

Legal Hangings in Kansas

LOUISE BARRY

I. INTRODUCTION

FOR the crime of murder in the first degree the death penalty has been legal for approximately 68 of the 96 years since the organization of Kansas.¹ Or, to state it otherwise: the penalty has been legal in Kansas except for the 28 years between 1907 and 1935. Execution by *hanging* was not specified by law until 1858, but since that year it has been the state's prescribed method of capital punishment.

Up to 1907, when capital punishment was abolished, only nine persons had been hanged *under state law*. All these executions occurred between 1863 and 1870. During the next 73 years there were no hangings *under state law*, but since 1944, six men have died on the gallows of the Kansas penitentiary at Lansing.

Nine other persons are known to have been legally hanged in Kansas. Records have been found of three such executions under *military* jurisdiction² during the Civil War period. Three persons were hanged under *federal* law, at Wichita, in the late 1880's; and at the U. S. penitentiary, Leavenworth, one man was hanged in 1930, and two others in 1938.

Illegal hangings within the state have been much more numerous. More than 200 men have been lynched in Kansas.³ These outside-the-law executions were largely for the crimes of horse stealing and murder. Although more than half of the lynchings occurred in the first 15 years of Kansas' existence, some 90 persons were illegally hanged in the state between 1870 and 1932.

Legislation relating to capital punishment for murder in the first degree can be summarized as follows:

Among the so-called "bogus laws" passed by the Proslavery territorial legislature of Kansas in 1855 was a statute dealing with crime and criminals, one of its provisions being that "Persons convicted of murder in the first degree shall suffer death."⁴ Until the territorial legislature of 1858 passed a "Code of Criminal Pro-

LOUISE BARRY is in charge of the Manuscripts division of the Kansas State Historical Society.

1. One other crime—treason against the state—has carried a death penalty in Kansas since 1861. No one has been convicted under this statute.

2. Legal executions of one civilian (Solomon P. Hoy), and of one soldier (John W. Summers), by *military firing squad*, are also noted in this article.

3. Genevieve Yost's "History of Lynchings in Kansas," in *The Kansas Historical Quarterly*, v. 2, pp. 182-219, covers the subject comprehensively.

4. *The Statutes of the Territory of Kansas*, 1855, Ch. 48, Sec. 3.

cedure"⁵ there was no law prescribing a specific method—hanging—as the means of execution.

However, in 1859, the territorial legislature repealed all the statutes of 1855, and many of the laws enacted in 1858, including the criminal code.⁶ The 1859 legislature proceeded to pass a new crime and criminals act, and a new code of criminal procedure. The former provided that "Persons convicted of murder in the first degree shall suffer death";⁷ and the latter contained a section stating that "The punishment of death, prescribed by law, must be inflicted by hanging by the neck, at such time as the court may adjudge." Also in the criminal code was a provision that "Sentence of death shall be executed in some private enclosure, as near to the jail as possible," with a specific statement as to the persons who could attend an execution either by invitation of the sheriff, or by request of the prisoner.⁸ (The hanging of William Griffith in 1863 was, nevertheless, a public affair; and the hanging of William Dickson in 1870, was a travesty of this section of the law.)

When Kansas became a state in 1861 these 1859 acts remained in effect because the Wyandotte constitution, under which Kansas was admitted to the Union, provided that all laws in force in the territory at the time of the adoption of the constitution should remain in force until expired or repealed, if they were not inconsistent with the constitution.⁹ They were slightly revised, and codified, in 1868,¹⁰ but remained essentially unchanged.

Several sections of the code of criminal procedure were amended by the legislature of 1872. The most vital change was a provision that "The punishment of death prescribed by law must be inflicted by hanging by the neck at such time as the Governor of the state for the time being may appoint, not less than one year from the time of conviction. . . . *Provided*, That no Governor shall be compelled to issue any order . . . for the execution of any convict. . . ." ¹¹ In effect, this banned capital punishment, for no Kansas governor, during the 35 years this law existed, ever took the responsibility of ordering an execution.

In 1907 a law was enacted which did abolish capital punishment for murder. The law said, in part, "Persons convicted of murder

5. *Laws of the Territory of Kansas*, 1858, Ch. 12, Art. 12, Sec. 11.

6. *General Laws of the Territory of Kansas*, 1859, Ch. 89, Secs. 1, 3.

7. *Ibid.*, Ch. 28, Sec. 3.

8. *Ibid.*, Ch. 27, Secs. 242, 244.

9. *Constitution of the State of Kansas*, Schedule, Sec. 4.

10. *The General Statutes of the State of Kansas*, 1868, p. vi; and Chs. 31, 82.

11. *The Laws of the State of Kansas*, 1872, Ch. 166, Secs. 2, 3.

in the first degree shall be punished by confinement and hard labor in the Penitentiary of the state of Kansas for life. . . ." ¹² This statute remained in effect for 28 years.

In 1935, by legislative act, capital punishment for murder again became legal in Kansas. The new law provided that "Persons convicted of murder in the first degree shall be punished by death or by confinement and hard labor in the penitentiary of the state of Kansas for life, and the jury trying the case shall determine which punishment shall be inflicted: *Provided*, that the death penalty shall not be inflicted under this act upon any person under the age of eighteen years. . . ." ¹³ The criminal code was amended also, and the new law stated: "The mode of inflicting the punishment of death, in all cases in this state, shall be by hanging by the neck until such convicted person is dead. The warden of the state penitentiary . . . [or] the deputy warden, shall be the executioner. . . ." ¹⁴ These 1935 statutes have not been changed and "hanging by the neck" remains the only way of carrying out the death penalty according to Kansas law.

II. LEGAL HANGINGS IN KANSAS

It should be noted that one legal execution, by firing squad, occurred within the boundaries of this state 17 months before Kansas was organized as a territory. On January 18, 1853, a young Indian named John Coon, Jr., was executed under the government of the civilized Wyandotte Indians, in what is today Wyandotte county. Coon was tried, convicted and shot for the killing of Curtis Punch on December 11, 1852. The trial took place on December 17, with William Walker as prosecutor and Silas Armstrong as defense counsel. All of these persons were Wyandotte Indians. Walker considered the penalty much more severe than was justified by the circumstances of the case. ¹⁵

Although Carl Horne was the first person to be hanged *under state law*, he was the second to be legally hanged, and the third to be legally executed, after the organization of Kansas. According to the adjutant general's records, Pvt. John Bell, Company I, Second Kansas cavalry, was hanged for rape, on July 11, 1862, at Iola, by sentence of a drum-head court martial approved by Col. W. F. Cloud. To Bell, therefore, goes the distinction of being the first individual legally hanged in Kansas.

