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ROSS DISCHARGED

PROSECUTION OF WITNESS FOR PERJURY COLLAPSES.

JUDGMENT BY JUDGE M'CLERNAN

Justice Nelson Erred in Holding Ross to the District Court—No Evidence Upon Elements of Crime.

Judge McClerman this morning overturned Justice of the Peace Nelson's judgment and order holding William M. Ross, one of the Bordeaux divorce case witnesses, to answer to the district court for perjury, and ordered Ross set free.

The judgment was rendered in connection with the habeas corpus proceedings instituted in Ross' behalf.

Ross and Charles Barnaman were charged in the justice court with having given perjured testimony in the Bordeaux case in behalf of the plaintiff, John R. Bordeaux. The charges were brought by the attorneys for Mrs. Ella F. Bordeaux, the defendant.

The defendants were given a preliminary examination before Judge Nelson and bound over. Then they brought habeas corpus proceedings before Judge McClerman on the ground that they were imprisoned without right. The question was argued and submitted.

The attorney general broke into the case on account of the plaintiff, Bordeaux, in the divorce suit having been represented by County Attorney Breen. The county attorney opposed his admission to represent the sheriff, but Judge McClerman permitted Assistant Attorney General Moore to appear.

Git of the Judgment.
The judgment of Judge McClerman is as follows:
"The petitioner herein seeks his discharge from imprisonment on the ground that he has been committed on a criminal charge without a reasonable or probable cause."

The judgment proceeds to say that the rule of law for the guidance of the court in such cases is as follows:
"It is enough if the evidence be sufficient to warrant the court in saying that a verdict founded thereon would not be without evidence to sustain it."

Then the judgment goes into the elements of the crime of perjury, which must be proved at the preliminary. The judgment says:
"One of the essential elements of the crime of perjury is the materiality of the sworn statements alleged to be false."

"It is the essence of the crime, and in the absence of at least some evidence on that element the committing magistrate is not warranted in finding that the crime of perjury has been committed."

"It will not be seriously contended by any one that a verdict is sustained by the evidence, if there is absolutely no evidence on any essential element of the crime charged, and in this case where there was not even an attempt to introduce any evidence which might in any way tend to establish the materiality of the sworn statements alleged to be false, it certainly cannot be said that a verdict based on such evidence has any evidence to sustain it."

The court says that the state cannot take the position that it does not have to produce all its evidence, saying that it was certainly necessary to introduce some evidence on the essential elements of the crime; also that it was no answer to say it could produce evidence at the trial.

Ross' Discharge Ordered.
The judgment concludes as follows:
"Inasmuch, therefore, as there has been an absolute failure to even attempt to prove the materiality of the alleged false statements, this court does not deem it necessary to pass upon the weight of the testimony generally, but asserts that it is not only the province but the duty of the court to do so to the extent herein suggested. The petitioner is ordered discharged from imprisonment."

Judge McClerman said that in Barnaman's case he had not yet had time to look into it, and that his decision in it would be held back until later.

The conviction of Ross for perjury might have overturned the decree of divorce in the Bordeaux case.

The collapse of the prosecution of Ross leaves the plaintiff in that case in a less hopeful position in her efforts to secure a new trial, although the Barnaman prosecution is still in the courts.

CHIEF REYNOLDS' REPORT.

Not as Many Arrests in January as in December.
Chief of Police Reynolds has filed his report for January, which shows a decrease in the number of arrests as compared with the preceding month.

The total number of arrests during January was but 306, and the total amount of fines collected from prisoners adjudged guilty was \$387. The amount represented money paid in by 139 defendants.

The total number of meals served to prisoners was 805, the same costing \$161, at the rate of 20 cents per meal.

The cost of operating the department, including the money expended for salaries and disbursed for bills allowed during the month was \$5603.13.

The police recovered stolen property to the value of \$539. The total value of property reported stolen was \$915.

CALKINS' JANUARY REPORT.

City Expended \$58,000 During Month—Collections Good.
The January report of City Treasurer Calkins has been filed with the city clerk. The report shows additional payments on the city debt.

During January warrants and the interest on them to the amount of \$56,289.70 were paid. The total amount of cash on hand, including that on deposit in the State Savings bank, is \$67,927.88. The aggregate collections for the month amounted to \$16,650.42. The checks outstanding aggregate \$2066.01.

Exempt.
(San Francisco Bulletin.)
"There's one good thing about Mrs. De Sneeze, she never slanders her friends."
"No, she hasn't any."

TWO CASES AIRED

MESSES. BRODERSON AND GAMER HAVE AN INNING.

