

BUTTE NEWS.

The Greatest MARK-DOWN SALE ON RECORD

Former low prices and cost entirely disregarded during this sale.

A Bargain Harvest of "High-Art Clothing" for Men, Boys and Children.

\$15.00 and \$18.00 Suits and Overcoats during this sale

\$10.00

Everything else in proportion.



213-215 North Main Street, BUTTE, MONTANA.

TRUSSES

TRUSSES

A



PERFECT



FIT



GUARANTEED



We carry the only complete line of these goods in this section of the country, and this department is in charge of

An Expert Truss Fitter

NEWBRO DRUG CO. 119 N. Main St. Butte, Mont.

The Largest Drug House in the State.

THE SHAFER CASE AGAIN

His Attorneys Find Sixty-Seven Alleged Errors.

THIRTY-FOUR EXCEPTIONS

This Is the Largest Number Ever Raised in the Courts of Silver Bow County.

The Case Was Tried Before Judge Clancy.

County Attorney Stapleton was yesterday served with the bill of exceptions and assignment of errors in the Shafer case. The county attorney acknowledged the service and waived copy. The assignment includes 67 errors on which the attorneys for the defendant, M. L. and J. L. Wines, Bernard Noon and Booth & Cavanaugh, base their motion for a new trial on appeal from the judgment of the lower court. This is the largest number of errors ever raised in a case in Silver Bow county. There are also 34 exceptions and the statement and bill of exceptions take up altogether 311 pages of typewritten matter.

The first error given in the assignment of errors is that the court erred in striking out the testimony of James Lansay, a witness for the defendant, who said he was acquainted with the general reputation of the defendant, and the court further erred in making the remark from the bench that the general reputation is what a majority of the community say, which does not correctly state the case and was misleading to the jury.

Error No. 2—The court erred in striking out all of the evidence of Lee Phillips as to the general reputation of the defendant for peace and quiet.

Error No. 3—The court erred in striking out the testimony of C. N. Norcross as to the defendant's reputation for peace and quiet, and he further erred in stating in the presence of the jury that within the meaning of the law the city of Butte is not a community; that a community is the immediate locality in which the defendant has resided, and testimony as to reputation should be as to the reputation he sustains among his friends and neighbors.

Error No. 4—The court erred in sustaining the objection of the state to a question propounded to the defendant as to the general physical proportions of the deceased, for the reason that before the question had been asked evidence had been introduced by the state showing an assault by the deceased upon the defendant at Columbia gardens, and the said ruling of the court was an interference with the defendant's right to put in his own testimony in the order of his own choosing.

Error No. 5—The court erred in striking out the testimony of the defendant that he would defend the deceased because he knew his reputation and because deceased had attacked him a couple of times.

Error No. 6—The court erred in sustaining the county attorney's objection to William Booth's testimony that the deceased was a man of bad reputation and a violent man.

Error No. 7—The court erred in sustaining an objection to the evidence of the same witness as to use of violence by the deceased which endangered the life of the witness, for the reason that such acts of violence were competent to prove the violent and desperate character of the deceased, John Hawkins.

Error No. 8—The court erred in striking out the testimony of Matt Lewis as to the bad reputation of Hawkins, and as to the general reputation of the defendant and ordering the jury to disregard such testimony.

Error No. 9—The court erred in allowing Sol Levy to testify to statements made to him at the city jail by Hawkins a few minutes before the affray occurred, in the absence of the defendant for the reason that said declarations were mere hearsay.

Error No. 10—The court erred in allowing the same witness to testify to other declarations made by the deceased to him at the city jail at the same time with reference to what occurred between the deceased and defendant at Columbia gardens, as such testimony was mere hearsay, not proper rebuttal, and incompetent for any purpose.

Error No. 11—The court erred in allowing the witness to identify a certain coat and vest as belonging to the deceased, such evidence not being rebuttal.

Error No. 12—The court erred in allowing the county attorney to offer in evidence this coat and vest.

Error No. 13—The court erred in allowing Charles Ray to testify to statements made to him at 4:30 a. m. on the morning of the tragedy, in the absence of Grosvitch & Zorn in the absence of defendant.

Error No. 14—The court erred in allowing the same witness to testify to other statements made by the deceased at the effect that he wanted police protection.

Error No. 15—The court erred in asking the witness if he stated there who the man was.