12. *Session Laws, 1907*, Ch. 188, Sec. 1.

13. *General Statutes of Kansas, 1935*, Ch. 21, Sec. 403.

14. *Ibid.*, Ch. 62, Sec. 2401.

15. *The Provisional Government of Nebraska Territory and the Journals of William Walker*, edited by W. E. Connelley (Lincoln, Neb., 1899), pp. 369, 371.

THE HANGING OF CARL HORNE¹⁷

In a haystack on his farm, about a mile from Easton, neighbors found the body of John Philip Friend (Freund), on September 5, 1861. His head and chest were crushed, and he had been dead for some days. (The murder date was later established as August 30.) Gone from the farm were Friend's wife, Catharine, his son, James (aged about five), and Carl Horne (ex-soldier, aged about 35), a boarder in the Friend household since June. Investigators learned that Horne and Mrs. Friend (using the name Catharine Grossman) had been married at Leavenworth on September 2, and had started for St. Joseph, Mo., with the young boy, several days later. Deputy Marshal Shott set out in pursuit on September 6, and at Elwood the next day he overtook and arrested Horne and Catharine Friend. They were returned to Leavenworth and lodged in jail on September 7.

Both were tried during the next term of the district court in Leavenworth. Carl Horne's trial opened on November 25, 1861, before Judge William C. McDowell, with Thomas P. Fenlon and F. P. Fitzwilliams as prosecutors. The defense lawyers were Adams, Crozier and Ludlum, and W. P. Gambell. On the evening of the third day the case went to the jurors, and after two hours they returned a verdict of "guilty of murder in the first degree." Next day the Leavenworth *Times* reported "This is the first time, in the history of Kansas, that a verdict of murder in the first degree has been given."

A few days later Catharine Friend was tried, found guilty of murder in the second degree, and sentenced to 10 years imprisonment.

On December 7, 1861, an argument by Carl Horne's attorneys on a motion for a new trial and in arrest of judgment was heard by the court. Ward Burlingame, who was in the room, years later stated that immediately after hearing the defense lawyers, Judge McDowell "pulled out a roll of manuscript and *read* his speech to the prisoner and the final sentence, showing that he had fully decided to overrule the motion before it was argued." The judge then sentenced Horne to be hanged on January 24, 1862, but he was not executed on that day because his case was carried to the Kansas supreme court.

17. References: Leavenworth *Daily Times*, September 7, 8, November 26, 28, December 3, 6, 8, 1861; Leavenworth *Daily Conservative*, December 8, 1861, December 11-14, 28, 31, 1862, February 12, 14, 1863; *Kansas Reports*, v. 1, pp. 42-74; article by W[ard] B[urlingame] in *Atchison Daily Champion*, February 20, 1879, p. 4.

The supreme court heard the Horne case in February, 1862—this tribunal's first criminal case. Deciding that the lower court had erred in instructing the jury, it reversed the judgment and sent the case back for a new trial.

Ten months later, Carl Horne was tried again for the murder of Philip Friend—this time in the criminal court of Leavenworth which had been established by the legislature in March, 1862. The second trial began on December 10, 1862, with Judge Samuel D. Lecompte presiding, *pro tem*. On the 13th, after a short period of deliberation, the jurors found Horne guilty of murder in the first degree. On December 30, Judge Lecompte overruled a motion for a new trial, and sentenced the prisoner to be hanged on February 13, 1863.

Two days before the execution, the *Daily Conservative* sent a reporter to the jail to see the condemned man. He found Horne cheerful, ready to talk about his situation, and seemingly resigned to his fate. The reporter also noted that among the 30 or so prisoners in the jail was Catharine Friend, although he did not see her.

A gallows "of hickory, neatly put up, and painted a dark drab color," was ready for the hanging, on the north side of the Leavenworth jail, midway between the fence and building. As early as 10 o'clock on the morning of February 13, 1863, a crowd began to gather, although it was known that only a select number of persons invited by the sheriff would witness the hanging. Men and boys climbed to the top of the fence, but a military guard soon came along and ordered them down.

Among the spectators within the jail yard enclosure was a *Daily Conservative* writer. He stated that the invited guests entered the front gate between two rows of bayonets. The proceedings began at 12:30 P. M., the prisoner walking to the gallows with a "firm tread and calm demeanor." After the deputy sheriff read the death warrant, Horne made a short speech in German to his friends, then spoke in English, saying that he was innocent, and sorry that he had ever had anything to do with Mrs. Friend.

At one minute after one o'clock the sheriff gave the signal, and the drop fell. Horne was declared dead 14 minutes later. Thus ended the first execution in Kansas under *state* law; and the second legal hanging within Kansas after its organization.

THE HANGING OF JOHN SHIRLEY¹⁸

Shirley was the second of three *civilians* executed by the military in Kansas;¹⁹ and his was the first of three *public* legal hangings in Kansas;²⁰ but the unique circumstance of his case was that he was legally hanged for *robbery*!²¹

On April 22, 1863, John Shirley, John McBride and Charles Radcliff ("all men well known as rascals capable of committing any crime," said the *Daily Conservative*), got William Keyes, a discharged soldier, drunk at the Cincinnati House in Leavenworth. Then, in broad daylight, they enticed him to a ravine behind the hospital (on the government reserve), knocked him down and robbed him of \$1,100. There were witnesses, and all three criminals were arrested later in the day, but only \$77 of the money was found. On the 23d, military authorities had the prisoners transferred from the Leavenworth jail to the guard house at Fort Leavenworth. This was done not so much because the crime had been committed on government property, but because the city of Leavenworth was then under martial law.²²

A military commission was convened on April 24, with Capt. R. H. Hunt, Second Kansas volunteers, as president, to try the three criminals. Shirley and McBride were convicted and sentenced to be hanged on May 6, 1863; Radcliff was convicted and sentenced to hard labor "during the continuance of the present rebellion."

Maj. Gen. James G. Blunt, who approved the findings of the military commission, commented that the penalties were severe, and greater than would be justified in time of peace, but were considered necessary to preserve peace and restore order under existing conditions. However, McBride was later reprieved, and Special Order No. 193, issued at Fort Leavenworth on May 5, 1863, stated only that John Shirley would be hanged publicly on May 6, 1863.

