# IT IS NEARLY OVER.

## The Whetstone Case To Go To The Grand Jury Today.

### AFTER JUDGE ANDERSON'S CHARGE.

### The Defendant's Friends Are Hopeful That He Will Be Discharged.

In his closing address to the jury, for the defense, in the Whetstone murder case at Ogden yesterday, Attorney Evans said in the course of his remarks: The reputation of Henry Whetstone was not questioned by the witnesses who appeared on the stand, while McLellan was a bad, vindictive man. Yet, the prosecution will have you write upon the tombstone of Whetstone, "Here lies Henry Whetstone, the murderer of J. B. McLellan." They will have you guilty of a judicial murder in deciding this case. They tell us that McLellan never made any threats at all. Why in the wine room of the saloon on the night of the affair McLellan said that he had it in for several and he was going to get even with them and Whetstone thought he directed his remarks to him. Another point I wish to bring out, Mr. Macmillan said, why didn't Whetstone go home after this duty only and this disaster would have been averted. Why should Whetstone go home? Didn't he have a perfect right to stay there? But would it not have been proper for McLellan to have gone home? McLellan was the only party that caused all the trouble. Whetstone had done nothing and there was no reason why he should have retired from the scene of a conflict precipitated by McLellan. Is it any wonder, I think it is no amazing strength to have kept McLellan's murderous mind in check; he would have undoubtedly been accosted by some a fellow he would have afterwards murdered Whetstone. All the witnesses on the stand told of threats made against the defendant, and some of them spoke loudly and bold enough, making in all about twenty-five threats made against Whetstone.

Counsel briefly reviewed the testimony given by the two Denver officers, and endeavored to show the many alleged discrepancies in their evidence. He referred to the damaging evidence offered by one of the detectives as to Whetstone's business in Denver being that of a tinner and a bad lot, and then asked why, if Winslow was a bad man, Denver detectives did not bring with them some official record of Winslow's crime and take account of such a record would have been admissible as evidence to attack the credibility of Winslow's evidence. Mr. Evans referred to the fact that the prosecution did not produce McLellan's dying statement, and earnestly asked why such a strange proceeding had taken place. Was the prosecution afraid that McLellan's dying words would destroy their case? The prosecution certainly did not withhold it on the grounds of generosity, for the assistance with which they sought not evidence from different and distant points, certainly deserved that idea. There can be no reason assigned, except possibly that the dying statement contained statements which would damage the cause of the prosecution. Such at least is the only plausible explanation of this strange proceeding on the part of the prosecution. Whetstone's testimony he stated, stands as uttered, unsupported and not a word, which could not be shown even by the most skilled and severe cross-examination, Whetstone's character had never been attacked and his evidence carried conviction so long as the words of a truthful man, narrating the exact facts of a transaction. He reviewed the circumstances immediately preceding the firing of the fatal shot, dwelling at some length upon the evidence, showing that McLellan was on his way to attack a fellow employee. Then counsel discussed the question of "a reasonable doubt," then the lower degrees of guilt, viz., manslaughter and involuntary manslaughter, and argued that the evidence showed self defense, that no legal crime had been committed and asked for acquittal.

### FOR THE PROSECUTION.

It was 3:45 p. m. when Mr. Evans closed and within the best minutes District Attorney Allison's voice was heard:

"Gentlemen of the jury.—You have here a case of unusual importance. You have a great duty to perform for one side you have the majesty of the law to uphold, and on the other side the sacredness of human life to protect. You have to decide this case entirely upon the evidence adduced and if you find the defendant guilty it is your duty to set him free; on the other hand if you find him guilty it is your duty to say so without fear or favor." Mr. Allison took up the real facts to know and stated that the prosecution would ask a verdict of guilty of murder in the first degree. Whetstone never asked the courts for protection against McLellan—never asked that McLellan be placed under bonds to keep the peace, and the very fact that Whetstone never asked this, shows conclusively that Whetstone did not fear McLellan's threats. Whetstone never showed any fear of McLellan's threats. McLellan was simply a bluffer and his threats never amounted to anything. Through years the defendant and McLellan were good friends, even after these threats. The question of character cuts but little figure in the case. It is conceded that Whetstone was a quiet man, while McLellan was a loud, boisterous man. Counsel reviewed the circumstances in the wine room immediately preceding the shooting, showing that even there Whetstone was not afraid of McLellan even with McLellan holding a gun. He argued against the probability of the truth of Whetstone's statement that he wanted the gun to go home with. McLellan was killed simply because he was an "unknown man," a man given to loud and boisterous talk, and there is not a part of evidence to justify the commission of the act. Mr. Allison scored counsel for the defense for stating two theories—that McLellan came back the half way to meet Whetstone and the other that McLellan was in position to shoot Whetstone. There was not a single circumstance attending the whole affair that tends in the least justify Whetstone's action. Even if a man had had a good character, that does not excuse that he cannot commit a crime. The first criminal act in almost every criminal's life comes upon the community with a shock. But if the first offense is not punished law would be of small benefit.

Proof of bad character for defendant was not necessary. Plenty of men had escaped from the first quarrel until the time of the shooting, or deliberation, and the existence of both the intervening time was occupied somewhere conclusively that there certainly was premeditation, deliberation and malice in the act. A verdict of acquittal means approval of Whetstone's act, and says that such acts can go unpunished. Counsel asked for a verdict against the verdict of order and a license to violate the laws of the country and throw them into disrepute. It would open the door to lawlessness and disorder and increase the number of whomes who every spring would wend their way to the graves of the dead to pour their offerings of love and regrets, memories upon the graves of injured husbands. Whetstone should have gone home after the first quarrel instead of going back to the saloon. As to not putting McLellan's dying statement in evidence, Mr. Allison said that the prosecution allowed it to the records. The prosecution is not bound by the decisions of the courts to produce all the eye witnesses to the affair. Why did not the defense use it? The prosecution wanted a verdict based upon the facts, wanted the jury to carefully consider all the facts and bring in a verdict in accordance with them.

Attorney Allison closed his address at 4:15 and court adjourned until this morning.

### Can Come from the Same State.

Hon. George S. Boutwell writes to the Boston Globe to show that there is nothing in the United States constitution to prevent a president and vice-president from being residents of the same state. The document declares only that the electors in their respective states shall vote for a president and the president, one of whom shall not be a resident of the same state with themselves. Even if the country wanted a president and vice president from the same state, the electors would be free to put almost the reverse from that state simply neglecting to vote, and having them from the other states to vote for the president.

But the provision in the constitution requires an electoral majority or an election to be made in which case the house of delegates shall elect the president out of the three persons having the highest number of votes for president, which the number of votes for the president. Thus there is absolutely nothing to prevent the Democratic voters from electing Mr. Cleveland president and the Republicans under Tom Cleveling Mr. Reid as vice president. It would be something else to have a president and vice president of different political parties, but it would not be unconstitutional, and the wisdom of this and government would still rule.

Mr. Boutwell calls attention to the fact that the country has drifted quite away from the political intentions of those who adopted the constitution. They had not the formed notion of the rot and dirty primary election and nominating conventions of our time. Under our election system of nominating candidates the electoral college has become a mere nothing.

Mr. Boutwell says:

With the experience of a century to mind we are forced to look upon the provision of the constitution as it was when it was framed, as an anachronism.

In view of the failure of the electoral college to perform the duties for which it was created, and the fact that the people are now with a great majority in favor of a change in the constitution, I am of the opinion that the time is now ripe for the proper steps to be taken for the amendment of the high powers that be may avail and the sooner verily of the best.

Upon which, and for all the reasons indicated, I am fully in favor of the adoption of a direct vote of the people for President and Vice President.

### LIVING ON AIR.

#### The Remarkable Survival of Three Entombed Miners in Colorado.

The teaching of experience is illustrated by several instances of prolonged abstinence, though it may appear strange that human endurance in the performance of special conditions, has yet provided an overall criterion of the vital resistance possessed by the average man when suddenly deprived of every form of nourishment. The instances of this force may nevertheless be grouped with approximate correctness from the history of numerous instances of prolonged and accidental privation. As an example, the following is remarkable even in this category:

It is the narrative of three Bohemian miners, who after being entombed by a fall of sand in the pit where they were working, were finally rescued alive, though of course in an utterly prostrate condition, seven days later. During the period of their live burial six men jumped down to them by here holes. On this they may be said to have lived, without food and without water. The question of the latter is what makes their survival so remarkable. But for this contingent longer force of profoundness feeling our would have been quite impossible.

