

The Story of Dan P. Doherty
How Alcohol Ruined a Good Man

By
Roger Doherty
June 2023

THE STORY OF DAN P. DOHERTY

How Alcohol Ruined a Good Man

On December 20, 1907, Daniel (Dan) Patrick Doherty, a Lexington saloonkeeper, got into a drunken argument with another man, which ended in death and the ruin of Dan's life. Dan, an Irish immigrant from Glenkeen (between Carndonagh and Moville in the middle of the Inishowen Peninsula) had led a hardworking and productive life to this point, and left a wife, daughter, and infant son to survive without him.

DAN P. DOHERTY'S EARLY LIFE IN MORROW COUNTY

Dan was one of a group of "Glenkeen" Dohertys who immigrated to Umatilla and Morrow Counties in eastern Oregon, and whose descendants make up a very large family group in the area. He was born on February 9, 1854 to Patrick "Glenkeen" Doherty and Catherine Doherty. Dan had seven siblings, four of whom immigrated to America. His brother Patrick and sister Celia ended up in Massachusetts, and his brothers Bernard (Little Barney) and Edward (Long Ed) came out to eastern Oregon. Both of these brothers made significant contributions to the settling and development of eastern Oregon. Dan came to Oregon in 1886, and in his words, "went to work for Charles Cunningham who then lived in Morrow County and was at that time sheep king of Eastern Oregon".¹ Cunningham's Morrow County ranch headquarters were near the confluence of Big Butter Creek and Cunningham Canyon. By May 1897, Dan was well enough established that he filed a 160-acre homestead claim in Section 12, Township 1 south, Range 29 east – within spitting distance of both the Cunningham headquarters and the Umatilla County border. Dan filed his intention to make final proof of his claim in 1899 and it was approved March 30, 1900. His "proof" was witnessed by Doherty clan members, James Nelson and Patrick Doherty of Vinson.

It does not appear that Dan stayed long on his property. It is well known that Cunningham was acquiring property at that time, and it is likely that Doherty shortly sold his claim to the sheep king. By the latter half of 1900, Dan was in business running a store in Heppner – the I.X.L. Confectionery and Cigar Store. His advertisements in the *Heppner Gazette* offer a free reading room where "gentlemen are invited to come in and be comfortable, and read papers from all over the world, -- a quiet and respectable place." He offered confectionery, tobacco and cigars, "all of the very best quality." And making his hospitality available to all, he notes that "[a] fair share of the public patronage is solicited". Dan intended to make his mark. In November, he advertised that "[p]eople who failed to put up fruit this season can buy a nice lot all in jars from Dan P. Doherty, at the I. X. L. store. He wants to get the room it occupies. It is good, and was put up by Mrs. Tefft". And in December, Dan advertised "I have just received two barrels of Orange Cider and Manila Punch, and have it on sale at 5 cents a glass, 15 cents a quart or 40 cents a gallon. It is very Choice. I. X. L. Confectionery". Dan advertised regularly in the *Gazette*, and in return in February 1901, the editor noted in his "Here and There" column, "Candy? O, yes, the very choicest kinds are kept at Dan P. Doherty's I. X. L. store."

Doherty continued his entrepreneurship and transferred some of his attention to the neighboring town of Lexington. Perhaps doing double duty, as early as 1900 he was buying and selling lots in Lexington. He was also thinking about settling down domestically. In the December 7, 1901 issue of the Portland *Oregonian* an item appeared noting a marriage license for Daniel P. Doherty, 42, and Julia Sheridan, 26. And on December 9, Dan P Doherty was noted in the *Sunday Oregonian's* "At The Hotels" column as having been registered at The Perkins Hotel in Portland.

¹ Dan's brother Little Barney, and probably also long Ed also worked for Charles Cunningham when they arrived in the area, soon becoming well enough established that they struck out on their own in sheep and agricultural enterprises.



Picture 1: Daniel Patrick Doherty of Glenkeen, Ireland

The couple were married on Saturday, December 7, 1901 at St. Mary's Cathedral. "After the wedding, a dainty wedding dinner was served at the home of the bride's sister, Mrs. F. L. Benedict, 728 Hall Street, Portland, Oregon, after which Mr. and Mrs. Doherty left for a short visit with the bride's mother, Mrs. E. E. Sheridan of Salem. They will make their future home in Heppner."²

By January 1903, Dan was proprietor of the I. X. L. Saloon and was also a general agent for Gibson's Washer. He is also cited in the *Gazette* as proprietor of one of Lexington's two hotels. Always the salesman, the advertisements for the I. X. L. Saloon note "Choice wines, liquors, and cigars. Cold beer always on hand." In 1904 Doherty was well settled in Lexington, and was drawn from that community for Morrow County's Jury Box, along with his countrymen, James G. Doherty and Phil Doherty.

In March 1905, Dan acquired local notoriety in his saloonkeeper role. Previously in a local election, and with voting in each precinct in Morrow County the issue of prohibition of alcohol was hot and heavy. On this issue, Lone and Heppner voted 'wet' and eight others, including Lexington and Hardman voted 'dry.' In newspapers it was reported that, defiantly, "Doherty is said to have been running a saloon at Lexington continuously and was charged with having violated the local option law." In the case *State of Oregon v. Doherty*, circuit court Judge Ellis held that prohibition in the eight precincts of Morrow County that went dry was set aside on the ground that the law was illegally enacted. This decision

² Sunday Oregonian, December 8, 1901, P. 18

applied to all of Morrow County. One might imagine here that Dan was for a time held in high esteem by his Irish countrymen. And perhaps here is an omen of Doherty's downfall, as in life, all things both start and end.