The *Evening Bulletin* of May 6, 1863, described the execution of John Shirley in detail, from which account the following excerpts are taken:

18. Sources: Leavenworth *Evening Bulletin*, April 22-24, 29, May 4, 6, 8, 1863; Leavenworth *Daily Conservative*, April 23, May 3, 6, 7, 1863.

19. The execution of Hoy by firing squad in 1862, and the hanging of Frizell on May 27, 1863, were also military executions of civilians.

20. William Griffith's hanging, October 30, 1863, was conducted publicly, contrary to state law; and William Dickson's hanging in 1870 was a mockery of the law's provision for non-public executions.

21. John W. Summers, deserter from Company E, Second Kansas cavalry, was executed as a deserter, by military firing squad at Fort Scott, on May 13, 1863.—Leavenworth *Daily Conservative*, May 17, 1863. Quite possibly there have been other military executions of military personnel at army posts in Kansas, for desertion, and other crimes.

22. Martial law was declared in Leavenworth by General Orders No. 5, issued at Fort Leavenworth on February 10, 1863.—See Leavenworth *Daily Conservative*, February 11, 1863.

. . . The largest concourse of people assembled in Kansas turned out today to witness the execution of John Shirley. . . .

At 11 o'clock the road to the Fort was crowded with citizens in carriages and on horseback, all eager with curiosity to witness the unusual proceeding for Kansas of hanging a criminal for highway robbery.

At 12 o'clock some two or three thousand people had gathered around the gallows, which was erected on open ground south of the guard-house. A large number of females were present from the city and Fort, and every one seemed bent on selecting the most advantageous spot to view the dying struggles of a fellow mortal. . . .

At fifteen minutes before one the entire command at the Post, consisting in all of five companies of Infantry, were formed in full uniform, under arms, and commanded by Post Adjutant Hadley. The band and field music formed in front of the Guard House and played a solemn air, when the infantry formed in line, and the carriage in which the prisoner was to be conveyed to the gallows drove up to the steps.

Capt. J. T. Gordon, Co. I, 12th Kansas volunteers, then conducted Shirley to the carriage and the whole cavalcade, preceded by the guard and the criminal, started for the ground. The prisoner maintained a stolid indifference, and did not seem to realize that his time on earth was short.

Arrived at the gallows, the prisoner ascended the steps with firmness, and boldly walked to the drop, accompanied by Rev. Dr. Davis. . . . Captain Graham [Gordon?] then read the death warrant, after which Shirley kissed his two little brothers . . . and after shaking hands and bidding them farewell, the culprit was allowed to address the assembled multitude. . . .

I have but one word to say, and that is this: I hope my friends will lead a different life from what I have. I've led a very indifferent life; and, furthermore, I hope you will not meet the same doom which I have come to—the gallows. . . .

At 1:30 P. M. the signal was given, the drop fell and John Shirley was "ushered into eternity." Some 12 to 15 minutes later he was pronounced dead, and his body was taken down and placed in a wagon. The troops followed behind the six-mule wagon which carried him away, the band "played a lively air," and the crowd dispersed. Thus ended the third legal hanging in Kansas.²³

THE HANGING OF CLAUDEUS C. FRIZELL²⁴

Early in March, 1863, a militia company was organized in Vernon county, Missouri. Augustus Baker, a farmer, was chosen head of the company over Claudeus C. Frizell, who much desired the captaincy. About March 6, Frizell, with a companion named Upton, went to

23. In remarking that "The extreme penalty . . . was executed for the third time in Kansas, yesterday," the *Daily Conservative* of May 7, 1863, probably referred to the shooting of Hoy on July 28, 1862, and the hanging of Horne on February 13, 1863, as the two earlier executions. The hanging of Private Bell on July 11, 1862, was evidently unknown, or forgotten, by the Leavenworth journalist.

24. Sources: Leavenworth *Evening Bulletin*, May 20, 22, 1863; Leavenworth *Daily Conservative*, May 22, 1863; C. W. Goodlander's *Memoirs and Recollections . . . of the Early Days of Fort Scott* . . . (Fort Scott, 1900), pp. 102, 103; [R. I. Holcombe's] *History of Vernon County, Missouri* . . . (St. Louis, 1887), pp. 311, 312.

Baker's home. They entered in pretended friendliness—then Frizell drew a gun and murdered Baker in the presence of his wife. The men robbed the house and departed.

Troops from Fort Scott were sent into Missouri to track down the criminals. Early in May, at a house in Cedar county, they arrested Frizell; but Upton jumped out of a second-floor window, fled, and was never caught. On May 13, Frizell was placed in the Fort Scott guard house. Next day, before a military commission of which Capt. H. F. Rouse, Third Wisconsin cavalry, was president, he was tried and convicted of murder and robbery. On May 21, at Fort Leavenworth, Maj. Gen. James G. Blunt reviewed and confirmed the military commission's findings, and sentenced Frizell to be hanged on May 27, 1863.²⁵

A Fort Scott resident, many years later, stated that the scaffold was erected "out towards the government corral about where the Presbyterian Church stands [1900], on the prairie. [Frizell] . . . went to the gallows reading a Bible." No contemporaneous account of the hanging has been found.

THE HANGING OF WILLIAM GRIFFITH²⁶

The Marais des Cygnes massacre was perhaps the most infamous of the many crimes committed by Proslavery men during the bitter struggle over the slavery issue in Kansas. On May 19, 1858, Charles Hamelton and some 30 Missourians came over into Linn county, captured 11 Free-State men, lined them up in a ravine near Trading Post, and shot them down. Five of the Kansas settlers were killed, five were wounded, and one was unharmed. Many of the Proslavery men who took part in this mass murder were known, but the only one to be brought to justice and hanged for the crime was William Griffith, who was arrested, tried, convicted and hanged five years after the event.

In September, 1863, a detachment of troops from Fort Leavenworth arrested Griffith in Platte county, Missouri, on the recognizance of William Hairgrove, one of the massacre survivors. Griffith was taken to Mound City and turned over to the Linn county sheriff, E. B. Metz. A few weeks later he was tried during the regular term of the district court, Judge Solon O. Thatcher, of Lawrence, presiding. Two lawyers, D. P. Lowe of Mound City, and A. Wagstaff of

25. Frizell, though a member of the Vernon county, Missouri, militia, could not, strictly speaking, be classed as a soldier. This was the third and apparently the last instance of a civilian being executed by the military in Kansas.