Error No. 16—The court erred in allowing E. E. Eby to testify to statements made by the defendant 15 or 20 minutes before the affray to the effect that he had no gun and that he wanted police protection, such declarations being mere hearsay.

Error No. 17—The court erred in allowing the same witness to relate a conversation between witness and deceased in which the deceased told him he had no gun.

Errors Nos. 19, 20, 21, 22, 23—The court erred in allowing the introduction of the records of the police court of the city of Butte as to various police court cases.

Error No. 24—The court erred in allowing Henry Woy to testify as to the defendant's general reputation, the witness not having shown himself competent to give such testimony.

Error No. 25—The court erred in allowing the same witness to testify as to the good reputation of Hawkins.

Error No. 26—The court erred in allowing Daniel McLeod to testify as to Shafer's reputation.

statements made to him at the city jail 20 minutes before the affray to the effect that he had been shot at, and that the persons by whom he was shot had trouble out there with Shafer and that he wanted the witness to arrest Shafer, such testimony not being proper rebuttal and made in the absence of defendant.

Error No. 28—The court erred in allowing the same witness to testify as to the general reputation of Eva Smith for honesty and integrity, the witness being incompetent under previous rulings of the court to testify, and insisting that the witness must answer yes or no to the question as to reputation without allowing him to explain himself.

Error No. 29—The evidence was insufficient to warrant the verdict in this case, as there was uncontradicted testimony that the deceased Hawkins was the assaulter and was armed with a deadly weapon, and that the defendant had reasonable grounds for believing he was in danger of great bodily harm.

Error No. 31—The court erred in underscoring the words "willful, deliberate, and malicious" in the instruction given to the jury by such underscoring a prominence and weight which would amount on the part of the court to an expression of his opinion of the case.

Error No. 32—The court erred in giving instructions upon the question of intent, said instruction being framed in such a manner as to be misleading to the jury, presupposing that the only intent in the case was the intent to kill, the fact whether or not defendant intended to kill Hawkins at the time he fired the fatal shot, thereby leading the jury to believe that if he intended to kill him he would be guilty as charged.

Error No. 33—The court erred in giving instructions presumably defining what is murder in the first degree, which instructions misstate the law, the elements of malice and felonious intent being entirely eliminated from the definition.

Error No. 34—The court erred in giving instruction No. 14, the court thus assuming the functions of the jury by passing upon a question of fact.

Error No. 35—The court erred in giving instruction No. 15, by inserting the word "premeditated" in said instruction, and by assuming that in order to reduce the offense from murder to manslaughter there should be a highly provoking injury inflicted, or an attempt by the person killed to inflict a personal injury, thereby excluding from the defendant the right to act upon appearances or gestures which would lead a reasonable person to believe that great bodily harm was about to be inflicted.

Error No. 36—The court erred in giving instruction No. 17, the court assuming that the act of killing was committed deliberately and without adequate provocation, and that it was done in malice.

Error No. 37—The court erred in giving instruction No. 18, which does not confine the instruction to the facts and circumstances tending to establish in the minds of the jury a fact which was their province to determine—namely, any grudge, malice, hatred or ill-will toward the deceased.

Error No. 38—The court erred in giving instruction No. 20 for the reason that the definition of manslaughter therein given is not the statutory definition.

Error No. 39—The court erred in giving instruction No. 21 by instructing the jury that justifiable homicide is the killing of a human being in "necessary self-defense," and for the reason that the Criminal Code defines justifiable homicide and the statutory definition was not followed by the court.

Error No. 40—The court erred in instruction No. 24 by using the words "ordinarily courageous man," instead of the words "a reasonable man," used in the statutes, and in using the words "or to do anything more than to have a fair fight," for the reason that the court did not explain to the jury the meaning of the law, is a "fair fight," and that no such thing as a "fair fight" is known to or contemplated by the law; third, that the court erred in directing the jury that the defendant cannot avail himself of the claim of necessary self-defense, if any necessity for such defense was brought on by himself, such instruction not giving the correct rule of law with reference to self-defense; fourth, the court erred in instructing "if the jury believes from the evidence that the defendant had no reason to believe that the deceased intended to take his life."

Error No. 41—The court erred in instruction No. 25, not being applicable to the case and making justifiable homicide depend upon the absolute necessity for the killing, and for the reason that the court instructed the jury that it must appear that the person killed was the assailant.

