Henry, going home on the night of May 25, 1897, and upon reaching the intersection of Crystal and Park streets, where they were confronted by two masked highwaymen, who covered the two brothers with guns and commanded them to throw up their hands, and upon Paul Kroeger failing to comply with the order he was shot down and killed by one of the robbers, whereupon Henry Kroeger ran away and when he was a few feet distant he heard another shot fired, and the nature of the wound indicated that it was fired while Kroeger was lying on the ground and in a dying condition. The two murderers then ran in pursuit of Henry Kroeger, and commanded him to hush or they would give him a similar dose, and it was doubtless their intention to slay or disable him also, but the arrival of people on the scene frustrated their design and they recognized that they would have to make their escape and they continued running west on Park street and were met by Robert D. Lewis, who ran some distance with them and with a view of diverting suspicion they told him that the man running ahead of them had killed a policeman, and then immediately asked the young man if he had a gun, and upon his reply in the negative they said the man ahead had and knew how to use it. The evidence of their coolness and ability to think and plan under such exciting conditions shows that they were hardened criminals and used to the commission of such crime.

"Right here it might be well to stop and ask yourselves," said Mr. Baldwin to the jury, "who was that man who ran with young Lewis and talked to him as they ran? Was it not that man sitting there?" pointing to Franey. "Young Lewis said it was. It was an old and hardened highwayman who had engaged in such brutal crime before."

Mr. Baldwin spoke of what he considered the providential saving of the life of young Lewis, who was detained by Mr. Canty as, with the two murderers, he was running by Mr. Canty's house. If he had not stopped, and had continued to run with the murderers across the vacant lots and down the dark alley, the would doubtless have killed him also, "for they could not run the risk of having him follow them to their lair in the Will house." The providential incident saved the life of young Lewis and "saved to the state the innocent, truthful and manly youth as a witness to testify to this heinous crime." The attorney spoke of the positive identification of Franey by young Lewis and the identification of his voice by Henry Kroeger, the identification of the general form, outline and appearance of the defendant and Moody with the murderers, by the witnesses Nichols, Welsh and Canty; the admissions made by Franey to Dickenson in jail. A significant fact pointing to a premeditated and planned robbery was shown in the evidence that Franey and Moody changed their lodging place for the night of the murder from some place, which they declined to give, to the Will house, where they engaged a room for one night. They were there before and after the murder and both were seen by the landlady, but their friend and alibi witness, Mike Creamer, was not seen there at any time. The evidence shows that the defendants did not wear mackintoshes when they were seen going to the scene of the murder, but they did wear them when they left the scene, which justifies the conclusion that Moody took the disguises to the scene of the murder when he was seen there several hours previously, and concealed there by him, or that the men had an accomplice who carried the mackintoshes. Sigmund Meyer, a disinterested witness, testified that a short while before the murder he saw Moody and Franey within two short blocks of the place where the murder was committed and going in the direction of it. That is a strong circumstance to show that they were present at the commission of the crime. They had just sufficient time to reach the place where their pal was waiting for them with the mackintoshes or to get them where they had previously been concealed. Another strong circumstance against the defendant is his emphatic denial that he ever wore a mackintosh. He recognized the importance of it, and did not want it to be known that he had worn anything to compare with the attire of the two murders. Afterward, however, when he was recalled to the witness stand, and had seen the witness from Anaconda who had known him to wear a mackintosh only a few days before the murder, he modified his statement and said he had at some time worn one. There was some evidence of another old mackintosh. The friend and boon companion of the two defendants, Mike Creamer, testified that he had an old mackintosh during the time he was detained in the county jail as a witness. He was released from the jail on the 21st of May, four days before the murder. He said he had left his mackintosh at the jail and later took it to his cabin. He couldn't account for it after that and couldn't produce it. It was just such a mackintosh as was worn by one of the murderers that night. These matters concerning the mackintoshes are patent facts and show that the robbery had been long planned and prearranged, and if their intended victims had not resisted the robbery would have been successfully carried out, but resistance was offered, and a cold-blooded and dastardly murder was committed.

"How did the mackintoshes and revolvers get away? The murderers had ample opportunity to dispose of them or they had an accomplice waiting for them at some point. Where was Creamer that night? Nobody knows but himself and Moody and Franey. There are circumstances in this case that point to Creamer as the accomplice and confederate of this defendant and Moody. He disappeared for some time after the murder. He may have been the man who got away with the mackintoshes and revolvers, though he was not necessary for that, as there were many sewers, vaults and other places of concealment along the route over which the two murderers ran. We have not only one of the murderers in the man here on trial, but we have both of them in the witnesses who appeared on behalf of the defendant who would do anything on the stand to shield themselves."