26. Sources: Kansas City (Mo.) *Daily Journal of Commerce*, October 8, November 3, 1863; *History of the State of Kansas* (Chicago, A. T. Andreas, 1883), pp. 1104-1106; W. A. Mitchell's *Linn County, Kansas: a History* (Kansas City, c1928), pp. 211-214.

Paola, were assigned to defend him. The trial opened on October 3. Griffith acknowledged that he had helped to capture the Free-State men and march them to the place of death, and admitted taking two mules belonging to William Hairgrove and a gray mare owned by Judge Nichols of Trading Post, but denied being present when the shooting was done. (Survivors of the massacre testified to the contrary on this latter issue.) The "Amnesty Act" ²⁷ of 1859 was also pleaded in Griffith's defense by his counsel. On the afternoon of the second day of the trial the case went to the jurors. In about three hours they returned a verdict of "guilty of murder in the first degree." Judge Thatcher subsequently denied motion for a new trial, and set the execution date as October 30, 1863. During the intervening weeks, Griffith was held in a house in Mound City (there being no jail), guarded by a detachment of Linn county militia.

A gallows was erected west of town, across Little Sugar creek, in a woods. Shortly after noon on October 30, Griffith was conducted to the place of execution. Acting Sheriff C. S. Wheaton was in charge of the proceedings, with militia companies totaling at least 200 men in attendance. Plainly, no attempt was made to conform with the provision of the law requiring that an execution take place in a private enclosure. The size of the crowd witnessing this hanging is not known, though there were spectators not only from Linn county, but from adjoining Bourbon county, as well; and "dozens of women" were present. William Hairgrove, massacre survivor, was allowed to swing the hatchet severing a rope which dropped a 400-pound weight and jerked Griffith's body into the air. The weight fell at seven minutes after one o'clock, and 25 minutes later Griffith was declared dead. He left a wife and five children, the youngest only four months old.

THE HANGING OF JOHN HENDLEY ²⁸

A Texan named John Hendley came to work on the farm of John T. (Tauby) Jones, in Franklin county, in June, 1865. He became acquainted with the John Sutton family living near by, and engaged Mrs. Sutton to make a hunting shirt. On June 28, Hendley went to the Sutton home in a rage because a quarter-yard remnant

²⁷. *General Laws*, 1859, Ch. 104, "An Act to Establish Peace in Kansas," Section 1 stating "That no criminal offense heretofore committed in the counties of Lykins, Linn, Bourbon, McGee, Allen and Anderson, growing out of any political differences of opinion, or arising, in any way, from such political differences of opinion, shall be subject to any prosecution, on any complaint or indictment, in any court whatsoever in this Territory"; and Section 2 stating "That all criminal actions now commenced, growing out of political differences of opinion, shall be dismissed."

²⁸. Sources: *Kansas Daily Tribune*, Lawrence, July 2, November 12, December 30, 1865; *Kansas Weekly Tribune*, Lawrence, November 30, 1865.

of ribbon used in making the shirt had not been returned to him. For his abusive language to Mrs. Sutton and her sister, John Sutton ordered the man from his house. Hendley said he would leave when he got ready, but retreated outside when Sutton picked up a gun, fired at Hendley, and shot him in the arm. Thereupon, Hendley drew a revolver, rushed in the house and shot Sutton through the chest, mortally wounding him. He died the next day. Hendley fled, but was arrested near Bloomington on June 30, and taken to Ottawa. After a preliminary hearing before Justice Dow, he was taken by Sheriff Robbins to Lawrence and placed in the Douglas county jail.

Hendley was tried at the November, 1865, session of the district court in Lawrence, before Judge Valentine. The case went to the jurors on November 11, and about an hour later they returned a verdict that the prisoner was guilty of murder in the first degree. On November 25, Judge Valentine overruled a motion for a new trial and sentenced the prisoner to be hanged at Lawrence on December 29.

The *Kansas Daily Tribune* of December 30, 1865, stated: "Hendley was executed between 11 and 12 o'clock yesterday. Up to the last moment he manifested a stoicism better becoming a savage than a man reared in Christian society."

THE HANGING OF ERNEST WA-TEE-CHA ²⁹

Just three weeks after the execution of John Hendley, another murderer was hanged on the same gallows in the Douglas county jail yard. This man was Ernest Wa-tee-cha, a Quapaw Indian, who had been educated at the Osage Mission in Neosho county.

On January 31, 1865, Wa-tee-cha, a soldier in Company A, Sixteenth Kansas cavalry, was in Ohio City (a now extinct Franklin county town), on furlough. In a store he happened to see a large sum of money paid to a man named William Hastings. When Hastings, a farmer of Ottumwa, started home with his team and wagon, the Indian followed, caught up with him several miles out on the prairie, and shot him in the back. Although badly wounded, Hastings made some show of resistance and Wa-tee-cha ran off without getting the money. The farmer managed to make his way to the nearest house, where he was cared for until his death some

29. Sources: *Kansas Weekly Tribune*, Lawrence, November 30, 1865, January 25, 1866; *Kansas Patriot*, Burlington, February 10, 1866.

The *Report of the Adjutant General of the State of Kansas for 1861-1865*, p. 536, lists "Earnest Wa-ti-tia" as "Absent in confinement by civil authority, Lawrence, no evi[dence] of mus[ter] out on file."

24 hours later. Before he died, Wa-tee-cha had been caught, brought before him and identified.

The Indian's trial took place during the latter part of November, 1865, at the district court in Lawrence, before Judge Valentine. One of Wa-tee-cha's lawyers was Wilson Shannon, a former territorial governor of Kansas. The trial ended on November 23, and the jurors, after being out an hour, found the defendant guilty of murder in the first degree. Some days later he was sentenced to be hanged on January 19, 1866.

S. S. Prouty, publisher of the *Kansas Patriot*, Burlington, happened to be in Lawrence on the day of the execution, and "through the politeness of District Clerk S. A. Stonebraker, Sheriff Ogden and Major E. G. Ross of the *Tribune*," he was permitted to witness the hanging of Wa-tee-cha. He commented that it was the first execution he had ever seen and that it was not "so shocking a sight as it has been represented." "Hanging," he wrote, . . . "is getting to be one of the institutions of Lawrence, and the people seem to regard it as an every day affair, for the morning papers did not esteem the event I witnessed, of sufficient importance to make mention of it previous to its occurrence. . . ."

