

BUTTE NEWS.

IS ORDERED DISCHARGED

A Decision Rendered in the Case of Mrs. Barnhill.

DEFENDANT IS RELEASED

She Was an Alleged Absconding Debtor. The Writ of Habeas Corpus Was Opposed by County Attorney Duffy of Deer Lodge.

Judge Lindsay yesterday morning made a decision in the habeas corpus matter of Mrs. Missouri S. Barnhill of Anaconda and ordered the woman's discharge. He held that she had been wrongfully arrested. Mrs. Barnhill and her attorneys and Sheriff Conley of Deer Lodge county were in court when the decision was made.

The case is an important one, as it involves new questions of law relating to the arrest and prosecution of alleged absconding debtors, and it is probable that the matter will be taken to the supreme court for final determination.

This is a proceeding in which the justice of the state of Montana issued a writ of habeas corpus and made the same returnable before the judge of department No. 1 of the Second judicial district of said state.

A hearing has been had upon the said petition and the return of the sheriff of Deer Lodge county, said state of Montana, as well as upon the motion to quash said petition and writ.

It appears by the showing made, that on Oct. 15, 1899, Messrs. MacCallum & Cloutier, co-partners, commenced an action in the justice court of Deer Lodge county before J. M. Kennedy, a justice of the peace, against the petitioner, for recovery of the sum of \$239.96, alleged to be due and owing for goods, wares and merchandise sold and delivered by said firm to said petitioner.

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on oath deposes and says that he is one of the plaintiffs in the above entitled action.

That the defendant in said action is justly indebted to plaintiff therein in the sum of \$239.96 lawful money of the United States for goods, wares and merchandise sold and delivered to the defendant by plaintiffs within three years last past at her request and that no part of the same has been paid.

That the above named defendant is about to depart from the state of Montana with the intention to defraud her creditors and in particular the plaintiff herein.

That on or about the 12th day of October, 1899, the defendant stated to divers and sundry persons that she was going to leave the state of Montana and take up a residence in the state of Idaho in a few days.

That the defendant disposed of all her real estate situated in the state of Montana, and now has the proceeds of such sale in her possession, custody and control.

That thereupon and after the filing of the undertaking hereinafter referred to, the said J. M. Kennedy, justice of the peace aforesaid, issued an order for the arrest and detention of the said Missouri S. Barnhill, the petitioner herein.

That said undertaking was executed by said A. C. MacCallum, one of the plaintiffs in said action, and two sureties, binding themselves unto John Conley, sheriff of Deer Lodge county, Montana, in the sum of \$500, conditioned as follows:

That the petitioner shall be imprisoned for debt, except in the manner prescribed by law, upon refusal to deliver up his estate for the benefit of his creditors, or in cases of tort, where there is a strong presumption of fraud.

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That thereupon the said justice of the peace rendered a judgment as follows:

"That the defendant be remanded to the sheriff of said county of Deer Lodge until she pay the debt owed to said plaintiff and for which the above action was maintained."

That while the jury was deliberating the surety of the petitioner appeared in court with the petitioner and surrendered her to the custody of the sheriff, and asked that the bail be exonerated, which was done on the following day, and the said petitioner has since been retained in custody by the said sheriff.

The return of the sheriff shows the judgment set forth above and a commitment pursuant thereto commanding the said sheriff "to take and receive said defendant into custody and imprison her in the county jail of Deer Lodge county, Montana, until discharged by due process of law in accordance with the judgment rendered herein."

Upon the hearing of the petition for a writ of habeas corpus counsel for said John Conley, sheriff, moved that the court quash the petition on various grounds.

This court, upon consideration of the facts, seems to be of the opinion that the petition and said writ untenable and will briefly point out the grounds upon which the conclusion reached herein is based.

Arrest and detention for debt is permitted both by the constitution and statutes of this state in certain cases and upon certain prescribed grounds or causes, through proceedings which must be strictly pursued.

The law protects personal liberty with such vigor that in order to warrant an arrest for indebtedness in such a case as is here presented, it must clearly appear that the statutory provisions providing therefor have been strictly complied with.