By August 1905, newspapers were reporting that Dan and his wife were relocating to Pendleton, where they had bought the Alta House, a lodging business.³ Doherty told the *East Oregonian* that he was relocating to Pendleton and would be there and operating the Alta House On September 1, 1905⁴. Doherty was juggling several businesses, and struggling to maintain the management of all of them, including the Doherty Hotel and the I. X. L. Saloon. Seizing the opportunity to expand beyond renting overnight rooms, by the first of November Julia had rented rooms in the Doherty Hotel to Elsa Totzauer for her dressmaking business.⁵ This same week, Dan visited in Lexington, saying it "looks good" to him and that he may return here in the near future.⁶ Things did not seem to be going well at the Alta House in Pendleton and in late November Doherty sold the Alta House to A. J. Cummings, a Butter Creek stockman.⁷ On November 30, the Heppner *Gazette* reported that Dan had returned to Lexington. He "took charge" of the Beymer Hotel on the first of December, refurnishing it throughout. At this time Dan was moving some properties in Lexington, and the Wheatfield reported in December 1906 and in February 1906 transfer of lots to Dennis McNamee and Henry McCarthy and Eliza A Beymer. Dan's ad on February 8, 1906 in the *Wheatfield* says: "Hotel Lexington, Opposite Leech Brothers, Mrs. Dan P Doherty, Prop. Good meals served. Newly furnished, refitted with hot and cold water. Strict attention to guests. Rates one dollar per day and upwards. Lexington Oregon."⁸ In the first week in March, Doherty transferred Lots 2 And 4, Block 18 to Pat Doherty. Dan remained active during this year. In June "Dan P Doherty had charge of the Pastime during the absence of J. V. Grimes."⁹

Not everything went smoothly for Dan every time. In February 1907, Doherty sued and recovered judgements against C. H. Beymer, Emma Chapman, J. H. Chapman, and A. M. McNab in a deal gone bad over parts of Lots 6, 7, and 8, Block 9, Lexington. The judgment for recovery of \$1,500 and costs resulted in public auction of the property on the courthouse steps in Heppner on February 23, 1900.

In the middle of all of this, Dan and wife rejoiced on September 3, 1907, with the birth at home of their second child, Joseph Daniel. Joseph Daniel's older sister, Mary C, was born in 1903. Two months later, life changed for Dan.

THE FATEFUL EVENT

Friday evening, December 20, the holiday season was well under way, and people were celebrating in the ways of their family custom. On this night, Dan and a group of friends went to A. B. Inskeep's saloon. Dan was "considerably under the influence of liquor" and bought a round for the house. Another lounge named Oscar Allen, was asleep in a back room. A fellow named Padberg, a Clark's Canyon farmer for whom Allen was working, went to the back room where Oscar Allen was sleeping, apparently on a pool table, and woke him. Allen joined the group at the bar room. After Dan's round was served and all had finished drinking, Dan suggested that Allen should treat the saloon to a round of drinks, and he did so. Dan then asked him to treat again, but Allen declined, and Dan persisted.

The *East Oregonian*, December 21, 1907 reported that Allen, a larger man, tired of this exchange and said "say that again and I'll hit you." Dan continued his verbal assault, and what happened next was reported differently by witnesses;

³ East Oregonian, August 21, 1905

⁴ Doherty was reportedly backed in this venture by his cousin, Barney. East Oregonian, Dec 31, 1907

⁵ Lexington Wheatfield, November 2, 1905

⁶ Lexington Wheatfield, cited in the East Oregonian, November 4, 1905

⁷ East Oregonian, November 29, 1905

⁸ Lexington Wheatfield, February 8, 1906.

⁹ Lexington Wheatfield, June 21, 1906

whether Allen shoved or struck or possibly grabbed Dan by the neck, is uncertain, but was important to the subsequent legal investigation. At this point Dan pulled a pistol from his pocket and fired five shots, killing Allen within minutes.

The *East Oregonian* and other newspapers were quick to pull Dan's relatives in the affair, saying "Dan Doherty, the Lexington Saloonkeeper and a cousin of the Doherty brothers of this county, shot and killed Oscar Allen in Doherty's saloon at 12 o'clock last night."¹⁰ The newspaper also reported that Dan had let his license expire and his place of business was closed that night. Dan had regained his license by the same evening, but his bartender was out of town at a country dance, and had the keys to the establishment. Thus, Dan had wandered into Inskeep's establishment.

At the time that Allen turned on Dan, Howard Lane¹¹ was bartending. Lane testified that Padberg had entered the fray and told Allen that they had gone far enough. Allen turned and walked away but turned again and "stuck Doherty." Lane ran from behind the bar and met Dan when he pulled his gun. The first shot struck Allen's hat. Doherty fired four more times and then ran out of the house. Allen was shot through the side. Lane also testified that Allen had imposed himself upon Doherty and that Allen was a much larger man, and had hit Doherty. Dr. Hunter, who was brought to the scene, testified regarding the remaining four shots. The doctor found Allen lying on the floor, dead from a gunshot wound just below the seventh rib a little backward of the center of the side. He also found a wound on the right arm just above the wrist, also another glancing wound on the breast.