THE HANGING OF BEN LEWIS³⁰

Ben Lewis, an Indian (probably of the Peoria tribe), killed a man named Jones about six miles north of Paola either in late 1865 or in the fore part of 1866. No account of the killing has been found. (The murder may possibly have occurred while the Civil War was still in progress since the victim is said to have been a soldier of the First Kansas cavalry.)

Lewis was tried, on his own confession, at a special term of the district court at Paola, early in July, 1866, Judge D. M. Valentine presiding. On July 3, the second day of the trial, the case went to the jurors, and they soon returned a verdict that the defendant was guilty of murder in the first degree. Two days later, Judge Valentine sentenced Ben Lewis to be hanged on August 10, 1866, at Paola.

The execution took place on the scheduled day—presumably in the county jail yard at Paola. Lewis was afterwards buried in the Indian cemetery near town.

30. Sources: Fourth judicial district court records of "State of Kansas vs. Ben Lewis," courtesy of Mrs. Ethel J. Hunt, clerk of the district court for Miami county; *Leavenworth Daily Conservative*, July 15, August 18, 1866. According to the *Western Spirit*, Paola, May 27, 1910, the public library in Paola has a photograph of Lewis.

The adjutant general's *Report* for 1861-1865, p. 485, lists a Benjamin Lewis, of Paola, in Company F, 14th Kansas cavalry, with the remark that he deserted at Fort Scott on December 19, 1864. Probably this was the Ben Lewis hanged in 1866.

THE HANGING OF MARTIN W. BATES ³¹

Deputy Sheriff John Polley of Osage county arrested Martin W. Bates for robbery in late September, 1866. Because there was no jail, he kept the prisoner, legs shackled, in his home. On October 3, he left Bates in the charge of his father, Abel Polley. The prisoner got possession of a loaded shotgun in the house, and during a struggle over the gun, he shot and mortally wounded the elder Polley, who died a few days later. Bates, who had cut off his shackles with an ax, was arrested a week or so later in Johnson county. He was charged with murder, and for safekeeping, was housed in the jail at Lawrence until his trial.

The Bates case was tried at an extra term of the district court in Burlingame, in the latter part of December, 1866, Judge John Watson, of Emporia, presiding. The defendant was found guilty of murder in the first degree and sentenced to be hanged on February 20, 1867. He was returned to the Douglas county jail to await his execution.

Although the judge had ordered that an enclosure be built in the Osage county jail yard to house the gallows, the county officers decided the expense of lumber for a temporary stockade was not justified. Acting upon the suggestion of County Clerk Marshall M. Murdock, they arranged to have a scaffold erected in the courtroom, on the second floor of the courthouse! There, on the appointed day, 19-year-old Martin W. Bates was hanged, at a few minutes after noon. According to Murdock, who was present, only six persons witnessed the hanging—the deputy who officiated, three county officers, a Methodist preacher and a Catholic priest. A crowd of would-be spectators waited outside the building in a sleet and rainstorm while the proceedings took place. Judge Watson, indignant over the desecration of the courtroom, thereafter held the view that Marshall Murdock was chiefly responsible for the misuse of the hall of justice.³²

31. Sources: *Emporia News*, January 5, February 20, 1867; *Topeka Weekly Leader*, January 3, 1867; *Kansas Weekly Tribune*, Lawrence, October 11, 1866; *Kansas Daily Tribune*, Lawrence, February 23, 1867; *Wichita (Weekly) Eagle*, January 7, 1886; *History of the State of Kansas* (Chicago, A. T. Andreas, 1883), p. 1534; *Topeka Mail and Breeze*, March 30, 1900.

32. The Schuyler grade school was later erected on the site of the early-day Osage county courthouse in Burlingame.—*Topeka Daily Capital*, July 19, 1936.

THE HANGING OF SCOTT HOLDERMAN ³³

On September 25, 1865, Scott Holderman, Elias Foster ³⁴ and a man named Ward, plotted and executed the murder of John Carver, a stranger passing through Linn county. The crime was planned at the home of Holderman's father-in-law, a farmer named Williams, living three miles north of Trading Post. The crime was committed several miles away, after Carver left the Williams home, where he had stopped to recover from an attack of ague. Robbery was the only known motive of the murder.

Carver's body was found six or seven weeks after the crime. It was decided at the inquest that he came to his death by violence, but although there were several persons who knew or suspected who the criminals were, no warrants for arrest were issued at the time.

Holderman and Foster were arrested on a robbery charge about two months after the murder. Three weeks after being placed in the Paola jail they escaped and left the state. Foster was captured in Missouri in the spring of 1866 and brought back to Linn county. He told enough about Carver's death to cause warrants to be issued for the arrest of Holderman and Ward on charges of murder. He was himself remanded for trial on the charge and was held in the jail at Lawrence for several months.

Ward was captured near Lawrence, tried, convicted of murder in the second degree, and sentenced to 10 years imprisonment. Foster, brought back to Mound City for trial in the spring of 1867, was granted a change of venue to Anderson county. Sheriff David Goss and a constable set out on May 5, 1867, to take Foster to Garnett. As they neared Saddler's crossing of Big Sugar creek about nine that evening, a party of 40 to 50 vigilantes rode up, surrounded the wagon and forcibly took the prisoner. Next morning Elias Foster's body was found swinging from a tree near the crossing.

In June, 1867, Sheriff Goss learned that Holderman was living in Polk county, Missouri. On July 2 a sheriff's posse surrounded the house and ordered Holderman to surrender. Instead, he came out firing and halted only when shot down by John Humphrey, a deputy sheriff. After recovering from his wound, Holderman was taken to Mound City and tried in the district court, Judge D. P. Lowe presiding. The trial opened in mid-September and lasted most of a week, but the jurors took only an hour to decide that the prisoner was

33. Sources: *The Border Sentinel*, Mound City, May 10, September 20, 27, November 22, 1867; *Kansas Daily Tribune*, Lawrence, November 16, 1867; W. A. Mitchell's *Linn County, Kansas: a History* (Kansas City, c1928), pp. 327-331.