Error No. 42—The court erred in instruction No. 28, which misstates the law in that it eliminates the consideration of the jury the fact whether or not a person may be justified in killing another who assaults him with a deadly weapon, even though the person killed, by some trivial provocation, had brought about the difficulty.

Error No. 43—The court erred in instruction No. 30 in that it instructed the jury that if they found the defendant was the aggressor and the deceased was without fault, then the evidence introduced in the case as to the character of the deceased should have no weight in the deliberations of the jury, such instruction taking away the consideration of the fact of defendant's knowledge of the character of Hawkins as a violent and desperate man, which should be considered by the jury in mitigating the offense.

Error No. 44—The court erred in instruction No. 31, which is ambiguous, uncertain, incomprehensible and misleading, for in it the court instructs the jury that he must first prove he was attacked before he can show that the deceased was armed with a deadly weapon, and that evidence of the ferocity and vindictiveness of the deceased could be received by them only after the jury believed that the defendant was acting in self-defense when the shot was fired and was attacked, and not otherwise. When, as a matter of fact, if the jury believed the defendant was acting in self-defense, there would be no necessity for the introduction of such evidence, and that the instruction presumed to be a final summing up of the law upon the subject treated.

Error No. 45—The court erred in instruction No. 32, which placed upon the defendant the necessity that he attempt to escape from his assailant before he could be justified in firing a shot.

Error No. 46—The court erred in instruction No. 33, which instructed the jury that where the word "Shafer" was used in the records in evidence, they should consider in their minds the defendant intended Shafer the defendant to be meant.

Error No. 47—The court erred in instruction No. 35, with regard to the weight to be given by the jury to the police court records.

Error No. 48—The court erred in instruction No. 36, which is uncertain, ambiguous, unintelligible and misleading and virtually instructs the jury that if he failed to have Hawkins arrested when he heard Hawkins had threatened his life, that he could not successfully interpose the plea of self-defense, and in instructing to disregard all evidence as to any threats made by Hawkins, the court believed that it was the aggressor for the reason that such threats were in evidence and proper for the consideration of the jury, if for no other reason, to reduce the degree of the offense.

Error No. 49—The court erred in giving said instructions for the reason that they were inconsistent with one another and inconsistent with instructions requested by the defendant, and conflicting with one another.

Error No. 50—The court erred in giving the instructions of the state separately and in giving the instructions requested by the defendant separately with the statement to the jury that they were requested by the defendant, the manner of giving instructions being prejudicial in that it gave undue and unequal weight to those given by the state, and for the further reason that as soon as the court consented to give such instructions they became the instructions of the court.

Error No. 51—The court erred in modifying instruction 42, requested by defendant, the instruction as originally presented stating the law correctly, which it does not do as modified, that as modified it only justified a person in killing an assailant when it was impossible for him to retreat.

Error No. 52—The court erred in instruction 43 the words "and you must acquit him and your verdict must not be guilty," therefore taking from the jury the instruction as to what their verdict must be, if they found the facts as stated in the instruction.

Error No. 53—In refusing to give instruction 45 as requested by defendant.

Error No. 54—in refusing to give instruction 49 as asked by defendant and inserting in it the words "if you find, from the evidence, that the deceased was of a desperate character," thus instructing the jury that the evidence introduced in the case tends to show that the defendant believed deceased to be a man of desperate character.

Error No. 55—in modifying instruction 52 by striking out the words "and unless you are satisfied upon that and that alone, then you should acquit the defendant and your verdict be not guilty," thereby refusing to instruct the jury that they must determine the guilt or innocence of the defendant on the evidence introduced alone.

Error No. 56—in modifying instruction 52 by striking out the words "and unless you are satisfied upon that and that alone, then you should acquit the defendant and your verdict be not guilty," thereby refusing to instruct the jury that they must determine the guilt or innocence of the defendant on the evidence introduced alone.

Error No. 57—in inserting the words in instruction 53, "and you must consider that he is the defendant and the enormity of the crime with which he is charged."

Error No. 58—in refusing to give instruction 58, which properly states the law, and in refusing to give instruction 59—in refusing No. 2 of the refused instruction as to reasonable doubt.

Error No. 60—in refusing No. 3 of the refused instruction as to reasonable doubt.

Error No. 61—in refusing No. 4 of refused instructions as to the time in which a person assaulted is justified in acting.

Error No. 62—in refusing No. 5 of the refused instructions as to the circumstances under which a person is justified in acting upon appearances.