Both Franey and Moody swore positively that on the day or night of the murder they were not west of Main street. In swearing to that they swore that the witnesses Haller, Meyer, Lewis and Henry Kroeger testified falsely and committed perjury, and contradicted those who identified them generally.

Mr. Baldwin, referring again to the testimony of D. N. Dickenson, said that the only thing brought out at the trial in an attempt to discredit that testimony was the talk of "this fellow, Thresher," in his address to the jury. Thresher had for a long time been Dickenson's counsel and went about the state pleading Dickenson's cause and innocence, but now his tune is changed and he discovers that his former client is the most abandoned perjurer and criminal.

Mr. Baldwin said that Dickenson did not only have no inducement offered him for testifying, but he was given to understand that the state did not want anything from him but the truth. Dickenson's reticence in testifying and his demeanor while on the stand must have impressed the jury that he was telling the truth. Counsel for the defendant spoke of the improbability of Franey making a confidant of Dickenson and making a confession to him of the crime he had committed, but there is nothing uncommon or unlikely about it. The highway robber and murderer is considered by the criminal class high above the common herd of petty larceny thieves who usually fill prisons, and when Franey got into jail he wanted to let the common class there know the high position he occupied and the rank he was entitled to as a criminal. He placed reliance on "honor among thieves" that his boasts would not be repeated or betrayed, but "murder will out," and there is another old maxim which says that "from the abundance of the heart the mouth speaketh," or perhaps the defendant has been engaged in crime so long that the promptings of his conscience have become somewhat obtuse.

Mr. Baldwin devoted considerable attention to Lawyer Thresher, who, he said, had insinuated that the county attorney and Veno's attorney, E. W. Toole of Helena, had induced Veno to testify falsely for pay or promises of reward, and had also charged that the associate counsel for the state was working for a reward and that his fee depended on a verdict of guilty. Mr. McClernan called Sigmund Meyer a monstrosity, and said that this Jew would not only sell his Christ for 30 pieces of silver, but would throw in the 12 apostles for good measure. "I cannot see," said Mr. Baldwin, "how these gentlemen can expect to acquit their client by slandering other people in such an outrageous manner."

In his argument, Thresher said a youth between the age of 15 and 22 should not be believed, declaring that boys of that age were so debased that they would, for a little notoriety, commit perjury to have a fellow man hang. To indorse his estimate of the youth and the unlikelihood that Meyer and Lewis could be relied on, Thresher told about another hold-up with which he had something to do when he was 21 years old, but he did not tell sufficient of that affair to indicate what part he took or in what role he appeared.

The defense put Police Officer Handlin on the stand for the purpose of impeaching young Lewis, and Handlin testified that Lewis told him shortly after the murder that he could not give a good description of the murderers. Handlin heard the shooting, but he was very tardy in getting to the scene, and when he did reach there he waited for some one to come and give him a description of the murderers instead of following the footfalls of the fleeing criminals. He acted cowardly, and it is a wonder he did not wait until some one brought him a photograph of the murderers. If any weight were given to the testimony of such inefficient and inactive policemen there never would be a conviction.

The famous Will house clock came in for some attention from Mr. Baldwin. Mrs. Althoff first testified that the time at which Moody and Franey returned to the house was 10:45 o'clock. Afterward a lady friend told her to remember that this was a murder trial and that she habitually kept her clock a quarter of an hour fast, and then Mrs. Althoff, in the abundance of her precaution, modified her testimony in accord with what her lady friend had told her. Like all women, she allowed her womanly feeling to go out to any man, however debased. There is nothing the jury has to go by to say that the real time was not a quarter to 11 o'clock except the statement of the landlady that it was her general rule to keep her clock a quarter of an hour fast. Mr. Baldwin said the fact that Franey and Moody called at the office of the Will house at 10:45 o'clock to get an alarm clock to awaken them by 9 o'clock in the morning was part of the prearranged plan to establish an alibi. If, as they claim, they went to bed at 11 o'clock or before, they certainly had no need of an alarm clock to get up before 9 o'clock in the morning. They were excited and in a hurry when they called at the office and both wore their hats and coats, which is against their claims that they had just come from their room, where they had a little social enjoyment with their friend, Creamer.

Mr. Baldwin did not conclude his argument until 5:30 o'clock, and Judge Clancy then created a general surprise by continuing the case until Monday morning, at which time he will instruct the jury.

Front rooms for rent over Symons' dry goods store, 48 West Park.

AT THE CHURCHES TO-DAY.