We can have no difficulty in understanding generally why this holds true if we bear in mind the fact that not only does water constitute by far the greater constituent of every tissue, but that without the free operation the circulation and renovation of the blood and that needful of early chemical change upon which all tissue repair depends would be also impossible.

In endeavoring to trace the rationale of a life preserving, as in the case of the typical miners, in spite of the absence of every natural condition, we must settle one or two significant points. In the first place, their condition was that of rest, their functional metabolism being proportionately inactive, their wants of force diminished and their output of carbonic acid not so likely to overcharge the surrounding atmosphere. Further, we may take it for granted that a robust physique had no small share in the preservation of vital energy.

Much depends in such cases on the amount of consciousness and mental force for the time and in the particular person, and consider the deterrent influence. We may safely conclude that the amount of reserve strength in the case of these men was not inconsiderable. It is not, of course, in the comprehension that we can attribute to any of the laws of their existence, but the still more remarkable prospect of their entombment and subsequent survival.—London Lancet.

We must all meet the fate of the Old World and their work of creation. What they will do in our New World late to be still more developed and is an other thing.

In speaking of the substitution of a lady by saying, Professor Dewar says that water can be made to become solid by the evaporation of a quarter of its weight.


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### NOTICE TO CREDITORS.

Estate of Amos D. Pratt, Deceased.

NOTICE IS HEREBY GIVEN, BY THE undersigned, Executor of the Estate of Amos D. Pratt, deceased, to the creditors of said deceased, to exhibit their claims against said estate, with the proper vouchers, to the undersigned executor, at the office of Zerubbabel Snow, in Salt Lake City, Utah, within four months from the date hereof.

JAMES HENRY LEE,
Administrator of the estate of Amos D. Pratt, deceased.

Dated Salt Lake City, Utah, September 6, 1892.

### LEGAL NOTICE.

In the Probate Court in and for Salt Lake County, Territory of Utah.

In the matter of the Estate of Sarah Hunt, Deceased.

NOTICE IS HEREBY GIVEN THAT the undersigned, Executrix of the estate of Sarah Hunt, deceased, has filed in said Court her final account as such executrix, and the Judge of said Court has appointed Saturday, the 24th day of September, A.D. 1892, at the hour of 10 o'clock a. m. of said day, at the Court House in said County, Salt Lake City, Utah County, Utah, for the hearing of said account and for the settlement of said estate, and all persons interested are hereby notified to appear at said time and place and contest said account, if they see cause so to do.

Dated Salt Lake City, Utah, September 6, A.D. 1892.

C. E. ALLEN,
Clerk of the Probate Court.
By CHARLES SCOVILL, Jr., Deputy.

### LEGAL NOTICE.

In the Probate Court of the County of Salt Lake, Territory of Utah.

In the matter of the Estate and Guardianship of Alonzo G. Wentworth, a minor.

Order to show cause why order of sale of real estate should not be made.

A. SHARP, H. WOLSKILL, THE GUARDIAN, petitioner, having filed his petition herein, praying for the sale of the real estate of said minor, Alonzo G. Wentworth, and that Alonzo G. Wentworth, minor, being duly cited to appear and show cause why such sale should not be made, and the said minor having appeared by his guardian ad litem, and the said petition being duly considered, and it appearing to the satisfaction of the court that the said petition should be granted, and that it is for the benefit of said minor and his estate, and that said petitioner is the guardian of said minor, appointed by and qualified in this court, and that said petition should be granted, and that said petitioner should be authorized to sell the interest of said minor in said real estate, and that said petitioner should be authorized to sell the said real estate of said minor, and that said petitioner should be authorized to do all things necessary to perform the duties of said guardian, and to make a good and sufficient deed to the purchaser of said real estate, and that said petitioner should be authorized and empowered