"No person shall be imprisoned for debt, except in the manner prescribed by law, upon refusal to deliver up his estate for the benefit of his creditors, or in cases of tort, where there is a strong presumption of fraud."

The provision relating to this case upon which counsel relies is contained in subdivision 1 of section 801 of the same code, reading as follows:

"In an action for the recovery of money or damages, on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the state, with intent to defraud his creditors."

But it is further provided in section 154 that "before an order of arrest can be made, the party applying must prove to the satisfaction of the justice, by the affidavit of himself or some other person, the facts upon which the application is founded. The plaintiff must also execute and deliver to the justice a written undertaking in the sum of \$500, with sufficient sureties, to the effect that the plaintiff will pay all costs that may be adjudged to the defendant, and all damages which he may sustain

by reason of the arrest. If the same be wrongful, or without sufficient cause, not exceeding the sum specified in the undertaking."

These statutes are mandatory, and all proceedings must conform thereto, in order to warrant the arrest of a debtor in a civil action.

The facts required by the statute to be shown constituting the ground for arrest must be clearly set forth in such affidavit.

The affidavit upon which the petitioner was ordered arrested setting forth that the petitioner "is about to depart from the state of Montana with the intent to defraud her creditors and in particular the defendant herein," and that she had sold her real estate in Montana and had proceeds in her possession and as to what she had done towards packing her household goods for shipment out of the state, and that she has about \$700 in her possession and refuses to pay to plaintiffs the amount they claim, do not show that the petitioner is about to depart from the state with intent to defraud her creditors.

This arrest and imprisonment appears to be predicted wholly upon the proposition that the defendant is about to depart from the state. It does not here appear that the petitioner has in her possession any property not exempt from seizure nor the proceeds of any property which she may not dispose of, nor does it appear that she has removed or disposed of any property not exempt from execution, except in so far as may be applied by the showing that a writ of attachment was issued and returned nulla bona.

It would be a strange condition of the law to provide for the exemption of certain property and at the same time authorize the arrest and imprisonment of the debtor until the proceeds derived from the sale of such property should be paid over in satisfaction of the debt.

It is not pretended in the presentation of this case by counsel that the petitioner has any property except that which she would be entitled to hold as exempt from seizure.

It should be further observed that the statute requires that the bond provided for be delivered to the justice of the peace, and it seems that such bond should be executed to the person arrested in order to protect and indemnify such person against damages.

In this instance the undertaking was executed to the sheriff of Deer Lodge county, and the statute would enable the plaintiff to recover thereon in event her restraint was deemed illegal. The bond delivered does not fulfill the statutory requirements.

In my opinion a proper affidavit and a sufficient bond is necessary before an order of arrest shall issue, and that not appearing, the detention of the petitioner cannot be considered other than wrongful and she is accordingly ordered discharged.

Are you having your winter clothing made to order at Hennessy's? If not, why not?

RUBBERNECKS ARE SORE

The Star-Gazing Crowd Was Disappointed.

ANOTHER SHOWER BILLED

It Keeps Its Date It Will Appear Next Monday Night—The Earth Plays an Engagement With Biela's Comet.

The star-gazing element was disappointed last week in not seeing the promised shower of meteors, and the rubbernecks are sore. All kinds of preparations were made to receive the strange and brilliant aggregation of visitors, but the celestial pageant failed to put in an appearance and there was no parade.

However, there is another shower billed to appear next Monday night. Or rather the earth is scheduled to reach the path of the demolished comet Biela. On Nov. 27 this terrestrial globe is supposed to cross the path in which the comet would be traveling directly over the heads of the spectators.

On Feb. 26, 1826, an Austrian named Biela was courting a fair daughter of a Bohemian merchant in Josephstadt. The happy couple was standing under the spreading boughs of an oak which shaded the gravelled walk in the back yard of the girl's home.

The fair Bohemian girl looked up at the twinkling stars which dotted the blue heavens and sighed. The man was soon by her side. Together they looked into the face of the sky and all was quiet in Josephstadt.