Church services will be held in Butte to-day as follows:

Mountain View M. E. church—Corner Quartz and Montana street. Class meeting at 10:15 a. m.; Sunday school at 12:15 p. m.; Junior league at 3:30 p. m.; Senior league at 6:30 p. m.; preaching at 11 a. m. and 7:30 p. m. The first Sabbath of each month is Sunday school missionary day. Music will be furnished by the Sunday school quartette. Prayer meeting Wednesday evening at 7:30. Strangers are cordially welcomed to these services, as well as to all others.

St. John's Episcopal church—S. C. Blackiston, rector. Litany, sermon and holy communion at 11 a. m.; evening prayer and sermon at 7:30; Sunday school at 12:30 p. m.

First Presbyterian church—E. J. Groeneveld, pastor. Regular services at 11 a. m. and 7:30 p. m.; communion service and reception of members at the morning hour; Sunday school at 12:15 p. m.; Endeavor meetings at 4 and 6:30 p. m. Normal class Monday evening and prayer meeting Wednesday evening. Everybody cordially invited to attend all the meetings.

Swedish Lutheran church—Services held in the Carpenters' union hall, opposite court house. Preaching to-day at 11 a. m. and 7:30 p. m.

Immanuel Presbyterian church—Corner of Gaylord and Galena street; I. Newton Roberts, pastor. Services at 11 a. m. and 7:30 p. m. Rev. Mr. Darrow will preach at both services. Endeavor meeting at 6:30 p. m.; Sunday school at 2 p. m.; Junior Endeavor meeting at close of school. Prayer meeting Wednesday evening at 7:30 o'clock. All are cordially invited.

St. Paul's Episcopal mission, Centerville—Arthur F. Lewis, rector. Services in St. George's hall. Litany and holy communion, with sermon, at 11 a. m.; evening prayer at 8 o'clock; Sunday school at 2:30 p. m. Rector's residence, No. 7 Pacific street.

First Baptist church—Corner of Broadway and Montana streets; Rev. J. E. Noftsinger, pastor; residence, No. 614 Wett Quartz street. Worship at 10:30 a. m.; young men's prayer meeting, preaching at 11 a. m., subject, "The Christian Message;" at the close of this service the Lord's supper will be observed and hand of fellowship given to new members; Sunday school at 12:15 p. m.; young people's meeting at 6:30 p. m.; preaching at 7:30 p. m., subject, "Christianity Intensified." Prayer meeting Wednesday evening at 8 o'clock; teachers' meeting 7:30 p. m. Thursday; Junior B. Y. P. U. Friday afternoon at 2 o'clock. In basement of Union hall Calvary Sunday school will meet at 3 p. m.

Williamsburg—Rev. J. E. Noftsinger will preach at 2:30 p. m., subject, "The Bible and Its Mission." At the close of the service a Sunday school will be organized. The services will be held in one of Reuben Kent's houses, which has been fitted up for a chapel. Everybody invited.

Butte Ministerial association will meet in the parlor of the First Baptist church at 10:30 Monday morning. Order of the day will be report of committee and a paper by E. J. Groeneveld.

The church of Jesus Christ of Latter Day Saints hold regular services each Sunday at 902 Utah avenue; Sunday school at 10 a. m.; meetings at 2 and 7:30 p. m. All cordially invited.

Christian church—Corner Mercury and Washington street; Rev. Sherman Hill, pastor; pastor's office in the church; residence, No. 415 South Idaho street. Services as follows: At 11 a. m., sermon, theme, "Endeavor vs. Effect;" 12:30 p. m., Sunday school; 1:30 p. m., Jr. C. E.; 6:30 p. m., Sr. C. E.; 7:30 p. m., sermon, theme, "Truth and Freedom." One week from this evening Rev. Mr. Hill will deliver an address on "Cuba's Appeal vs. American Politics." Every lover of humanity is invited to this service. Prayer meeting Wednesday evening at 8 o'clock. Everyone welcome to all services.

Grace M. E. church—Corner Second and Arizona streets. Preaching at 11 a. m. by pastor, J. Hosking, and at 7:45 p. m. by Thomas Estlick; Sunday school at 2:30 p. m.; Epworth league at 7 p. m., led by Miss A. Gatz. Prayer meeting Wednesday evening at 7:45. Choir practice at 1:30 p. m.

Unity M. E. church, Meaderville—Rev. John Hosking, pastor; residence, No. 925 Arizona street. Sunday school at 2:30 p. m.; preaching at 7:30 p. m. by pastor. Prayer meeting Tuesday evening. Everybody welcome.

German Evangelical Lutheran church—Corner of Silver and Dakota streets; M. Huetloff, pastor. Services to-day at 11 a. m. only; Sunday school at 10 a. m.