In later testimony, Wm. H. Padberg recounted that he was in the saloon with Doherty when Mr. Breshears came in and Dan asked him to treat which he did. Dan treated the next round. Allen was lying on a billiard table. Allen was asked by Dan to treat, which he did, but refused a second request to treat. Dan called him cheap. Allen caught Dan by the neck and pushed him up against the corner of the bar. Lane intervened and said "that won't do", and Allen stepped back. Dan again asked him to treat, when Allen said that he would hit Dan if he asked him to treat again. After the shooting, Dan ran out but was captured by Padberg and brought back to the saloon.

The County Sheriff, whose name was Shutt, Deputy District Attorney Notson, and County Coroner Yeager left Heppner at 1:30 in the morning for the scene and held an inquest, which brought out the facts. Notson reported from the scene to District Attorney Phelps by telephone. Dan was arrested and taken to Heppner and placed in the county jail.

Later that night, when asked by a reporter whether he had been drinking, Dan responded, 'Yes, drinking very hard for several weeks.' The newspaper commented that Dan had "been drinking to excess for several days and when on such sprees is known as a very quarrelsome fellow. He has made several gun plays, but was considered by all who know him as harmless."¹² Doherty is of Irish birth and has a family and several brothers in this county. Barney Doherty, a brother, is a prosperous sheepman and highly respected citizen."

To this point, much information from witnesses and newspaper reports seem sympathetic to Dan, one headline reads, "Oscar Allen attacks Dan Doherty, Who Whips Out the Ever-Ready Revolver." Observations about liquor and excessive use are freely made, leaving others to draw their own conclusions about Doherty's guilt or self-defense in this case. Another headline at nearly the same time, however, heralded "Dan Doherty Picks Quarrel and Then Shoots and Kill Oscar Allen." To compound things, at the same time in Morrow County, another man named Webb McCaslin was in jail in Heppner for robbing and killing a butcher named B. F. Zaspell while under the influence of liquor. There had been only one murder case in Morrow County in the previous twenty years, and now there were two, both involving drunken men.

Dan was not able to receive a preliminary hearing on the charge of murder until after the Christmas holidays, because the District Attorney was involved in court matters in Umatilla County.

¹⁰East Oregonian, December 21, 1907. Correction note: this event took place in A. D. Inskeep's saloon.

¹¹ Howard Lane was well known and respected in the area for many years. He later farmed in the upper reaches of Sourdough Canyon.

¹² The Morning Oregonian, Portland, December 22, 1907.

As Dan P Doherty's trial neared in April 1908, more newspaper and community interest brought more information to light. The *East Oregonian* reported on April 29, 1908, that "the Doherty case is to be hard fought. Judge James A. Fee¹³ has been retained to assist Redfield & Van Vactor in the defense and that District Attorney Phelps will have to battle against three legal heavyweights. Also the two murder cases will first be passed upon by the grand jury before the trial occurs." The case of the State of Oregon against Dan P Doherty, charging him with murder in the second degree, was set for trial June 4.



Picture 2: This very bad newspaper photo from the Oregon Daily Journal does show Doherty's very gentle eyes and features that belie the killer that this story portrays

"What promises to be a long session of the circuit court opened here this morning with Judge Bean presiding. Work of selecting a jury to try Dan P Doherty, charged in the second degree with the murder of Oscar Allen, was begun, and before adjournment this afternoon six men had been selected to serve as jurymen. It is expected, however, that a second venire of jurors will have to be called to complete the list of 12 men who shall decide Doherty's fate."¹⁴

"Doherty was indicted by a grand jury May 14, when he was arraigned before the court and entered a plea of not guilty. A continuance if time was asked by his attorneys, Van Vactor and Fee, and the time for trial was set for June 4. This promises to be a hard-fought legal battle as Doherty's relatives have responded to his assistance very strongly and a plea of self-defense is likely to be the defense offered. The attorneys for the defense object to jurors who have read The *Oregonian* relative to this case, and bring much stress to bear upon this fact, as it was apparent all through the proceedings that men who had read the Portland daily were excused, as well as those who were Oddfellows.¹⁵ Allen, the man who was killed, was an Oddfellow, and jurors belonging to the order have been generally excused, although W. T. McNabb, who is an Oddfellow and a Mason was the second man to be accepted as juror. Three men were accepted this morning – F. M. Holmes, W. T. McNabb and John Iler - and in each case without any opposition or questioning by the prosecution. This afternoon R. A. Wilmot, R. A. Alstott and Jack Hynd were accepted. A special venire was issued and it is likely that it will take another venire before a jury can be secured to try the case as in each instance the juror has read or

¹³ Judge James A. Fee was a well known and respected attorney from Pendleton. Family lore is that Fee's fees (sic) were paid by Barney Doherty of Sand Hollow, Dan P Doherty's brother.