34. Holderman and Foster had both served in Company D, Sixth Kansas cavalry, under Capt. David Goss, who later, as Linn county sheriff, arrested them. Holderman claimed to have killed 16 men while in the army.

guilty of murder in the first degree. On September 25, Judge Lowe sentenced Holderman to be hanged on November 15, 1867. There being no secure jail at Mound City, he was taken to Lawrence, where from his cell he was led to the gallows in the Douglas county jail yard at 11:30 on the morning of the day set. About 35 persons witnessed the execution, while a large crowd waited outside the walls.

This was the last of three legal hangings in Lawrence. However, Douglas county's crime record was much better than indicated: the crimes paid for on the Douglas county gallows were committed in other counties—Franklin, Miami and Linn, respectively.

THE HANGING OF MELVIN E. BAUGHN³⁵

Three Doniphan county men arrived in Seneca on November 19, 1866, with warrants for four horse thieves known to be in the vicinity. Sheriff William Boulton and a posse of Nemaha county men joined in the hunt. Jackson and Strange, two of the wanted men, were captured a little east of town. Three posse members (Charles W. Ingram, Henry H. Hillix and Jesse S. Dennis) overtook the other two criminals on the road to Capioma. When they rode up to arrest the men—Melvin E. Baughn and Zach Mooney—they were fired upon. Hillix was wounded severely and Dennis was fatally shot in the back, dying a few minutes later. The horse thieves escaped.

Baughn was arrested in Leavenworth on January 6, 1867, on a robbery charge. When recognized as Dennis' murderer, he was turned over to Nemaha county officers who placed him in the Seneca jail. Four days later an unsuccessful attempt was made to lynch him. On February 6 he and another prisoner escaped.

More than 15 months later Baughn was captured near Sedalia, Mo., after being wounded by officers attempting to arrest him for a robbery. Upon being identified, he was returned to Kansas and to the Seneca jail. He was tried during the next term of the district court, early in August, Judge R. St. Clair Graham presiding. The jury found him guilty of murder in the first degree and on August 7 he was sentenced to be hanged on September 18, 1868.

A gallows was erected on the south side of the Nemaha county jail, and an area of the jail yard was enclosed by a "fence" of canvas. And, on the appointed day, at 3:18 in the afternoon, Baughn was hanged.³⁶

35. Sources: *Leavenworth Times and Conservative*, September 24, 1868; Ralph Tennial's *History of Nemaha County, Kansas* (Lawrence, 1916), pp. 212-214; *History of the State of Kansas* (Chicago, A. T. Andreas, 1883), p. 945.

36. During the time in 1860 and 1861, when the Pony Express was in operation, one of the well-known riders on the route between St. Joseph, Mo., and Seneca, was Melvin Baughn. It is said he turned to a life of crime by joining a gang of horse thieves, soon after the Pony Express ended. Mooney is said to have been lynched sometime later.

THE HANGING OF WILLIAM DICKSON ³⁷

The body of Jacob Barnett, a Jewish peddler of Leavenworth, was found on the road to Delaware City, March 10, 1870. He had been shot five times and robbed. On strong circumstantial evidence (including possession of the dead man's watch), William Dickson was arrested and held for the murder. Only two or three days earlier, he had been released from the penitentiary after serving a three-year sentence for horse stealing. Barnett had been killed brutally, he had many friends in the city, and public feeling ran high against Dickson. The courtroom was crowded on March 19 when a preliminary hearing of the case was held in recorder's court. On the evidence presented, Justice Rees ordered the prisoner remanded to the county jail to await trial. There was talk of a lynching, but law and order prevailed.

Dickson was tried at the June session of Leavenworth's criminal court. The trial, which began on June 13, ended on the 17th, and the jurors took just 15 minutes to find the defendant guilty of murder in the first degree. Dickson was sentenced, a few days later, to be hanged on August 9, 1870.

The "old" gallows (evidently left over from 1863), was repaired, and put up in the "northwest angle" of the county jail yard. This site scarcely fulfilled the criminal code's "private enclosure" provision. According to the *Times and Conservative*: "Owing to the prominence of the County Jail grounds the melancholy proceedings were visible from almost all parts of the city, and thousands availed themselves of the opportunity of seeing the law's victim dropped from earth to eternity."

This newspaper's description of the scene on the day of the execution, indicates that a stranger to Leavenworth might well have thought the attraction was a circus and not a legal hanging:

. . . Long before the hour appointed, 12 m., the hills and houses in the vicinity were crowded with people anxious to see the sad spectacle. For an hour before noon the entrances to the Jail were besieged by crowds, with and without admission cards. [Sheriff McFarland had invited a large number of citizens to attend the hanging.] Not only this, but all over the city people on house tops and eminences looked with glasses or the naked eye to see the suspension of the convicted wretch. . . .

About twelve o'clock the excitement of the thousands who failed to get admission was intense. The Sheriff, Deputy Sheriffs and peace officers were besieged with applications for passes, and scores of men and children shouted simultaneously for the open sesame to the judicial slaughter. We regret to be

37. Sources: Leavenworth *Daily Commercial*, March 11, 13, 19, June 14, 15, 17, August 5, 9, 10, 1870; Leavenworth *Times and Conservative*, March 11, 13, 19, June 14, 15, 17, August 9, 10, 1870.

compelled to say that at least one half of the vast concourse which viewed the spectacle from outside points was composed of children of both sexes. . . .

About eleven minutes of twelve o'clock the east gates of the jail was opened, and then commenced fierce crowding and pushing for speedy admission to the public spectacle. The crowd pressed desperately towards the entrance where three deputies were engaged in maintaining order and taking entrance cards.

. . . .
This was the scene—a travesty of the law's intention—shortly after noon on August 9, 1870.

Dickson's was the last execution in Kansas, *under state law*, for 73 years. The publicity it received was almost certainly an important factor in the passage of the law two years later (1872), which, in effect, banned capital punishment in Kansas.

KANSAS AND CAPITAL PUNISHMENT SINCE 1870

In February, 1871, a few months after Dickson's hanging, a bill was introduced in the state legislature by Sen. H. C. Whitney, "to regulate the infliction of the death penalty and to amend an act to establish a code of criminal procedure."³⁸ The contents of this bill are not known (since no copy can be found), but it apparently contained the same, or much the same, provisions as the bill which was to become a law in 1872. Of the 1871 measure (which passed both houses, but was not signed by the governor) the *State Record* later wrote: "If we are rightly informed Governor Harvey is opposed to capital punishment, but he did not like this law [*i. e.*, bill] because it threw all the responsibility on the Governor. . . ." ³⁹

Early in June, 1871, in the district court, Topeka, Mrs. Mary Jane Scales and Lewis Ford, Negroes, were tried and convicted for the murder on November 17, 1870, of Burnett Scales. They were sentenced to be hanged on August 17, 1871. Preparations for the execution included the erection of a gallows within a tight board fence (24 by 28 feet, and 14 feet high), on a vacant lot south of the Shawnee county jail, with a covered passageway leading from the jail.