M. E. church, South—Corner Galena and Idaho streets. To-day's services as follows: In the morning at 11 o'clock and evening at 7:30, preaching by the pastor, R. H. Shaeffer; league meeting at 6:30 p. m., led by Miss Blanche Knowlan; Sunday school at 10 o'clock.

First Official Circular.

The first official circular issued by the new Union Pacific Railroad company, dated Feb. 1, was received in Butte yesterday. It announces four appointments of general agents of the freight and passenger department, fourth on the list being E. V. Maze at Butte. The others are R. Teubroeck, general agent at New York; R. W. Baxter, at Portland, and J. F. Agion at St. Louis.

Everybody that reads Strachelberg & Co.'s advertisements do not smoke their cigars, but they should. Nobody is so well prepared to furnish you with high grade clear Havana cigars manufactured of choice selected tobacco as this well-known firm. They receive weekly shipments of tobacco direct from their own plantation in Cuba. Louis S. Cohn, Distributer, Butte.

HE GETS A WINDFALL

Sabin Wins His Suit Against His Step-Mother.

WILL RECEIVE HIS SHARE

His Life Has Been a Checkered One Filled With Many Stirring Events in the Early Territorial Days on the Frontier.

Attorney W. E. Carroll received word yesterday from his correspondents, Messrs. Bush & Harvey, prominent lawyers of Buffalo, N. Y., bringing news that Volney B. Sabin, an old and respected pioneer of '59 and a present resident of Butte, had won his case against his stepmother at Mayville, N. Y., and that the court there had set aside the probate of his father's will.

This suit involved an estate valued at $60,000, of which Mr. Sabin will receive one-third, or $20,000, and the balance will be divided between his brother, Alonzo D. Sabin, residing in Missouri, and a half-sister, still living in New York.

Mr. Sabin is feeling quite happy over the result and is receiving the congratulations of his many old-time friends. He will probably depart shortly for the East to receive his good fortune.

His life has been a checkered one, filled with stirring events, and, like all old-timers, he has seen many gold excitements, fought the Indians, crossed the plains, dabbled in mining stocks, been rich and poor.

One of the notable events in which he took no small part was in the spring of 1860 at Virginia City, Nev., during the Indian uprising known as the Pyramid lake war. A war party of Indians had surprised and cruelly murdered five men at Williams' station, where the stages stopped on their way to Virginia City, and 30 miles distant, and the news coming into Virginia City, a band of men was rapidly got together with the intention of wiping out the Indians. One hundred and five men comprised the party, of which Mr. Sabin, then a young man of 20, captained 15, supplying them with horses, provisions and ammunition. John Noyes, a well-known and wealthy citizen of Butte, was also of the party and commanded a company. They caught up with the Indians about 120 miles from Virginia. The Indians had stationed themselves upon a steep rise of ground, and were about 2,000 in number. They had evidently been expecting the attack and had taken every precaution. They had out flanking parties to cut off retreat. The men rode up and, discovering the position of the Indians, opened fire; the fire of the Indians was too strong and the men made the blunder of retiring to the timber, when the flanking parties of the Indians completely surrounded them and their retreat was cut off. The men were rapidly cut to pieces and had to make their escape on foot. Out of the 105 men who left Virginia City, only 40 survived, many losing their horses and provisions, and several had to walk the entire distance back to Virginia, suffering great privation, having to cross a wide desert without food or water.

Mr. Sabin filed a claim with the government at Washington, and his interests there are being looked after by Senators Lee Mantle and W. M. Stewart. The bill for his relief, allowing him $1,300 for the horses and provisions lost by him, has already passed the senate and is now under consideration by the committee on claims in the house of representatives. Representative Hartman has promised his assistance in securing action in the house.

Mr. Sabin's contest over his father's will was long delayed, owing to the fact that he had no news of his father's death until several years afterward. His father, David Sabin, was an old and respected citizen of the little village of Ripley, N. Y. He died in 1887 and shortly after his death an alleged will was produced by his widow, leaving all his estate to her. It amounted to about $60,000. No notice was sent to Mr. Sabin as required by law.

Mr. Sabin's mother died in 1855, and shortly afterward the father broke up the old home and set the boys adrift on the world when they were still only 15 or 16 years old. Very soon afterwards he married his dead wife's sister. The boys always believed that their aunt, the present widow, caused the old gentleman to throw them out. In 1859, when the Pike's Peak excitement was at its height, Mr. Sabin started across the plains for that place; but learning that the excitement was a fake, they changed their route and pushed on to Virginia City, Nev., where he continued to live until he went to Alaska several years ago. During his stay at Virginia City he engaged in the mining and smelting business and made quite a fortune. Believing he had been mistreated through the influence of his aunt-stepmother, he never corresponded with his father, and as two of his brothers had followed him out West and had died at Cherry Creek, Colo., while in search for him, he felt himself cut off from the old home.