¹⁴ Morning *Oregonian*, June 5, 1908

¹⁵ Morning *Oregonian*, December 23, 2007. Oscar Allen, the deceased in this case, was a single man who had lived in Morrow County for several years, but who had no relatives in the area. He was an active "Odd Fellow, and had attended an Oddfellow event in Heppner on Monday before his death. The Odd Fellows took charge of Allen's funeral on December 23, 2007, and a large delegation from the Heppner Lodge went down to Lexington to be in attendance."

discussed it and has formed an opinion which renders him unfit for service as a juror.”¹⁶ Later jurors who were added to the case included: F. M. Holmes, Olaf Bergstrom, N. S. Whetstone, W. E. Brown, Henry Scherzieger, and F. M. Orr.¹⁷

The seating of the jury was completed June 5, 1908. On the morning of June 6, the prosecution and defense made their opening statements to the jury. The first witness had made plans of the building in which the event had taken place. The *Oregonian* quoted “[t]he second witness was Coroner Yeager, who, before Attorney Fee got through with him, hardly knew whether he had been to the inquest or not.”¹⁸ The main witness for the prosecution was Howard Lane, who was the bartender on duty at the time of the shooting. Regarding Oscar Allen, Lane testified “[h]e was out in front of the bar with several others. Doherty was talking to Padberg and several more of us. Padberg brought Allen out from the back room where he had been lying on the billiard table. Dan bought a drink and then asked Allen to buy a drink, which he did. Then Allen bought a flask and asked for a bundle which he had lying on the safe, and which I gave him. Then Doherty asked Allen to buy another drink, Allen saying that he had bought one already. Doherty insisted and told Allen that ‘the dirt under his fingernails were better than a whole tribe like you.’ Allen tried to strike Doherty. Doherty said he was not afraid of Allen, though he (Allen) was bigger. I told Allen to cut it out, that I didn’t want any trouble in the house.

“Allen turned away, Doherty asked him to buy another drink and called Allen a cheap guy. Allen turned to strike Doherty. I rushed from behind the bar. Doherty drew a gun and began shooting, which blinded me. Doherty ran from the house. I told Padberg to catch him and bring him back.”

Lane testified that he thought Allen caught Dan by the neck and that he shot from the hip. In the afternoon, defense counsel “succeeded in tangling the witness up some over testimony given at the Coroner’s Inquest. Now, however Lane stuck closely to his story. The main differing item was whether Allen struck Dan or struck over his head. Lane was on the stand all day.”¹⁹

On June 9, Dan took the stand in his own defense. His story was one of self-defense. He described Allen as having abused him shamefully, calling him vile names, and striking him, knocking him to the floor, where Dan then fired two shots, and three more after he got up. He ran, he said because he feared Allen and others in the barroom would beat him to death. The *Morning Oregonian* described him as appearing very nervous on the stand. He talked freely, in a high pitched voice, anxious to tell his story. The defense asserted that Allen’s wounds indicated that Dan had fired from the floor, after having been knocked down. Dan said that he feared Allen, and that he carried a gun to protect himself and his money after closing up his saloon at night.

The prosecution and defense wound up their presentations on June 10, 1908, and the jury was sent out with instructions from the judge for deliberation. The jury was out all night of the 11th, and then returned a verdict of guilty of murder in the second degree. The *East Oregonian*²⁰ observed that the case was hard fought, created much interest, and had a heavy bearing on the prohibition question in Morrow County. The issue of prohibition was not mentioned in previous newspaper coverage, but may have been inferred here because of Dan’s previous involvement in a legal dispute related to a prohibition vote in the county.

Sentencing was scheduled for June 15, 1908. Apparently that date was continued, as a sentence of life service in the state penitentiary was made by Judge Bean on July 7, 1908. Prior to passing sentence, Judge Fee, Dan’s attorney, filed a motion for a new trial implying that an appeal would be made. On hearing the motion for a new trial on July 7th, Judge Bean denied the motion.²¹

While resting in the Morrow County Jail, with time for reflective thinking, and being perhaps a little maudlin, even without liquor, Dan composed the following letter which was published in the Heppner Gazette on July 9, 1908;

¹⁶ *Morning Oregonian*, June 5, 1908.

¹⁷ *Heppner Gazette*, June 11, 1908

¹⁸ *Sunday Oregonian*, June 7, 1908

¹⁹ *Sunday Oregonian*, June 7, 1908

²⁰ *East Oregonian*, June 12, 1908

²¹ *Heppner Gazette*, July 9, 1908

Letter From Dan Doherty

This is the Fourth of July, this is Independence Day, this is the day we celebrate, to celebrate is to give praise too. Well, I can give praise to Mr. Shutt for his strict attention to my culinary requirements and his courteous treatment of my friends who visit me. I have cause to celebrate on my being a citizen of the world, in general, and of the United States in particular.

I have lived in the United States for twenty-seven years and never before today have I spent a Fourth of July in Jail. I came to Oregon in 1886, went to work for Charles Cunningham who then lived in Morrow County and was at that time sheep king of Eastern Oregon and whether rightly or wrongly, cast my vote for Heppner instead of Lexington to be the County seat. I have lived in both towns and in my present dilemma and experience of each, I would still cast my vote for Heppner to be the metropolis of Morrow County.