Error No. 63—in refusing No. 6 of the refused instructions as to the purpose for which the witness, Eva Smith, used a razor upon the body of the deceased.

Error No. 64—in refusing No. 7 of the refused instructions as to threats previously made by the deceased.

Error No. 65—in refusing No. 8 of the refused instructions as to the presumption of innocence which the law gives the defendant.

Error No. 66—Further, that each and all of said refused instructions correctly state the law and directly apply to the circumstances proven in evidence on trial, said instructions not being given in any instruction given on behalf of the state.

Error No. 67—The court erred in ordering the filing and recording of the verdict arrived at by the jury in this case for the reason that the verdict was against the law and the evidence.

TOO MUCH WATER.

It Came Very Near Undermining the New High School Building.

A chinook visited Butte yesterday and softened the ground up to the extent of causing a great deal of annoyance, and in some places, considerable damage. Streams of water flowed down every street and the mud made the walking miserable. Early in the day kicks commenced coming to the city hall, and the city engineer, Mr. C. Vost and John Gannon, were called to have sewers opened and cleaned, and under orders from Mayor Harrington the street commissioner put gangs of men to work cleaning the crossings and cleaning the gutters. The sanitary inspectors were kept busy answering calls to have sewers opened and cleaned, to prevent water running into cellars, and altogether the water caused much inconvenience.

The instance reported where serious damage was threatened was that of the new High School building, where the water flowing down the alley on the west side of the building began cutting in next to the foundation walls. It was discovered in time to prevent the undermining of the wall and measures were taken to turn the stream. But for this the consequences might have been serious.

KEEPING IT DARK.

Foley Says He Was Assaulted by a Gang of Hoboes.

Andrew Foley, an employe of the Montana Union, went to Murray & Freund's hospital late night before he had a wound dressed which he claimed to have received by being assaulted by hoboes at South Butte. Foley had a bad gash over the left ear. He was reluctant when questioned concerning the matter, but when he received it, and would say nothing beyond the statement that he had been attacked. It was learned elsewhere that he had had trouble with a fellow student in a bar, and while carrying a hod on a building in course of erection in South Butte. He had just carried a hod of brick to the top and stepped on the ladder to descend. The ladder was considered by the police to be ground and bruising his back and shoulders very severely. He was taken to the Sisters' hospital.

Severely Injured.

Timothy Shea, an aged laborer living in the southern part of the city, was severely injured yesterday afternoon by falling from a ladder while carrying a hod on a building in course of erection in South Butte. He had just carried a hod of brick to the top and stepped on the ladder to descend. The ladder was considered by the police to be ground and bruising his back and shoulders very severely. He was taken to the Sisters' hospital.

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TEACHERS' INSTITUTE.

It Will Convene Monday Morning and Continue Four Days.

The Silver Bow County Teachers' institute will convene at the High school assembly room at 9 o'clock to-morrow morning and continue in daily session for five days. County Superintendent Mary Mullins has arranged an excellent programme and the institute will be beyond doubt be the most important in the history of the county. A number of special and eminent instructors have been engaged, including Miss Braman of Chicago for drawing, Miss Finn in music, President D. E. Sanders of the state normal school, State Superintendent Carleton, Prof. M. A. Stapleton of Anaconda, Professor Hendricks and others.

The programme for Monday includes the following studies: Opening exercises, purpose of institute, Superintendent Carleton; music, Miss Finn; development of numbers, President Sanders; language, drawing, Miss Braman; didactics, Superintendent Hendricks; music, Miss Finn; language, drawing, Miss Braman; arithmetic, President Sanders; music, Miss Finn; English, Superintendent Carleton; psychology, President Sanders; didactics, Superintendent Hendricks; music, Miss Finn; language, drawing, Miss Braman; literature, Superintendent Stapleton; psychology, President Sanders; primary science, President Sanders; music, Miss Finn; literature, Superintendent Stapleton; language, drawing, Miss Braman; music, Miss Finn; geography, President Sanders; literature, Professor Stapleton; drawing, Miss Braman; psychology, President Sanders; language, music, Miss Finn; English, Superintendent Carleton.

The musical programme for the evening session consists of a selection by the Acme quartette, soprano solo by Mrs. C. C. Dierks, and a baritone solo by J. S. Butler.

Shoes you must have. You can't get along without them. If you want to get them cheap, attend the shoe sale now on at John Tassell's 25 West Park.