Said the *State Record*: "Hanging by the State is a disgrace to civilization and is only legalized murder. Every precaution will be taken to make this murder respectable. The fact that already over 250 applications for witnesses have been made, is evidence of a demoralized condition of society."⁴⁰ On the night before the scheduled executions, Gov. James M. Harvey commuted the sentences of these two murderers to life imprisonment.

38. *Senate Journal*, 1871, p. 278 (Senate Bill No. 92).

39. *Kansas State Record*, Topeka, August 16, 1871.

40. *Ibid.*, August 4, 1871.

The Scales-Ford case is mentioned here for two reasons: first, it was probably the nearest Kansas has come to hanging a woman; second, Governor Harvey's action in commuting the sentences of these criminals served to bring the subject of capital punishment again to the forefront of public attention.

In 1872 Sen. H. C. Whitney again introduced a bill "to regulate the death penalty and to amend an act to establish a code of criminal procedure."⁴¹ Both houses passed the bill and on March 2 Governor Harvey notified the senate that he had signed it.⁴² The measure (said to have been written by Thomas P. Fenlon,⁴³ Leavenworth lawyer, and member of the house in 1871, 1872 and 1874), provided that murderers sentenced to die must be kept in the state penitentiary for one year before being hanged, and then be hanged only if the governor issued a death warrant.

This law remained a Kansas statute for the next 35 years. It was, supposedly, a compromise between forces favoring capital punishment and those opposed. But in effect the measure banned legal executions, for no governor ever assumed the responsibility of ordering a hanging. In the two decades following its passage every governor, except St. John, outspokenly criticized the law, and requested its amendment.

Gov. Thomas A. Osborn, in 1876, told the legislature that the 1872 law was a subterfuge and needed to "be relieved of its ambiguity." In 1877 Gov. George T. Anthony also stressed the need for a change. Gov. George W. Glick, in 1883, asked the legislature to amend the statute, and stated that there were about 25 persons under sentence of death at that time. Gov. John W. Martin, in 1885, discussed the law "which abolishes capital punishment by indirection," and suggested it would be better to abolish the death penalty than to keep the 1872 law on the statute books. He renewed this recommendation in 1887. In the latter part of that year there were, according to the *Kansas City Times*, 54 prisoners under sentence of death in the Kansas penitentiary. The *Times* went on to say: "if Governor Martin chose to exercise the power vested in him . . . any one or all could be hanged in 30 days."⁴⁴ Gov. Lyman U. Humphrey in 1889 and again in 1891, asked the legislature to abolish the death penalty "in express terms," or make it effective. But no change was made in the law.

41. *Senate Journal*, 1872, p. 57.

42. *Ibid.*, p. 815.

43. Henry Shindler's statement in the *Kansas City Times*, May 31, 1910.

44. *Kansas City Times*, November 16, 1887.

With the rise of the Populists to power in the state, the capital punishment issue was forgotten, and not until 1905 was there any revival of interest in the subject. That December a statement by Gov. E. W. Hoch was printed in many of the nation's newspapers. Governor Hoch said, in part, "I would resign my position, however high it might be, before I would be the one to execute a death sentence, whether the condemned person is a man or woman. Why, the hanging of a human being, whether it be legalized or not, is a relic of barbarism. . . ." ⁴⁵

By the last of June, 1906, the penitentiary's death-sentence population had increased to 60 men.⁴⁶ This was the maximum number; two years later there were 57 and by 1915 only 14.⁴⁷

When the 1907 legislature met, bills to abolish capital punishment were introduced in both the house and senate. Sen. R. T. Simons, who introduced the senate bill, said: "The law as it stands is a farce. If a Governor should ever decide to sign the death warrants of all the 'hang' prisoners in the penitentiary it would mean a wholesale slaughter. There is little chance a Governor will ever do this, but farces in state laws are not the right thing. The law ought to say what it means."⁴⁸ It was the house bill (the bills were the same in any case), which passed the house on January 18 by a vote of 67 to 40,⁴⁹ and which, later in the month, was also approved by the senate. Governor Hoch signed the measure on January 30, 1907. In a letter written in December of that year, Hoch stated that it was largely at his instance that the 1907 legislature had repealed the 1872 law and provided life imprisonment instead.⁵⁰

From 1907 to 1935, Kansas had no capital punishment statute, but agitation for the re-enactment of such a law began some years before 1935. In 1927 the senate voted, 26-2, for a bill providing that persons convicted of murder in the first degree (1) should be electrocuted if the murder had been committed in connection with burglary or robbery, (2) should be imprisoned for life if the murder had no such connection.⁵¹ This measure, obviously intended to stem an outbreak of burglary-and-murder crimes in Kansas in the 1920's, did not pass the house.

45. Newspapers of December 9, 1905.

46. *Fifteenth Biennial Report, Kansas State Penitentiary, 1905-1906*, p. 55.

47. *Sixteenth Biennial Report, Kansas State Penitentiary, 1907-1908*, p. 60; Kansas City (Mo.) *Star*, September 12, 1915.

48. *Topeka Daily Herald*, January 16, 1907.

49. *Ibid.*, January 18, 1907.

50. Letter of Gov. E. W. Hoch, December 19, 1907, to the Rev. A. B. Wolfe (in Hoch papers, Archives division, Kansas State Historical Society).

51. Senate Bill No. 194, 1927 legislature.

In 1931 bills prescribing capital punishment (1) for murder in the first degree, (2) for robbery with firearms and (3) electrocution as the means of carrying out the death penalty, were passed by both the house and senate.⁵² A measure to make kidnaping also punishable by death failed. But Gov. Harry H. Woodring vetoed the bills on March 14, 1931, stating in a message to the legislature that he was voicing his own personal convictions and what he believed to be the "sentiment of a majority of the people of Kansas." His action was generally approved.

But in 1933 attempts were again made to pass bills providing for (1) death, or life imprisonment, for murder in the first degree, and (2) death, or from five to 10 years imprisonment for kidnaping.⁵³ The house passed these bills, but the senate did not.