While writing this I can hear the report of firecrackers at a near distance, and in my mind's eye I can picture our first celebration of Independence Day in Philadelphia one hundred and thirty two years ago. I can see the joyous crowd of Uncle Sam's first citizens as they listen to the peals of the Old Liberty Bell tolling and proclaiming liberty to the world and Independence to the United States, there and then destined to be the Greatest Nation on Earth.

Heppner, Oregon, July 4, 1908

Dan P. Doherty

Time passed for Dan. On the first of December 1908, the Oregon Supreme Court ruled that the theory of self-defense that he had set up at trial was not sufficient to overturn the guilty verdict, and Judge Bean's decision and Dan's sentence were upheld.

Dan had²² continued to reside in the Morrow County jail for quite a while, and in time the pressure began to tell on him. In early December 1908, the *East Oregonian* reported that Doherty had tried to commit suicide. The Heppner *Gazette Times* reported on December 4, 1908 "Dan P. Doherty, who last spring was convicted of the murder of Oscar Allen in a Lexington saloon, and whose case was on an appeal before the state Supreme Court, is now almost a raving maniac. Upon receiving word Tuesday that the superior court had sustained the lower court, and that he must serve his life sentence, he commenced to abuse all the other prisoners confined in the county jail with him, his attorneys and everyone who came within his notice.

"Sheriff Shutt has placed a watch over Doherty, as he had made several attempts to kill himself. Doherty has heretofore been a model prisoner and has talked reform and religion to all prisoners that have been his associates during the past year. It is thought that he is hopelessly insane."²³

Confirming the concern of others for his mental state, Dan had, indeed, attempted to hang himself on December 4, 1908.²⁴

The certain machinery of the law and courts move steadily and relentlessly. On December 14, Sheriff Shutt and W. P. Scrivner, his deputy, left Monday morning for Salem, taking Dan to the penitentiary to begin his life sentence for the killing of Oscar Allen. December 17, 1908.²⁵

In correspondence with the Oregon Department of Correction in December, 2022, we are informed that penitentiary records show that Dan Doherty was received on December 14, 1908 for a sentence of life. His prison ID number was

²² East Oregonian, December 2, 1908

²³ East Oregonian, December 8, 1908

²⁴ Daily Capitol Journal, Salem, December 5, 1908

²⁵ Heppner Gazette, /December 17, 1908

5818, and his occupation of record was 'Laborer'. The Department also provided a photocopy of a 3 x 5 card stating that Dan was conditionally pardoned July 18, 1911. No other information was provided.²⁶

In a 1960 interview with Cassie Doherty Higgins, Dan's niece, provided the information that upon his release from prison, Dan worked for many years as a custodian at Marylhurst College in Mt. Angel, Oregon.²⁷

In January 1916, a very brief item in a Salem newspaper informs us that Dan's wife, Julia, filed for a divorce, saying that Dan had gotten into trouble previously while operating a saloon in Lexington and was sent to prison. She stated that she had worked for years to obtain a conditional pardon for him. And when a later full pardon was granted, Dan celebrated and then came home and smashed a mirror. Mrs. Doherty stated that she feared him and ran from her home to the home of her mother, where she was still staying. She asked for custody of their daughter Mary, age 12, and son Joseph, age 7.

Dan returned to Morrow County for a visit in 1916. The *Gazette Times* reported "Dan P. Doherty, who has been visiting with his brother, Barney, in the Sand Hollow country was in Heppner the first of the week visiting with his many old friends. Mr. Doherty was formerly engaged in business in Lexington, but the past few years he has held a position with the Columbia University."²⁸

Dan died at Mt. Angel, Oregon at age 67, in November 1921 and was interred at Mt. Calvary Cemetery.²⁹

The life of Dan P. Doherty was complex and show a man at his best and at his worst. Dan was thought by relatives and acquaintances in his early life be a studious and serious person and to be a possible candidate for the priesthood.³⁰ Dan's life went in a different direction. Opting for the promise of a good life in America, Dan join a multitude of countrymen and relatives in Morrow County and spent his first years as a sheepman and homesteader in the Butter Creek area, followed by years of activity as a businessman in the County. Dan was dogged for years by demon drink, and a hot temper. To avoid too early bias for this story, this story includes little mention of his temper, which is a character flaw, but not a crime. Dan was widely known for his temper, to the extent that he was nicknamed and widely known as "Cranky Dan." Dan's tragic involvement in a saloon shooting deprived him of a productive second half of life, and deprived his wife and children of a father's love and closeness for the remainder of their lives. For Daniel P. Doherty, alcohol and a hot temper ruined the life of a man who otherwise probably would have contributed a great deal to his community.

Authors Note: Attached as appendixes are:

1) a story about the "The killing of Oscar Allen" from the book "Bunchgrassers" by Sam McMillan, 1974, Irwin-Hodson Company, Portland Oregon, Pages 73-74, This story is primarily constructed from the reminiscences of Lexington old-timers, and is not a very accurate telling of this story.

2) The published decision of the Oregon Supreme Court, 1908, denying the appeal of the conviction and sentence of Dan P Doherty. The bulk of this decision is a reaccounting of the event, from the court records, and is an important resource for an accurate account of the event. There is a fascination about this case, focusing on the conflict of good behavior and bad behavior. Interest is piqued by such as the court's inclusion that Doherty told Allen that " the dirt under his fingernails knew more than the breed of him." Drink or not, Doherty had a way with words. STATE v. DOHERTY is

²⁶ Correspondence between Roger Doherty and Oregon Department of Corrections, Nov 30, 2022 and Dec13, 2022.