NO DECISION IS RENDERED

Former Charged With the Theft of a Watch and the Latter Accused of Holding Money Collected for Rent.

Charles Allen and A. C. Broderson were the principals in a hearing in Justice Shepherd's court yesterday, the former as complaining witness and the latter as defendant, he being charged with the theft of a watch from Allen last July.

Broderson is an attorney and collector and Allen a miner.

Last July the latter appeared in Justice Olsen's court at South Butte on supplementary proceedings and Broderson asked him several questions as to his property possessions.

Allen is alleged to have said he had no property save the watch he carried.

It is claimed that he took the timepiece from his pocket and turned it over to the justice, and the latter decided to apply it on a judgment held against him.

At the hearing yesterday Justice Olsen, Fred Lohse and Broderson testified that Allen voluntarily surrendered the watch, while Allen and his wife swore that Broderson took it from Allen's pocket with the remark: "What have you here—a gold watch?"

H. A. Frank appeared as attorney for Broderson.

He endeavored to show that the prosecution of his client was malicious because Allen had not claimed that Broderson had stolen the ticker from him until after he learned Broderson had another bill against him.

Justice Shepherd will give a decision tomorrow.

The Gamer Hearing.

P. A. Gamer was tried in Justice Shepherd's court at Meaderville yesterday on a charge of failing to turn over to Tim Keefe \$23.59 which he is alleged to have collected in rent as the agent for Keefe, but the decision was reserved until tomorrow, when the defendant will give a preliminary hearing on the more serious charge of grand larceny in connection with an alleged similar offense.

Mr. Gamer was a member of the Gamer-Walker company, the business of which is now in the hands of a receiver.

The testimony adduced at the trial showed that Keefe owned some property in West Broadway and that the Gamer-Walker company collected the rent from the family occupying it.

The money was collected for November and the testimony showed that Gamer had it in his possession.

The argument in the case has not yet been made, but it will precede the decision.

ARE ONLY LESSEES

THREE DEFENDANTS ANSWER IN NIPPER-ANACONDA SUIT.

NOT MINING IN NIPPER GROUND

Warfield, Wilson and Hurley Tell How They Are in Nipper Ground—Defendants Answer in Thill Damage Suit.

In the suit brought by the Anaconda Copper company against the Nipper company and others to secure an injunction to prevent F. Augustus Heinze and a number of other persons and the company named as defendant from mining and wasting the Nipper claim, the three defendants—Harry Hurley, E. H. Wilson and Carlos Warfield—have answered.

The answer alleges that the defendants named were in possession of the plant and the underground workings of the Nipper mine by virtue of a lease given to them by the Nipper Consolidated Mining company, and were using the latter to tram ore through the workings and hoist it to the surface through the shaft.

Say They Are Outside Nipper.
They deny that they are mining or wasting the Nipper claim, saying that the mining they were doing was in adjoining territory outside the Nipper, and that they had a right to mine there.

In the suit of John E. Thill, as administrator of the estate of Michael Thill, who was killed in the Butte Reduction works, the property of Senator Clark, Charles W. Clark and J. Ross Clark, the separate answers of the three Clarks have been filed in the district court.

Clarks Deny Responsibility.
Thill, the deceased, was a young man who was killed quite a while ago while working around the machinery of the reduction works. His clothing caught in a set screw attached to a revolving shaft and he was whirled around by the machinery and crushed to a jelly.

The suit is for \$20,000 damages, and the complaint alleges that the proprietors of the mill were responsible for Thill's death, for the alleged reason that a set screw projected in a way to endanger the lives of workmen around the machinery.

The answers deny that the screw projected as far as alleged, and deny that the defendants are responsible for Thill's death.

If What?
(Punch.)
Unregenerate Youth—Pass the cake!
Vicar's Daughter—If—if?
Unregenerate Youth—If 't don't I'll shove 'im in the face!

Curious to Know.
(February Smart Set.)
The Bachelor Why, I've just reached my prime.
She—What delayed you?

FINE POINT OF LAW

JUDGE KNOWLES ASKED TO DETERMINE IT.

TRUSTEE WANTS COMMISSION

He Says He Is Entitled to \$150 on Money Involved in a Suit Brought By Him in Granite County.

Judge Knowles has been called upon by John S. Axtell to settle a question of commission in connection with a bankruptcy case.

Mr. Axtell is the trustee in bankruptcy for Herman Kaiser and John Kaiser of Granite county. When he submitted his bill of costs to Referee Thompson Campbell there was one item of \$150 which the referee refused to allow on the ground that a sum of money on which he claimed it was due as commission had never come into his possession, and he was therefore not entitled to it. It was decided to submit the question of its legality to the court.

