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NO 4.

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Krickbaum Ousted.

Judge Evans Throws Out the Mifflin Vote and Declares Hughes Associate Judge

THE OPINION IN FULL.

On Monday morning Judge Evans read an opinion in the Associate Judge contest, in which he threw out the vote of Mifflin township, and declared Geo. M. Hughes, republican, the duly elected Associate Judge in place of William Krickbaum. In answer to a question from Fred Ikeler, Esq., Associate Judge Yeager said he concurred with Judge Evans. The following is the opinion in full:

"The petition of George M. Hughes was filed in this case on the 4th day of December, 1907, to contest the election of William Krickbaum, to the office of Associate Judge for the county of Columbia. At the general election held on the 5th day of November, 1907, in said county, an Associate Judge was elected. On the canvass of the returns by the judges, it appears that William Krickbaum received 3043 votes, and that George M. Hughes received 3012 votes.

"The petition alleges that 107 votes were cast for William Krickbaum, and that thirty-nine votes were cast for George M. Hughes in Mifflin township at said election, and that all the votes cast at said election in Mifflin township were illegal and void and should not be counted for either Krickbaum or Hughes in computing the election returns of Columbia county; that if the votes cast at said election in Mifflin township were not counted, George M. Hughes would have received 2973 votes and that William Krickbaum would have received 2936 votes; that George M. Hughes received a majority of the legal votes cast for Associate Judge in Columbia county at the election held November 5, 1907.

"The objection to the vote counted for Mifflin township is: That the legally elected judge of election was not permitted to take part in holding the election, and that a usurper acted as judge in holding said election.

"From the petition, answer and testimony we find the following facts:

"1. That at the February election, 1907, in said district of Mifflin township, A. E. Johnson was duly elected as the judge of election, to serve for the ensuing year.

"2. That at the next following election in said district, to wit, the June primary election, the said A. E. Johnson did not attend, and that, thereupon, one of the inspectors appointed Whitney Hess, as the judge of election in the place of Johnson, and who, after being sworn, acted as judge during said June primary election.

"3. That on the morning of the general election held in said township on the 5th day of November, 1907, before the polls were opened, the said A. E. Johnson appeared at the regularly appointed place for holding the election in said township, and demanded to be sworn in as the regularly elected judge of election.

"4. That the other election officers refused to administer the oath to the said A. E. Johnson, and further refused to allow him to sit upon said election board, and perform the duties enjoined upon him as the regularly elected judge of the election board for said district.

"5. That the said A. E. Johnson persisted in demanding his right to sit as one of the said elec-

tion board, but notwithstanding his demand Whitney Hess was sworn in as judge of election by the minority inspector, and then, said Whitney Hess and the other members of the board, proceeded to conduct the election without Johnson, and received the votes cast at said polling place, counted and made return of the same without the said Johnson participating therein.

"6. That Whitney Hess acted as judge of the general election held in Mifflin township November 5, 1907; that he was not the regularly elected judge of election for said Mifflin township; that he was not appointed judge of election to hold the November election, 1907, in said Mifflin township; that there was no vacancy in the office of judge of election in Mifflin township on the morning of November 5th, 1907. A. E. Johnson, the regularly elected judge of election, being present at the time of opening the polls demanding his right to participate in receiving, counting and return of the votes cast at said polling place.

"7. That the election returns from Mifflin township for said election show that 107 votes were cast for William Krickbaum for Associate Judge and that thirty-nine votes were cast for George M. Hughes for Associate Judge.

On the part of the respondent it is contended that the vote of Mifflin township cannot be thrown out, (1) Because the action of Whitney Hess, as judge, was not in fraud of the rights of either candidate; neither was his appointment fraudulently obtained, nor did his action, or the action of the board in allowing him to sit, change, alter or even render uncertain a single vote cast at the election; (2) Because Whitney Hess, holding and claiming to hold by virtue of a valid appointment at the June primary was acting under color of title, and was therefore, as respects third persons, de facto judge of election, and his acts as such are binding on the contestants and respondent.

"On the part of the contestants it is contended that because the election in Mifflin township was held by a judge of election who was not legally elected or legally appointed the return of votes cast at that poll, is illegal and cannot be counted.