²⁷ Conversation with Cassie Doherty Higgins, 1960

²⁸ Gazette Times, February 17, 1916. "Columbia University" was the predecessor name of the Catholic institution of Higher Education that in the 1930s became The University of Portland.

²⁹ Morning Oregonian, November, 29, 1921.

³⁰ Conversation with John F Kenney, Heppner Oregon, About 1960

published and can be viewed in The Pacific Reporter (Annotated), Volume 98, Page s 152-154., December 14, 1908 – February 1, 1908.

Adendum I

THE BUNCHGRASSERS

A History of Lexington

Morrow County, Oregon

Copyright © Sam G. McMillan, 1974. All rights reserved. No part of this book may be reproduced in any form without permission in writing from the author, except for the inclusion of brief quotations in a review to be printed in a magazine or newspaper. Inquiries should be addressed to Sam G. McMillan, 11186 S.E. Wood Avenue, Portland, Oregon 97222.

Of this limited edition

this is book number **254** .

Published by Irwin-Hodson Company

for

Sam G. McMillan

11186 S.E. Wood Ave.

Portland, Oregon 97222

The Killing of Oscar Allen

Oscar Allen was shot and killed in the Office Saloon by Dan P. Doherty in December, 1907. *Homesteads and Heritages* reported the killing, and assigned Allen's refusal to buy a drink as the reason for Dan's anger. Dan was angry at the time the killing took place, but not at Oscar Allen, and getting a free drink was probably the furthest from Dan's mind. The story of the killing of Allen, and the marks in the wall where a stray bullet lodged, were well-known to customers of Howard Lane's Pastime in later years. The building which housed the Pastime was Add Inskeep's Office Saloon at the time the killing took place.

Mr. and Mrs. Dan P. Doherty were managing the Hotel Lexington for Mrs. Eliza Beymer in 1906 and 1907. Dan tended bar in the IXL Saloon located across C Street from the hotel. The site of the old IXL is where the Chevron gasoline station is located. In February of 1907 Dan purchased an interest in the IXL from J.H. Chapman, and on the night of the fatal shooting Dan was behind the bar at the IXL taking care of the trade.

According to Roy Munkers, who was a young man of seventeen years at the time of the killing, and who was part of the crowd which gathered outside the saloon after the shooting, the killing of Oscar Allen was accidental. Roy said the fun started when Add Inskeep, Charlie Beymer, and Charles Whittaker walked up the street from the Office Saloon to see what was going on at the IXL. Perhaps the visiting dignitaries from the Office Saloon expected a free drink. At any rate, they put Dan through the trap door which was behind the bar. This trap door led to the cellar where beer kegs were tapped. Charlie Beymer had been a former partner with Chapman in the IXL, and knew all about the workings of that trap door. With Dan securely locked in the cellar, the visiting trio decided to "take over the place" and have a free party "on the house". When the trio returned to the Office they left Dan locked in the cellar. When Dan got out of the cellar he went down to the other saloon and started shooting. The bullet that may have been intended for Charlie Beymer struck Oscar Allen, a young and single ranch hand, who at that moment was standing on the footrest at the bar consuming his last drink.

Terrel Benge's father, Ralph Benge, was called to care for the body. Ralph was taking care of Fred Benge's Red Front Livery Stable and adjoining lumber yard where the body was "laid out". The task of

shaving and cleaning the corpse to make ready for burial fell to him.

defense, unless he in good faith withdrew or attempted to withdraw from the conflict.

[Ed. Note.—For other cases, see Homicide, Cent. Dig. §§ 145-150; Dec. Dig. § 112.*]

3. HOMICIDE (§ 300*) — INSTRUCTIONS — SELF-DEFENSE.

Evidence of a difficulty between the parties shortly before the homicide, in which decedent pushed accused against a wall and choked him, warranted an instruction that if the killing was done in a spirit of retaliation or revenge for past injury, and not because there was reasonable apprehension of impending injury, accused could not plead self-defense.

[Ed. Note.—For other cases, see Homicide, Cent. Dig. §§ 614-632; Dec. Dig. § 300.*]

4. HOMICIDE (§ 116*) — "SELF-DEFENSE." — BASIS.

The right to kill in "self-defense" is founded on necessity, real or apparent, and can only be resorted to when the circumstances are such as to warrant a reasonable belief in him assaulted that the killing is necessary to preserve life or to protect himself from great bodily harm.

[Ed. Note.—For other cases, see Homicide, Cent. Dig. §§ 158-163; Dec. Dig. § 116.*]

For other definitions, see Words and Phrases, vol. 7, pp. 6402-6405; vol. 8, p. 7797.]

5. HOMICIDE (§ 115*) — SELF-DEFENSE — "GREAT BODILY HARM."

"Great bodily harm," within the rule governing the right of self-defense, means more than mere injury by the fist such as is likely to occur in ordinary assault and battery (citing Words and Phrases, vol. 4, p. 3162).