IN POLICE COURT.

J. J. Stere Pleaded Not Guilty to the Charge of Beating His Wife.

In police court yesterday J. J. Stere, arrested Friday for abusing his wife and charged with disturbance and with hearing set for Tuesday at 1 o'clock. The same case was taken in the arraignment of Con Sullivan for disturbance and John Gannon for being a secretary.

Ed. LeGrande, Adolph Polly and Simon Bartel, accused of being secretaries, took 24 hours to plead.

H. Mitchell, charged with disturbance, C. Vost and John Smith were fined \$5 each for drunkenness.

SMOKE COMMITTEE.

J. D. Mitchell Explains the Workings of His Consumer.

The smoke committee met last evening in the office of City Engineer Blackford to listen to J. D. Mitchell's explanation of the smoke consumer, with which he proposes to get rid of Butte's smoke. The consumer was thoroughly explained in its operations as already outlined in the Standard, and answered. Without passing any judgment on the merits of the consumer the committee adjourned until next Wednesday evening. Mr. Mitchell will endeavor to have the practical demonstration of the consumer in operation within a few days.

SELLING AT A LOSS

IS good merchandising at times, and this is one of those times. Every season we start with a fresh stock. We don't propose to carry over one dollar's worth of this season's merchandise. We've gone through each department and dumped everything, without regard to profit, cost or consequences. The question is not "What did the goods cost?" but "At what price will they sell quick?" And that's the price you'll find on everything now. Note every item—and take a hand.

25 pieces light Percales, all pretty patterns, worth 6c a yard; ten yards to a customer..... 2c

20 pieces Check Toweling, worth 5c a yard; ten yards to a customer..... 2 1/2c

100 pieces Bleached Muslin, 4-4 wide, fine grade, worth 8c yard..... 4c

10 pieces Bleached Pillow Muslin, 46 in. wide, Pepperell Brand, worth 15c yd..... 9c

10 pieces Bleached Sheet, 9-4, Pepperell Brand, worth 25c yard..... 15c

40 dozen Pillow Cases, 36x42, in good muslin, worth 13c each..... 7c

36 dozen White Sheets, size 72x90, of good muslin, worth 60c each..... 39c

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CHANCE IN OUR SECOND KIMBALL PIANO GIVEN WITH EVERY \$1.00 PURCHASE.

CASTORA For Infants and Children.

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PRAHMAN'S ANNUAL SALE OF EMBROIDERIES

IMPORTED direct from St. Gall, Switzerland. We show by far the largest and prettiest assortment of Embroideries ever exhibited in Butte, AT THE LOWEST PRICES.

- See Window Display. 500 Pieces containing 4 1-2 yards each... price per piece 15c. 500 Pieces containing 4 1-2 yards each... price per piece 20c. 300 Pieces containing 4 1-2 yards each... price per piece 25c. 300 Pieces containing 4 1-2 yards each... price per piece 30c. 200 Pieces containing 4 1-2 yards each... price per piece 50c. 200 Pieces containing 4 1-2 yards each... price per piece 75c. 100 Pieces containing 4 1-2 yards each... price per piece 95c. Beautiful Swiss and Nainsook Embroideries on sale. Ask to see the New Bell Skirt, made of India Linen with Lace Insertion.

Wash Goods Event.

In connection with Embroideries, we will place our New Wash Goods on sale.

- 100 pieces beautiful Percales for waists and dresses, fast colors; price..... 6 yds. for 50c. 100 pieces 36-inch French Percale, light and dark colors, absolutely fast; price..... per yd. 10c. 75 pieces fine Zephyr Ginghams, dainty designs and colorings; price..... per yd. 10c. 50 pieces extra-quality Shirting Prints, handsome patterns; price..... 10 yds. for 50c. 50 pieces Dress Calicoes, medium dark colors; price..... 10 yds. for 40c.

One Lot mill ends of White Goods in lengths from 3 to 5 yards, consisting of Check Nainsooks, plain Nainsook, Long Cloths and India Linens, at Manufacturers' Cost.

MAIL ORDERS RECEIVE PROMPT ATTENTION.

105 N. MAIN ST., BUTTE. PRAHMAN DRY GOODS COMPANY

Try a Standard Want Adv.

Feather Boas.

Only 100 left; they are 45 inches long, full and fluffy; we must close them out at once; worth 65c each..... 15c