"The holding of elections within this commonwealth is governed by the constitution and statute. Section 14 of the Act of Assembly, approved July 2, 1839, P. L. 519, reads as follows: "The general, special, city, incorporated district and township elections for electors of president and vice president of the United States, shall be held and conducted by the inspectors and judges elected as aforesaid, and by clerks appointed as in hereafter provided."

"Article 8, Section 14 of the Constitution of 1874, provides: That 'District election boards shall consist of a judge and two inspectors, who shall be chosen annually by the citizens.'

"The Act of January 30, 1874, P. L. 39, provides 'That at the election to be held on the third Tuesday of February, and at the election annually thereafter, there shall be elected in each election district in the state * * * one person as judge and two inspectors.'

"The act of May 5, 1897, P. L. 38, provides that 'in all election districts where a vacancy exists by reason of the disqualification of the officer, or by removal, resignation, death or other cause, in an election board heretofore elected or appointed, or that may hereafter be elected or appointed, the judge or judges of the Court of Common

Pleas of the proper court, upon proof furnished that such vacancy or vacancies exist, shall at any time before any general, municipal or special election, appoint competent persons, who shall be of good character, and known in the district where the vacancy occurs, to fill said vacancy or vacancies to conduct the election in said districts.'

"Section 15 of the Act of July, 1839, and Article 8, Section 2, of the Constitution, provides that 'the inspectors and judges, chosen as aforesaid, shall meet at the respective places appointed for holding the election in the district to which they respectively belong, before 7 o'clock on the morning of Tuesday next following the first Monday of November in each year.'

"Section 16 of the Act of 1839, provides: that in case the person elected a judge shall not attend, then the inspector who received the highest number of votes shall appoint a judge in his place.

"It is provided in Article 8, Section 1, of the Constitution of 1874, as one of the qualifications of a voter, that 'he shall have resided in the election district where he shall offer to vote at least two months immediately preceding the election.'

"Judge Simonton in delivering the opinion of the Court in Sanner and Rowe, Nominations 24 County Court Reports, 43, decided that where the rules of a political party provided for the method of electing judges of election to conduct a primary election that the rules of the party must be complied with and only those judges of election, elected in compliance with the rules were competent to conduct such election and where the election in any precinct was conducted by an usurper or person not authorized by the rules of the party to conduct such election the return from the district should be thrown out and not counted. In this case, the return from Ogle precinct was thrown out and not counted, because the election was not held by the legal judge of election. His place had been usurped, and the election was not held by the legal officer. The throwing out and not counting the vote from Ogle precinct nominated Koozts. Had the election been held by legal officer in Ogle precinct, the vote would have been counted, and Sanner would have been nominated instead of Koozts. The voters from Ogle precinct were disfranchised because of the act of those who conspired the usurpation as well as those who actually usurped the place of the legal judge of election.

"In Yonkin's contested election case reported in 2 County Court Reports at page 550 upon the face of the returns Yonkin appeared to be elected Associate Judge, but by throwing out and not counting the vote for Laporte township, Strong was elected. The reason for throwing out the vote from Laporte township was that the voters from the township cast their votes at a polling place situate in the Borough of Laporte, instead of a polling place situate in the township of Laporte.

Judge Sittler in delivering the opinion of the Court says: "The evidence is undisputed that this polling place, viz: the house of Russell Karns, is within the borough. These votes then being cast outside of the election district of Laporte township can they be counted? Since the cases of Chase vs. Miller, 41 Pa. 419 and McNeill's case 111 Pa., 235, we cannot regard it as an open question.

The votes returned from Laporte township were thrown out and not counted, and the certificate of election awarded to Strong. Had the votes from Laporte township been counted and not thrown out Yonkin would have been awarded the certificate of election. The voters from Laporte township were disfranchised because they voted in the wrong precinct.

"In Connell's nomination reported in 27 County Court Reports, page 306 the nomination was set aside because of non compliance by the election officers, with the first section of the Act of June 29, 1881, P. L. 128, which requires the judges, inspectors and clerks of primary elections to take and subscribe to an oath or affirmation in the form prescribed by the act.

"Judge Weiss in delivering the opinion of the Court says: 'The act is mandatory, and its provisions

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A RETROSPECT.