[Ed. Note.—For other cases, see Homicide, Cent. Dig. §§ 155-157; Dec. Dig. § 115.*]

6. HOMICIDE (§ 117*) — SELF-DEFENSE — RIGHT TO INVOKE.

A threatened injury, to warrant a homicide in self-defense, must involve imminent peril to life or limb, fear of a slight injury or a mere assault not felonious furnishing no excuse, but if, considering the relative age and strength of the parties or the ferocity of the attack, the intended beating is of such character as to endanger life or limb, it will be felonious, and the assaulted person may kill if necessary to preserve his own life or protect himself from such beating.

[Ed. Note.—For other cases, see Homicide, Cent. Dig. §§ 164-167; Dec. Dig. § 117.*]

7. HOMICIDE (§ 276*) — SELF-DEFENSE — EVIDENCE — SUFFICIENCY.

Evidence in prosecution for murder held insufficient to raise the issue of self-defense.

[Ed. Note.—For other cases, see Homicide, Cent. Dig. § 569; Dec. Dig. § 276.*]

8. HOMICIDE (§ 300*) — SELF-DEFENSE — RIGHTS OF ACCUSED — INSTRUCTION — CONFORMITY TO EVIDENCE.

One attempting to justify a homicide on a plea of self-defense, which the evidence tends to sustain, is entitled to instructions on his theory; but, when the evidence shows murder or manslaughter, an instruction on self-defense should not be given.

[Ed. Note.—For other cases, see Homicide, Cent. Dig. §§ 614-632; Dec. Dig. § 300.*]

9. HOMICIDE (§ 340*) — APPEAL — HARMLESS ERROR — INSTRUCTIONS.

One convicted of murder cannot complain of errors in an instruction on self-defense, when the evidence did not raise that issue.

[Ed. Note.—For other cases, see Homicide, Cent. Dig. §§ 715-719; Dec. Dig. § 340.*]

STATE v. DOHERTY.

(Supreme Court of Oregon. Dec. 1, 1908.)

1. CRIMINAL LAW (§ 822*) — INSTRUCTIONS — CONSTRUCTION.

An instruction in a criminal case must be interpreted in connection with the remainder of the charge.

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. §§ 1990-1995; Dec. Dig. § 822.*]

2. HOMICIDE (§ 112*) — SELF-DEFENSE — PROVOKING DIFFICULTY — EFFECT.

If decedent expressed an intent to strike

Dan P. Doherty was convicted of murder in the second degree, and he appeals. Affirmed.

James A. Fee, for appellant. A. M. Crawford, Atty. Gen., and G. W. Phelps, Dist. Atty., for the State.

BEAN, C. J. The defendant was tried and convicted of murder in the second degree for shooting and killing one Oscar Allen in a saloon in the town of Lexington, on December 20, 1907, and from the judgment, sentencing him to the penitentiary for life, he appeals.

Allen was working for one Padburg on a farm near the town, and on the night of the tragedy he and his employer were in town and spent most of the evening at a saloon kept by one Inskeep. Allen had been engaged in a game of cards early in the evening, but about two hours before he was killed had withdrawn from the game, and, while waiting for Padburg to get ready to go home, lay down on a billiard table in the back room of the saloon and went to sleep. Defendant had been in the saloon some time early in the evening, had taken a drink or two, went away, and returned again about 10 or 11 o'clock. After remaining in the front room about an hour, talking to Padburg, Bere shears, and Lane, the bartender, during which time he had several drinks, he offered to buy the drinks "for the house," and Padburg went into the back room where Allen was sleeping and awoke him, telling him to get up: "Dan (the defendant) is buying a drink for the house. Get a drink, and we will go home." Allen got up, went into the front room, and took a drink with the others. The defendant asked him to treat, which he did, and Allen then requested the bartender to give him a pint of whisky and a package, belonging to him, lying on the safe back of the bar, preparatory to going home. Defendant, however, insisted that he buy another drink, but Allen declined to do so, saying that he had bought one and did not want to buy another. Defendant kept insisting and called him a "cheap John" or "cheap geaser," until Allen became out of humor and told him not to repeat the request. Defendant then jumped around in front of Allen and told him "the dirt under his finger nails knew more than the breed of him." Whereupon Allen using some abusive language, caught him by the throat and pushed him into a corner of the saloon, but did not strike or attempt to strike him. The bartender called to Allen to stop, and told him he had gone far enough, and he left defendant and walked away. Defendant, nevertheless, followed him, "edging along the bar," as one witness said, saying, "You are a bigger man than I am, but I am not afraid of you," and still kept insisting that he buy the drinks, and repeated the term "cheap John" or "cheap geaser." Allen told him not to ask him again to buy any more drinks, and that

if he did, using an oath, he would mash his mouth, or something to that effect. Defendant thereupon repeated the request, when Allen struck at him, and the defendant drew his gun and commenced firing at Allen, firing five shots in all, from the effects of which Allen died in a few minutes. All the witnesses, who were present at the time, except defendant, say that, as far as they could see, Allen did not strike defendant, but missed him, and that defendant was standing when he did the shooting. Defendant testified, on his own behalf, that Allen struck him on the chest, and he fell to the floor, and while on the floor took out his gun and fired one or two shots, then got up, and fired three more, as Allen was moving backward.