"Eureka!" cried Biela. "I have it—the end of the age! I have a fortune. Alas, my lord, don't be too sure of that. This is rather sudden when you come to think of it. Give me a few moments in which to ponder and frame a suitable answer." And they stood gazing at each other.

"Jehosaphat! ye fair daughter of Josephstadt, the world must know at once. Away I fly to spread the news of my discovery. Adieu, fair one, and content thyself until my return."

The press wires of the old and new worlds were hot with the stories of the wonderful discovery of the new comet. The time of its revolutions was about six years and eight months. In 1852 it returned and created unmeasured

AN IMPORTED QUARREL

This Cutting Affair Was Brought From Sunny Italy.

KNIVES PLAYED MERRILY

Piedmont and Tuscany Arrayed Against Each Other—But It Was a Different Thing on the Witness Stand.

All hands were having a big drink at the saloon of Bertoglio & Grossa, at Meaderville, on the night in question. It grew to a brawl and the old dislike of one faction for the other came to the surface. Some days later Giachetto and Cina appeared at county attorney's office and told a story of how the Quillic brothers had attacked and stabbed them. It was a story of childlike innocence on their part and malicious unprovoked assault on the part of the ones complained against.

But although dead they are not forgotten. If counsel could be believed to have spirits the Biela twins would be seen in 1872, both the intervening returns of 1859 and 1865 being unfavorable. In 1885 the earth crossed the path of the Biela comets at a time very near to that when the latter should have been at the point of intersection, and there was another brilliant shower of meteors.

It has happened several years since that unusual numbers of meteors appeared from the constellation of Andromeda, Nov. 27, and the belief is that the fragments of the Biela comets are stringing themselves out over their orbit, so that they will meet them more frequently, although at times they are much more numerous than at others.

A big shower is expected in November, 1898, and it will be well to keep an eye open, and astronomers, as they say, as this is one of the critical times.

The first witness examined was Dr. Wells, who testified that he had attended Giachetto and Cina and that the former had four knife wounds in the back and Cina one. Then Giachetto was called to the stand. He had forgotten that he ever had any trouble with the defendants and could not remember that he had ever been stabbed. He did, however, remember having had some trouble once upon a time with one Oreste Giuliani. His statements to his lawyer, he had since learned, were quite inaccurate.

Cina stuck a little closer to his original version of the affair. Whereas he and Giachetto had first said the Quillic brothers had both stabbed them, Cina could now remember of but one of the brothers, John, having had to do with his injury. He remembered that Giachetto and Giuliani had a fight, and that he, a bystander, had been cut by John Quillic.

(Continued on Page Eleven.)

Hennessy's Hennessy's Hennessy's Hennessy's Hennessy's Hennessy's Hennessy's Hennessy's

**Dolls, Toys AND Games**

IN THE BASEMENT

Everything for children's amusement and instruction will be found in our Basement Bazaar, where we have just opened up a large lot of the newest and most amusing Toys that can be devised for youngsters of all ages and both sexes. Pick out your Christmas presents now. This basement contains some of the richest China, Glassware and Bric-a-Brac generally that has been imported this season for the holiday and regular trade.

# Men's Overcoats

## The First Showing of the Finest Styles

**HENNESSY'S FULL LINE OF OVERCOATS for Fall and Winter has just been opened up. Nothing to equal it has ever been seen here or elsewhere in Montana. It contains the leading styles of the season, shows the newest textures and colorings and an assortment of garments, better made and better finished than any heretofore produced. Examine carefully those displayed in our front windows, a few of those mentioned below; try on those which most strike your fancy, and a moment's reflection will convince you HENNESSY'S OVERCOATS ARE THE BEST.**

**Handkerchiefs**

Embroidered Cambric Edgings, three-quarter to one-inch wide, 50 yard; one and a half to two and a half-inch wide, \$1.25 yard.

Embroidered Cambric Edgings with insertions to match, two to two and a half inches wide, 10c yard; three inches wide, 12 1/2c yard; three to three and a half inches wide, 15c yard; three and a half to four inches wide, 20c yard.