Col. J. G. Freeze, President of the Columbia County Bar Association, had been selected by the committee to act as toastmaster at the first annual banquet of the bar, held at the Central Hotel on December 31st. Owing to the death of Mrs. Freeze he was not present. Before her illness he had prepared some remarks for the occasion, and the following extract is of such historical interest that we have requested it for publication:

"It is now nearly one hundred years since the County of Columbia was organized, having been cut off from Northumberland county March 22, 1813. We were made a part of the Middle district of the Supreme Court and a part of the eighth Judicial District of the Common Pleas. Hon. Seth Chapman was at that time President Judge of the District, and presided over our courts. He was appointed from Bucks county in 1811 and remained on the bench until October 10, 1833. It used to be said of the Judges in those days, that few died, and none resigned—but Judge Chapman did resign. He remained in Northumberland and died there in 1835.

It is needless to remark that none of us ever saw Judge Chapman.

He was followed by Ellis Lewis, who was later transferred to Lancaster, was elected to the Supreme Court and in regular order succeeded to the position of Chief Justice. He was ten years on the bench of Columbia county; and in my school boy days at the Danville Academy, I saw him on the bench frequently; and, with the exception of Judge Donnel who died in 1844, I saw and knew and practiced before every Judge from that time to the present. It is a list of distinguished men, among whom were two who reached the Supreme Bench, two were in Congress, and one, Governor of the Commonwealth.

Dauville was made the county seat at the organization of the county, and after a long struggle it was changed to Bloomsburg in November 1847, and the first court was held here in January 1848.

The old lawyers of Columbia county residing at Danville were Alem Marr, Robert C. Grier, Ebenezer Greenough, (for a short time,) George A. Frick, Legrand Bancroft, John Cooper, Joshua W. Comly and John G. Montgomery.

The first Associate Judges I ever saw on the bench were William Donaldson of Danville, and George Mack of the upper end; they were appointed in 1840, and were succeeded by Samuel Oakes and Stephen Baldy, and a long list which I need not enumerate nor name.

Jacob Eyerly was the first Prothonotary I ever saw at the desk. He served from January, 1830 to January, 1836 by appointment, and then by election from 1839 to 1863 consecutively, twenty-four years.

The first real live sheriff I ever saw, was John Fruit of Jerseytown, commissioned October 30, 1840.

When I add to these few, but I hope, interesting reminiscences, the fact, that on the 19th of April, 1908, I will have been sixty years at the bar, and that all except about half a dozen of the gentlemen before me, were born since my admission; I need not add anything further to the ancient history of the Bar of Columbia County."

BROTHERS DIE SAME DAY.

Orange S. Brown, proprietor of the Williamsport Gazette and Bulletin, and postmaster of that city, died there in a hospital on Tuesday morning. He had been in ill health for several years. He was one of the most prominent and substantial citizens of Williamsport and will be greatly missed.

The deceased was a brother of Mrs. H. H. Grotz of this town, and was unmarried. Mr. and Mrs. Grotz went to Williamsport on Tuesday.

By a strange coincidence another brother, Alfred S. Brown, whose home was in Wellsville, N. Y. died on the same day, at nearly the same time. Mrs. Grotz was preparing to leave for Wellsville on Tuesday, when she heard of the death of her other brother at Williamsport. Truly afflictions never come singly. Mrs. Grotz has the sympathy of her many friends in this double visitation.

The Car shops have an order for 50 mine cars.

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LICENSE COURT.

The license court sat on Monday, and all old licenses where no change was made in the proprietor, were granted, except that of Mrs. Sue Gruver at Espy, which was held under consideration. On motion of William Chrisman, Esq., a hearing was fixed for February 3rd.

The first case called was that of William Derr asking for a hotel license at Forks. Several witnesses were called who testified to the good character of the applicant, and the necessity for the house, and a half dozen others said there was no necessity for it.

The next cases heard were those of A. M. Harvey for hotel at Jerseytown, Andrew Sedusky for wholesale license at Aristes, Freeman Yeager for restaurant in Centralia, new men for old houses.

The new cases were then heard, and included the applications of O. A. Bishop for hotel in Berwick; Bloomsburg Brewing Co., wholesale, in Bloomsburg; Berwick Brewing Co., wholesale, Berwick; Geo. E. Clemens, restaurant, West Berwick; Patrick Delaney, hotel, West Berwick; Martin Gatosky, hotel, West Berwick; Jacob D. Keiper, hotel, West Berwick; John J. Lee, hotel, Bloomsburg, Main street at B. & S. Railroad; John Pavavsky, hotel, Briar creek township; Bartel Brewing Co., wholesale, Bloomsburg; H. B. Williams, hotel, Briar creek; Henry Schlenger, hotel, West Berwick; Henry Schonberger, hotel, Briar creek.