The court gave numerous instructions concerning the right of self-defense, stating therein, among other things: That the danger "must not have been brought on by defendant." He must not be the aggressor by some overt act or demonstration. That if defendant used offensive and abusive language to deceased, and deceased expressed an intention to strike him if he repeated such remarks, and defendant did so, and invited and brought on the difficulty, he could not successfully set up self-defense, unless he, in good faith, withdrew, or attempted to withdraw, from the conflict. That if defendant had no reasonable apprehension of impending injury to himself, but did the killing from a spirit of retaliation or revenge, for the purpose of punishing defendant for past injuries done him, he could not avail himself of the law of self-defense. That if Allen assaulted the defendant before the shooting, but in good faith withdrew from the conflict by retreating or otherwise, defendant had no right under the law to shoot, unless the shooting and killing were necessary, or apparently necessary, to protect himself from death or great bodily harm. That the killing must have been unavoidable. These and other like expressions or statements were excepted to by defendant, and he now insists that they do not correctly state the law as applicable to the facts of the case. As we have said, the portions objected to are but excerpts from the instructions, and, of course, must be interpreted in connection with the remainder of the charge. Without incumbering this opinion, by setting out the charge in full, it is sufficient, we think, to say that it fairly and clearly presented the law as favorable to defendant as he was entitled to under the testimony. The instruction, that if defendant used abusive and offensive language to decedent, and decedent expressed his intention to strike him if he repeated such language, and he did repeat it, and deceased struck him, he could not successfully set up the right of self-defense, unless he had, in good faith, withdrawn, or attempted to withdraw, from the conflict, is but announcing the general rule that one who provokes a difficulty, in which

he kills another, cannot plead self-defense, unless he, in good faith, withdrew, or attempted to withdraw, therefrom (State v. Sumner, 74 Am. St. Rep. 731, note), and was a proper instruction under the facts of this case (People v. McGrath, 47 Hun, 325). The instruction that, if the killing was done in a spirit of retaliation or revenge on account of past injuries, and not because there was reasonable apprehension of impending injury, defendant could not plead self-defense, was clearly within the evidence. There had been a difficulty between the parties a short time before the conflict, during which deceased pushed defendant against a wall and choked him, and, no doubt, the court had this circumstance in mind in giving the instruction in question. If we assume therefore that the facts in this case, as developed by the testimony, called for instructions on the law of self-defense, that question was properly presented to the jury. It is very doubtful, however, whether defendant was entitled to an instruction upon the subject at all. The right to take the life of another in self-defense is founded on necessity, real or apparent, and can only be resorted to when the circumstances are such as to warrant a reasonable belief in the party assaulted that the killing is necessary for the preservation of his life or to protect his person from great bodily harm. Wharton on Homicide, § 225. And by "great bodily harm" is meant more than a mere injury by the fist, such as is likely to occur in ordinary assault and battery. The injury apprehended must be more severe and serious than that usually inflicted in an ordinary fight with the fist, without weapon. 4 Words and Phrases, 3162; Wharton on Homicide, p. 376. According to the Supreme Court of the United States, the threatened injury must be one that would maim, or that would be permanent in its character, or that might produce death (Acers v. United States, 164 U. S. 388, 17 Sup. Ct. 91, 41 L. Ed. 481), or, as stated by the Supreme Court of Alabama, it must involve imminent peril to life or limb (Blackburn v. State, 86 Ala. 595, 6 South. 96). Fear of a slight injury is not sufficient, nor will a mere assault, not felonious, furnish an excuse for the taking of life. If the intention of the assailant is only to commit a trespass or simple beating, it will not justify his killing. Floyd v. State, 36 Ga. 91, 91 Am. Dec. 760; State v. Benham, 23 Iowa, 155, 92 Am. Dec. 416. But, considering the relative age and strength of the parties or the ferocity of the attack, if the intended beating is of such a character as to endanger life or limb, then it will be felonious, and the assaulted person is justified in taking the life of his assailant if necessary to preserve his own or protect him from such a beating. State v. Gray, 43 Or. 446, 74 Pac. 927.

Now there was no evidence in the case,

as we read the record, to justify an apprehension that the deceased intended to do anything more than to inflict a slight injury upon the defendant. According to all the witnesses to the affray, except defendant, he did not strike him at all, at the time of the shooting, nor make any effort to do him serious injury. Defendant states that deceased knocked him down. This conflicts with all the other testimony in the case; but, giving to it full weight and credit, it shows nothing more than an ordinary affray, in which the deceased struck him, but with no intention of doing him any serious bodily harm. Deceased was not armed at the time, and did not follow up the assault, or attempt to continue the beating, but was in the act of retreating, when the fatal shots were fired. One who attempts to justify an act of homicide on a plea of self-defense, which the evidence tends to sustain, is entitled to have the jury fully instructed as to the law applicable to his theory of the case; but, when the evidence shows guilt of either murder or manslaughter, an instruction on the law of self-defense should not be given, and, if one is given, the defendant cannot complain of error therein. Wharton on Homicide, § 222; Hayden v. Commonwealth, 63 S. W. 20, 23 Ky. Law Rep. 399; State v. Holloway, 161 Mo. 135, 61 S. W. 600.

The judgment is affirmed.

END