Embroidered Colored Cambric Edgings in medium blue, navy, pink and black, one to one and a half inches wide, 10c yard.

Embroidered Nainsook Edging, one and a half to two inches wide, 12 1/2c yard.

Embroidered Nainsook Edging with insertion to match, three and a half inches wide, 25c yard; four to five inches wide, 35c yard; six to seven inches wide, 50c yard.

Nainsook allover open work stripe polka dot pattern, \$1.50 yard.

Nainsook allover embroidery, 20 inches wide, \$2.00 yard.

Nainsook embroidered allover, extra fine, width 18 inches, \$3 yard.

Swiss skirting, hemstitched and Val lace trimmed, \$1.25 yard.

Swiss skirting, embroidered Val lace insertion and edging, \$1.50 yard.

Swiss skirting, hemstitched and tucked with Val lace trimming, \$1.75 yard.

Swiss skirting, hemstitched and trimmed with Val lace edging and insertion, extra fine, \$3.50 yard.

**Bargains In Draperies**

Take Elevator to Third Floor

We are closing out several pieces at cut prices. See the rich styles and meager figures. There's no question as to the quotations being cut to the quick. See these goods.

**At 10c yard**  
300 yards plain and fancy serim for curtains, value 15c to 18 yard, 200 yards dotted Swiss, worth from 15c to 18c yard.  
500 yards silklike, all new patterns.

**At 12 1/2c yard**  
400 yards curtain serim, best quality, plain and fancy, worth 20c to 25c.  
500 yards fine Swiss, Al quality, and in all sized dots, values 20c to 25c.  
300 yards art denims and cretons, worth 20c yard.

**At 15c yard**  
100 yards fish net, one style, value 25c yard, for 15c.

**At 25c yard**  
600 yards fish nets, Point d'Esprit, fancy nets and Madras, values 50c to 60c yard, for 25c.

**At 50c yard**  
200 yards Ferguson's finest silks, 75c and \$1.00 values for 50c.  
100 yards drapery tapestry, first class, for sofa cushions, going at 50c.

**At 7 1/2 and 10c yard**  
White muslin and net ruffles for curtains, worth 10c and 15c yard.

**Embroideries**

Embroidered Cambric Edgings, three-quarter to one-inch wide, 50 yard; one and a half to two and a half-inch wide, \$1.25 yard.

Embroidered Cambric Edgings with insertions to match, two to two and a half inches wide, 10c yard; three inches wide, 12 1/2c yard; three to three and a half inches wide, 15c yard; three and a half to four inches wide, 20c yard.

Embroidered Colored Cambric Edgings in medium blue, navy, pink and black, one to one and a half inches wide, 10c yard.

Embroidered Nainsook Edging, one and a half to two inches wide, 12 1/2c yard.

Embroidered Nainsook Edging with insertion to match, three and a half inches wide, 25c yard; four to five inches wide, 35c yard; six to seven inches wide, 50c yard.

Nainsook allover open work stripe polka dot pattern, \$1.50 yard.

Nainsook allover embroidery, 20 inches wide, \$2.00 yard.

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Swiss skirting, embroidered Val lace insertion and edging, \$1.50 yard.

Swiss skirting, hemstitched and tucked with Val lace trimming, \$1.75 yard.

Swiss skirting, hemstitched and trimmed with Val lace edging and insertion, extra fine, \$3.50 yard.

**Furniture and House Furnishings**

See Hennessy's matchless assortment of Fine Furniture of every description, Draperies, Rugs, domestic and oriental, Rich Carpets, Curtains, Sofa Pillows, everything your heart can desire, at popular prices, part cash and part on the partial payment plan.

# Hennessy's Overcoats Are the Best

**Chinese and Japanese Silk Handkerchiefs**

AND GEMS IN REAL DUCHESSE LACE

For Holiday Gifts

**Lots of Pretty Things Too**

You can't afford to overlook, and can afford to buy.

Mail Orders to **Hennessy's** Butte