During a special session of the legislature in November, 1933, both the house and senate passed a measure providing death, or life imprisonment at hard labor, as the jury should decide, for murder in the first degree. Gov. Alfred M. Landon vetoed this because the companion bill providing the means, place, etc., of execution, had failed to pass the house and senate.⁵⁴

In 1935 the legislature passed a similar measure and another which provided hanging as the means of execution. These bills were signed by Governor Landon in March, and since that time have been the laws governing capital punishment in Kansas.⁵⁵

It was nine years before a criminal was hanged under this law. Albert M. Zakoura—the first person to be sentenced—was reprieved and his sentence commuted to life imprisonment by Gov. Walter A. Huxman on September 3, 1937. The second to be sentenced was Fred L. Brady. When, on February 8, 1944, Gov. Andrew F. Schoeppel refused clemency to Brady, M. F. Amrine, warden of the state penitentiary, resigned rather than to take part in a hanging. Amrine, after many years in penal work, had become opposed to capital punishment, though formerly favoring it. But it turned out that Brady was not the first victim of the law. A month before he was hanged, Ernest L. Hoefgen was executed (March 10, 1944) for the murder on September 18, 1943, of Bruce Smoll, an 18-year-old college student. Brady was hanged on April 15, 1944. His crime was the murder on January 9, 1943, of Joe Williams, Arkansas City, during an attempted holdup. On the same day, Clark B. Knox,

52. House Bills Nos. 14, 20, 23, 1931 legislature.

53. House Bills Nos. 416 and 671, 1933 legislature.

54. House Bills Nos. 78 and 87, 1933 legislature, special session.

55. House Bills Nos. 10 and 11, 1935 legislature; *Session Laws, 1935*, pp. 234-238. See page 281 for another statement of the provisions of the 1935 laws.

Negro, was executed for the murder on August 1, 1943, of Edward Nugent, Kansas City policeman. On July 29, 1947, Cecil Tate and George F. Guntow, out-of-state carnival workers, were hanged for the murders on May 12, 1947, of W. W. McClellan and his son, Arnold, at Calista. George Miller, Negro, was hanged on May 6, 1950, for murdering Mike Churchill, Osawatomie police chief, February 3, 1947.

These six men, hanged at the state penitentiary since 1944, plus the nine who were hanged between 1863 and 1870, make a total of 15 persons who have been legally executed *under state law* in Kansas.

The 15 state hangings, plus three under military law, and six under federal law, make a total of 24 persons who have been legally executed on the gallows in Kansas.

FEDERAL HANGINGS IN KANSAS, 1887-1938

In the 1880's, while Oklahoma was still Indian territory, criminal cases originating in the territory were tried at Wichita during an annual term of the U. S. district court. Each September, the city of Wichita took on some of its earlier-day frontier aspects as "Indians, cowboys, half-breeds and toughs," arrived for the court sessions. Many, but by no means all, of the murderers, horse thieves and other criminals whose cases crowded the docket each year were Indians.

In 1886, during the federal court term, two Seminole Indians (John Washington and Simmons Wolf) were found guilty of rape. On September 23 they were sentenced by Judge C. G. Foster to be hanged on February 8, 1887. According to the *Wichita Eagle* "this was the first time that ever in the history of the federal court of district of Kansas that the death penalty was imposed."⁵⁶ As it turned out, Washington and Simmons escaped the gallows. There was much local opposition to a death sentence for rape, and petitions were sent to President Cleveland to commute the sentences to life imprisonment. On February 7, 1887, the President granted a respite until March 4 to these two criminals.⁵⁷ Sometime before that date the sentences were apparently commuted—at least the prisoners were not hanged.

In 1887, the first two of a number of murder cases on the federal court's docket ended in hung juries, but the third case—that of Lee Mosier—ended in a death sentence. Mosier, a mentally weak 20-

56. *Wichita (Weekly) Eagle*, September 24, 1886.

57. *Ibid.*, February 8, 1887; *Wichita Daily Beacon*, February 7, 1887.

year-old, was tried and convicted of the murder of Hugh B. Lawler, south of the Kansas border, on October 27, 1886. Lawler had been driving Mosier from Anthony into the territory. A third passenger in the wagon was a young boy named Robert Arner. Around dusk, Mosier, sitting in the back of the wagon, picked up a double-barreled shotgun, placed it behind Lawler's ear, and pulled the trigger, almost blowing his victim's head off. He raised the gun again to shoot Arner, but the boy persuaded Mosier not to kill him. Having been allowed to depart in safety, he returned home and told what had happened. Mosier was captured in a Harper county cornfield the next day. He was taken to the Sedgwick county jail, where he was held until the federal court term in September, 1887. One story Mosier told was that he had been hired by Mrs. Lawler to do away with her husband. For lack of evidence, this story was not brought out during the trial. The trial began and ended on September 15, 1887. The prisoner having pleaded guilty, the jurors deliberated only a few minutes before returning a verdict that he was guilty as charged. Mosier was sentenced to be hanged on November 15, 1887. A gallows of 16-foot timbers was erected on the west side of the Sedgwick county jail in a stockade 30 feet square. Here, on the morning of the scheduled day, Mosier was led for his execution, fortified by a pint of brandy which he had finished off in the sheriff's office. There were 54 witnesses. A large crowd collected outside, and some of the bolder spirits even loosened boards of the enclosure so as to see the proceedings. The drop fell at 9:32½ A. M. and Mosier was declared dead at 9:53 A. M.⁵⁸ As the newspapers noted, there had been no legal hanging in Kansas during the preceding 17 years.

Among the murder cases originally scheduled for the 1887 term of the federal court at Wichita were those of the Creek Indian-Negro brothers Jake and Joe Tobler. A postponement of their cases was secured by counsel, and these criminals who had murdered two white men in August, 1885, were not tried until September, 1888.

In 1888, the first case on the docket of the U. S. district court, at Wichita, was that of Jake Tobler, the older of the two brothers. The trial opened on September 4 and the most convincing evidence introduced by the prosecution was a confession which had been made by both brothers soon after their arrest. On the night of August 16, 1885, James Cass and John Goodykoontz, two well-known cattle-

58. Sources for the Mosier case: *Wichita Morning Eagle*, September 16, 17, November 16, 1887; *Wichita Daily Beacon*, September 6, 15, 16, November 15, 1887; *Kansas City (Mo.) Times*, November 16, 1887.