On Tuesday the following cases were heard: Joseph Samley, hotel, West Berwick; N. Saracino, hotel, West Berwick; W. D. Mausteller, hotel, Pine township, an old stand.

The case of Geo. W. Wright, an applicant for restaurant license in the Bloomsburg Opera House block, was next heard. M. Flaherty, C. W. Brink, James Heddens, and Geo. Hutchison testified as to the necessity of the place and character of the applicant.

On Wednesday afternoon the court disposed of all of these cases.

Seven new applications were granted as follows: Henry Schoenberger, for hotel in Briar Creek; George E. Clemens, for restaurant in West Berwick; A. O. Bishop, for hotel in Berwick; Nick Caracino, for hotel in West Berwick; Bartel Brewing Company, storage in Bloomsburg; William Derr, for hotel at Forks; John J. Lee, for hotel in Bloomsburg, corner Main street and B. and S.

All other applications for new licenses were refused including the Grand restaurant in the opera house block.

All new applications for old stands were granted.

At a meeting of the vestry of St. Paul's Church on Tuesday evening, the resignation of J. G. Wells as secretary was accepted, and A. W. Duy was elected in his stead. Mr. Wells' frequent absence from town and inability to attend the meetings was the reason for his declining to serve longer.

Lafayette Creasy, an old and well known resident of this county, died at the home of his daughter in Wilkes-Barre on Wednesday morning, aged nearly 79 years. His entire life was spent in this county mostly in Center township. Since 1893 he had lived in Bloomsburg. His wife and three children survive him. The funeral will be held on Friday, with burial at Willow Grove.

QUARANTINE.

Regulations Under the New Law.

Under the new quarantine law now in effect in Pennsylvania, red cards will be put up at houses where diphtheria, scarlet fever and measles exist, and the period of quarantine will be longer than formerly. For chicken pox, mumps and whooping cough white cards are to be put up by the health authorities. Typhoid fever will also be placarded with a white card. The time of quarantine in cases of diphtheria is now twenty-one days and thirty days' exclusion from school after illness or a total of fifty-one days. Heretofore the period of quarantine was two weeks where anti-toxin was used and three weeks where it was not applied, with ten days out of school after recovery. The time of quarantine in cases of scarlet fever is forty-two days and thirty-two days' absence from school after recovery, a total of seventy-two days. Under the old rules the quarantine remained effective thirty days. When children of a family where contagion breaks out are taken to the homes of near relatives so as not to be exposed to the disease of the person ill the places where they remain must be placarded for fourteen days and the children kept out of school fourteen days. Formerly no cards were put up and the children were permitted to go to school in about ten days if they presented a certificate from the family physician that the time for the development of the contagion had expired.

Nearly 1500 Died With Measles.

Measles killed 1,463 persons in Pennsylvania during the year 1907, according to the records kept by the bureau of vital statistics of the State department of health. Of these 1,240 were under five years of age.

During the month of December alone in this past year there were reported to the State department of health 2,307 cases of this disease which annually kills about two and one-half times more children than scarlet fever and yet continues to be regarded by so many people with comparatively little concern.

"How to make the public appreciate the really serious danger of measles and get them to observe precautions to prevent the spread of the disease is about the hardest problem in educational sanitary work that I have encountered," said State Health Commissioner Dixon recently.

"A scarlet fever case in a neighborhood seems to strike terror to every mother's heart. If quarantine regulations are broken by the members of the infected household our health officers receive immediate complaints from other parents in the vicinity who are fearful that the disease may be transmitted to their own little ones. This is natural and right, for scarlet fever is a dangerous disease. But if we could get mothers to be equally concerned in keeping their children from the infection of measles we might save many a home from the sorrow of an infant grave."

Charles Battaglia, former hotel proprietor, labor contractor and perhaps the best known personage in the foreign section of West Berwick, spent Thursday night in the West Berwick lockup after his arrest on a charge brought by his daughter Angilina Battaglia, who claimed her father was abusing his entire family and her in particular. On Friday morning he gave bail for his appearance at court.