Case Was Settled.
In the petition, Axtell says that in November of 1898, he, as trustee, began suit against M. Kaiser, John Kaiser, Jennie Kaiser, Herman Kaiser and Mamie Kaiser in the court of Granite county to enforce the subject of certain claims proved against the bankrupt Kaisers. He says the action was based upon the allegation that the property belonged to the two bankrupts and was held by the defendants for the purpose of cheating, delaying and defrauding the creditors of the bankrupts; that before judgment could be had the attorneys on both sides settled the case out of court by the payment by M. Kaiser of \$4000 in cash and \$500 in real estate to Joseph A. Hyde and James H. King, who proved their claims in the bankruptcy matter.

Claim Commission Is Due Him.
M. Kaiser, he says, holds this claim against the bankrupt estate. He says his attorneys have informed him that he, as trustee, is entitled to a commission of 3 per cent on the \$5000, and that on the strength of the information he has dismissed the suit against the Kaisers.

The question which Judge Knowles is asked to decide is as follows:
"Is the trustee entitled to commissions on moneys represented by the compromise of an action for the recovery of money alleged to be fraudulently withheld from the estate wherein the trustee was plaintiff and the alleged fraudulent debtor defendant, out of court, between the debtor and certain creditors of the estate, whereby said creditors received from the debtor a sum of money in full settlement of the action against the debtor and the dismissal of the same by the trustee under a verbal agreement with said creditors that the trustee should receive his commissions on the said sum compromised for out of the funds then in his hands the proceeds of sales of property previously made by said trustee?"

JUDGE CLANCY'S JURY.
Men Retained on Panel in Department Number Two.

The following citizens have been retained on the jury panel to try civil cases in Judge Clancy's department of the district court:

Lewis Shodan, W. C. Moore, Pat Rordan, Andrew Corbish, Mike Riodan, A. W. Williams, J. L. Arnes, John Williams, Eli Richards, William Johns, John Gilbert, Adolph Reiche, S. W. Rice, Philip Harrington, Benjamin Ham, Pat O'Farrell, Dan Harrington, Martin Holmberg, Thomas W. Williams, Richard Williams, W. H. Hoskin, Joseph Miller, Mike Lowney, John R. Ross, James Treloar, Bernard Quinn, Richard Payne, David McLelland, William B. Tippet, John E. Hamilton, Herman Muller, Vincent Burns, Joseph McParland, George E. Rawson and Peter Peterson.

JACK CLAIM SOLD.
Its Sale Brought About in a Novel Manner.

William Madden has sold the Jack claim to Patrick Corney for \$2500. The property is located on Jack creek in Jefferson county, about seven miles south of Basin, and is considered a good silver and gold producer.

The sale was brought about in rather a novel way. The two men met in the liquid department of the Southern hotel yesterday and began joking each other about the mining claims they own. Madden spoke of the Jack claim as a good "looker," and Corney asked him what he would take for it.

"Two thousand five hundred," replied Madden, in a joking way.

"I'll take it," exclaimed Corney with such alacrity that Madden almost lost his breath.

"Do you mean it?" inquired Madden.

"I certainly do," said Corney, drawing a check book from his pocket and filling out a blank for the amount.

In a few minutes the deal was complete, Madden having the money in his possession and Corney having a bill of sale for the claim.

It is understood that Madden regretted the sale after he had time to think it over, but he has several other good properties in that section on which he expects to even up.

Other's Choice.
(Philadelphia Press.)
Tess—So she objects to being called an old maid?
Jess—Yes; she says she has remained single from choice.

Tess—Of course; because every man of her acquaintance chose some one else.

Too Thin.
(Chicago News.)
"Jack, I thought you were going to take me skating?"
"I was afraid of the ice, dear."
"Oh, that's too thin!"
"I know it is, dear; that is the reason I didn't take you."

BIG RUSH THIS YEAR

MONTANA SHOULD MAKE AN EFFORT TO GET HOMESEEKERS.

LAND BECOMING VALUABLE

Cattle From Oregon and Idaho Are Fattened on Montana Ranges for the Eastern Markets—New Town of Galata.

"When you speak of immigration to the average Montana man, he does not take to it very kindly," said David R. McGinnis, formerly state immigration agent for the Great Northern railroad but now a prominent business man of Kalspell, to an Inter Mountain reporter yesterday.

"The word immigrant or emigrant is very often associated with poverty. This is entirely erroneous as far as the Western immigrant is concerned.