Mr. Sabin charged in his suit that his aunt-stepmother had gained such an influence over his father that he was incapable of making a valid will. The father was quite aged at the time of his death and from being an atheist had become a devout spiritualist through the influence of his second wife. Most of his property had been accumulated in his earlier years, when his first wife was living, and it was greatly owing to her self-denial and hard work that he got his start. His holdings of real estate soon developed into great values, and since then his fortune steadily increased.

The widow never filed, during all the 10 years she has had the property, any account showing what disposition she was making of the property. She subsequently married the judge who allowed the probate of the will.

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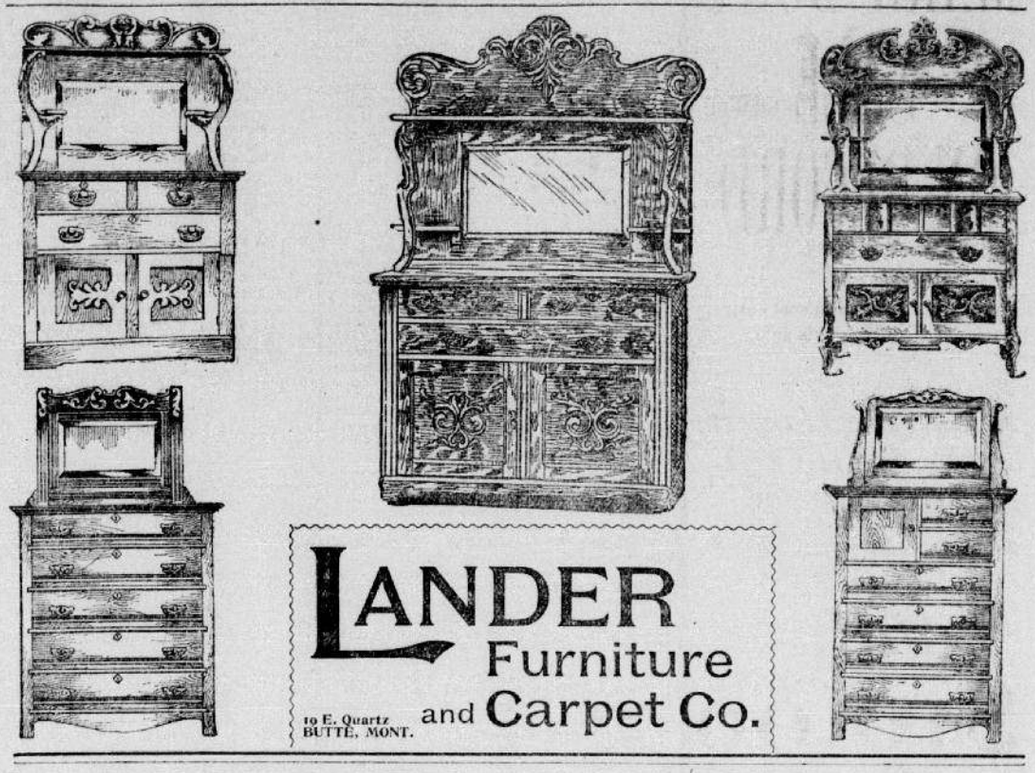

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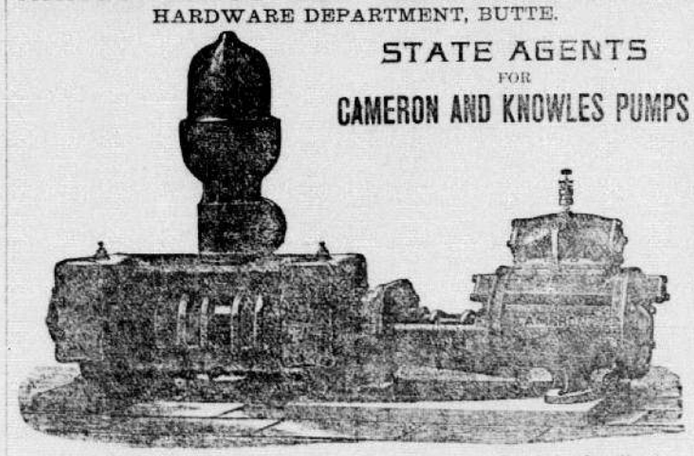

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