The average homeseeker is not by any means a pauper, and has frequently from \$2000 to \$10,000 on his arrival.

"Not long ago a settler paid \$18,000 for a ranch near Kalspell. As a general rule they have enough laid by to purchase machinery and to keep them going for a while, but, after all, that is but a secondary consideration.

"It is a deplorable fact and one which demands the attention of every state, that every year sees thousands of enterprising and desirable settlers pass through Montana for the coast states, leaving here land of the finest kind and natural resources untouched.

"Northern Montana," said Mr. McGinnis, "from the Eastern base of the main range of the Rockies to the east line of the state is one vast grazing prairie, ideal in climate and other conditions for stock raising.

Where Fat Bees Grow.
A 3 or 4-year-old steer there will weigh from 150 to 250 pounds more and usually bring 1 cent a pound more in the Chicago market than the Texas or Indian territory animal of the same age.

"They are starting a new town down there at Galata, about 70 miles west of Havre on the main line of the Great Northern. During the past two or three years it has been found convenient to ship a considerable number of cattle from there. Last year Galata was the third largest shipping point for cattle and sheep on the entire line.

"The railroad purposes to build a commodity depot there next spring and to enlarge the stockyards.

"In recent years cattle have been brought in from Oregon and Idaho and turned loose upon the ranges of Northern Montana from April to July, when they are loaded on cars for St. Paul and Chicago in prime condition.

"The people of the state should make some organized effort to induce even a small proportion of the homeseekers who are coming west this year to remain in Montana. There is going to be a big rush of settlers for the West this year.

"Here we talk a great deal about development among ourselves, but we don't make the people of the East understand about it. Look what Colorado has done.

Colorado Well Advertised.
"The resources of Colorado and the scenery of Colorado and the climate of Colorado are well known in every city in the East, whereas you hardly hear Montana mentioned, and yet I believe the resources of Colorado cannot begin to compare with those of Montana.

"It is only a question of a little time until land in Northern Montana will be as valuable as Washington land. Take that Milk River country, for instance; that land is going up to \$50 an acre inside of 10 years. Yes, I know that country pretty well; I was sent out by the Great Northern to start Chinook, and the proudest title I ever carried is that of 'the father of Chinook.'"

Mr. McGinnis left this morning to attend the woolgrowers' meeting at Helena.

The Handsomest Calendar of the Season.
The Chicago, Milwaukee & St. Paul Railway Co. has issued a beautiful calendar, in six sheets, 12x14 inches, each sheet having a ten color picture of a popular actress—reproductions of water colors by Leon Moran. The original paintings are owned by and the calendars are issued under the Railway company's copyright. A limited edition will be sold at 25 cents per calendar of six sheets. Will be mailed on receipt of price.

F. A. MILLER,
General Passenger Agent, Chicago.

His Opinion.
She—I know some couples that quarreled a good deal at first, but got along pretty well later on.
He—Oh, yes! Some people take matrimony like rheumatism—they get so they don't complain much.

Getting Prices.
(Boston Post.)
Mr. Skimp—What would you charge to paint my portrait full front view?
Artist—Three hundred dollars.
Mr. Skimp—Dear me. Then what would you charge for a three-quarter view?

An Internal Remedy and Absolute Cure
Perrin's Pile Specific
Also
Regulates and Corrects All Digestive Irregularities.

Manufactured by C. A. PERRIN, M. D., Helena, Montana.

For sale by all druggists. Send address for explanatory pamphlet.

Giving aim an Idea.
(Indianapolis News.)
The Visitor—You seem to have a growing town here.
The Native—Grown? W'y, say, th' council stays in session all the time extendin' the city limits.

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As played by the organization 34 times in San Francisco. Prices, evenings, \$1.50, \$1, 75c, 50c, 25c. Matinee, \$1.00, 75c, 50c, 25c.

Five Nights, Starting Wednesday, February 5. Matinee Saturday.

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Wednesday and Thursday nights—"The Gaiety."

Friday, Saturday matinee and night—"A Gaiety Girl."

Sunday night—"In Town."

Note—Immediately after the opening performance and after the matinee, Pollard's Juveniles will hold a reception on the stage. All are invited to meet the children.
Prices—\$1.00, 75c, 50c, 25c; matinee, 75c, 50c, 25c.

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1st act, The Farm; 2d act, The Hotel; 3d act, The Side Show; 4th act, The Main Tent. Gertie Hayes and her band of Captive Zulus.

Lions, Horses, Band and Orchestra. Street parade daily at noon.

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